

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 892/99

the 30th day of APRIL 2003

CORAM: Hon'ble Shri A.S. Sanghvi - Member (J)

Hon'ble Shri Shankar Prasad - Member (A)

M.K. Ubale
C/o Shri R.S. Chogle
Gajanan Colony Chal
25/195, Shivaji Nagar
Govandi, Mumbai.
(None)

...Applicant.

V/s

1. Union of India through
The Secretary
Department of Atomic Energy
Anushakti Bhavan,
CSM Marg., Mumbai.
2. The Controller
Bhabha Atomic Research Centre
Central Complex, Trombay,
Mumbai.
3. The Head Personnel Division
Bhabha Atomic Research Centre
Central Complex, Trombay
Mumbai.
4. Dy. Establishment Officer
Bhabha Atomic Research Centre
Central Complex, Trombay,
Mumbai.

...Respondents.

By Advocate Shri R.R.Shetty.

O R D E R

{Per A.S. Sanghvi, Member(J)}

The OA ^{is} ~~was~~ moved by the applicant challenging the order dismissing him from service and prays for reinstatement with all consequential benefits. According to the applicant the order dated 12.8.1997 dismissing him from service requires to be

quashed and set aside and the order in appeal passed by respondent No. 3 dated 26.12.1997 imposing the reduced penalty of Compulsory retirement also deserves to be quashed and set aside as he had not been served with the charge sheet and no enquiry had taken place in the charges levelled against him. According to the applicant he was suffering from Pulmonary Tuberculosis and severe anaemia and mental depression and was taking treatment at Sangola. He could not attend the duties as Washboy w.e.f. 8.1.1996 and had no idea that charge sheet was issued by the respondents for unauthorised absence from duty. Enquiry was held exparte in the charges levelled against the applicant. According to him he has sufficient reasons for remaining absent from duty and he had intimated about his inability to attend the duty due to sickness. However the disciplinary authority has noted his absence as unauthorised and issued orders dismissing him from service which in the appeal are set aside by the Appellate Authority and the punishment imposed on him is reduced to that of Compulsory retirement. He has further submitted that the penalty orders are illegal and deserves to be set aside..

2. The respondents on the other hand in the written statement stated that the penalty imposed on the applicant is proper and adequate as he had been remaining absent unauthorisedly from duty and had left the headquarters without prior permission of the competent authority for 72 days from 17.4.1995 to 27.6.1995. He had reported for duty on 28.6.1995 and submitted his leave application supported by a medical certificate issued by

Municipal Dispensary, Sangola. The applicant was directed to explain the reason for his failure to obtain prior permission of the competent authority before leaving the headquarters vide memo dated 27.7.1995. The applicant vide letter dated 2.5.1995 submitted his explanation for leaving the headquarters without prior permission of the competent authority and requested to pardon his mistake. The applicant was warned by the competent authority to resist from remaining absent unauthorisedly vide memo dated 24.8.1995. The applicant once again remained absent unauthorisedly from duty for the period from 8.11.1995 to 29.11.1995. A charge sheet under Rule 16 of Central Civil Services (Classification, Control & Appeal) Rule, 1965 was issued to him. According to the respondents the charge sheets were sent to the applicant by Registered post at his known local address as well as permanent address but the same were received back undelivered with the postal remarks "unclaimed" "R to sender" "left add." "addressee not available" etc. Since the applicants whereabouts were not known the enquiry was proceeded ex-parte against him and the Enquiry authority intimated the applicant to attend the hearing adjourned on 8.1.1997 vide order dated 18.12.1996. The applicant did not attend the hearing fixed by the Enquiry Authority from time to time and hence, the inquiry was conducted ex-parte in accordance with Govt. of India's instructions No.6 under the Rule 14 of CCS (CCA) Rules, 1965. The Enquiry Officer thereafter completed the enquiry and submitted his report to the Disciplinary Authority and the Disciplinary Authority had imposed the penalty of dismissal from

service on the applicant with immediate effect vide order dated 12.8.1997. Copy of the said order dated 12.8.1997 was forwarded to the applicant to his known address by Registered Post, but received back undelivered with the postal remark "Not claimed." When the applicant reported for duty on 27.8.1997 he was served with a copy of penalty order dated 12.8.1997 issued by the Disciplinary Authority. The applicant had submitted the medical certificate dated 24.8.1997 issued by Medical Officer, Municipal Dispensary, Sangola countersigned by Civil Surgeon, General Hospital, Sangli to the effect that the applicant was suffering from tuberculosis, severe anaemia and mental depression for the period from 8.1.1996 to 24.8.1997. However since the Disciplinary Authority had already dismissed him from service, the effective date of dismissal from service was considered as 27.8.1997. The applicant thereafter filed appeal against the order dated 12.8.1997 to the Appellate Authority and the Appellate Authority had reduced the punishment to that of compulsory retirement. Revision preferred by the applicant had also come to be dismissed. The respondents have contended that the enquiry was held as per Rules and Regulations.

3. We have heard Shri R.R. Shetty counsel for the respondents in the absence of Shri S.Natarajan counsel for the applicant and have carefully gone through the pleadings as well as the documents on record.

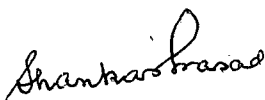
4. It is obvious from the above narrated facts that enquiry was not at all initiated against the applicant and he has wrongly and illegally been dismissed from service/ compulsorily retired. It is an admitted position that the applicant remained absent continuously from duty. A decision was taken by the respondents to initiate disciplinary proceedings against him. Pursuant to the decision, charge sheet was prepared and sent by Registered Post to the applicant's local as well as permanent address. The charge sheet alongwith documents, were admittedly returned back 'not claimed'. Despite the fact that the charge sheet was not served on the applicant, the authority concerned had decided to proceed further with the enquiry and the enquiry was held ex-parte against the applicant. The Enquiry Officer had completed the enquiry and submitted the report to the Disciplinary Authority and the Disciplinary Authority had there-upon passed the order of penalty of dismissal from service. The penalty order came to be served on the applicant only when he came to join duty with medical certificate. The applicant was served the penalty order and he was not allowed to resume duty. The Appellate Authority in the appeal preferred by the applicant also did not consider the ground of non-service of charge sheet on the applicant and confirmed the finding of the Disciplinary Authority of the charges being proved against the applicant and reduced the penalty of dismissal from service to that of compulsory retirement. There is hardly any doubt in our mind that the Appellate Authority and subsequently Revisional Authority had failed to apply their mind to the fact that illegal

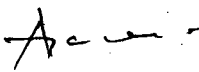
enquiry had been conducted against the applicant. Where the disciplinary proceedings were intended to be initiated by issuance of charge sheet, its actual service is essential as the person to whom the charge sheet is issued is required to submit his reply and thereafter to participate in the disciplinary proceedings. When there is no service of the charge sheet on the delinquent it is quite obvious that no opportunity to reply to the charge sheet is given to him resulting into the whole enquiry being vitiated. There was clear violation of principles of natural justice. Shri Shetty had tried to defend the action of the respondents in proceeding with the enquiry ex-parte against the applicant and argued that it was the duty of the applicant to furnish his contact address if he had proceeded on leave and since the applicant has failed to furnish his new address and his whereabouts were not known the respondents were justified in proceeding with the enquiry ex-parte against the applicant. He has further submitted that even if the enquiry had been conducted in the presence of the applicant the result would have been the same as the applicant had admittedly remained absent unauthorisedly from duty. We are not prepared to accept the submission that the result of the enquiry would have been the same if the inquiry was not conducted ex-parte. There is a possibility that the Medical certificate duly countersigned by Civil Surgeon, produced by the applicant could have been taken into consideration by Inquiry Officer to conclude that there were sufficient reasons for the applicant to remain absent from duty. The applicant was not given any opportunity to explain his absence from duty and as such the whole enquiry is vitiated.

5. In a similar case of Union of India and Ors. v/s Dinanath Shantaram Karekar and Ors. AISLJ SC 180 and Dr. Ramesh Chandra Tyagi V/s Union of India and Ors. 1996 (1) SLR 703, the Supreme Court while examining the question of non service of charge sheet on the applicant being returned with the endorsement "Not Found" and "not claimed" has held that there was no service at all of the charge sheet and that when the charge sheet itself was not served on the applicant, the enquiry proceedings cannot be said to have been legally initiated. It was observed by the Supreme Court that mere initiation of disciplinary proceedings was bad. The ratio of these decisions applies with full force to the instant case. We find that since no charge sheet was served on the applicant the initiation of enquiry and issuance of charge sheet was bad. As such the applicant ought not to have been either dismissed or retired compulsorily from service. The penalty imposed on the applicant therefore deserves to be set aside. It will however be open to the respondents to initiate fresh enquiry against the applicant for the charges levelled after properly serving the charge sheet on him.

6. We, therefore allow the OA and quash and set aside the punishment of compulsory retirement as well as dismissal from service imposed by the Appellate Authority as well as the Disciplinary Authority respectively on the applicant and direct the respondents to reinstate the applicant in service with all consequential benefits. We also direct the applicant to refund any amount if he has received by way of retiral benefits on

account of the order of compulsory retirement passed by the Appellate Authority, within three months from the date of receipt of copy of the order and if not refunded in time it will be open to the respondents to recover the same from the applicant with 9% interest thereon. With these directions the OA stands disposed of. No order as to costs.


(Shankar Prasad)
Member(A)


(A.S. Sanghvi)
Member(J)

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