

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 173/2000
THIS THE 5TH DAY OF SEPTEMBER, 2001

CORAM: SHRI S.L. JAIN.
SMT. SHANTA SHAstry

: MEMBER (J)
: MEMBER (A)

Shri B.R. Tank,
working as Tradesman, Ticket No. 57210,
C.No. Personnel Department,
Naval Dockyard, residing at
C/o Shri Dharampal Mehrol,
Municipal Lapat Chawl,
Khartan Road, Near Thane College,
Thane (W), District Thane. Applicant

By Advocate Shri S.S. Karkera

Versus

1. The Union of India
through the Flag Officer,
Commanding in Chief, Western
Naval Command Headquarters,
First Floor, Shahid Bhagat,
Singh Road, Mumbai-400 001.
2. The Admiral Superintendent,
Naval Dockyard, S.B. Road,
Lion Gate, Mumbai-400 001.
3. The Personnel Manager,
Naval Dockyard, S.B. Road,
Lion Gate, Mumbai-400 001. Respondents

By Advocate Shri V.S. Masurkar.

ORDER

Smt. Shanta Shastry. Member (A)

The applicant in this OA has prayed for quashing and setting aside the impugned orders of 18th July, 1996 and 31st October, 99 whereby he was removed from service and his appeal was rejected and has prayed for the reinstatement in service with all backwages and arrears. The applicant was working in the department of

the respondents as Tradesman since 1983. When he was selected to the post and was transferred to Electrical department, the applicant had applied for Earned Leave from 9.1.93 to 28.2.93 for going to native place since his mother was sick and the applicant was also suffering from abdominal Tuberculosis and therefore, he could not return to duty on the expiry of the leave. According to him, he was taking treatment from the Civil Hospital at Sahadara, New Delhi. The applicant submits that he had sent representation to Respondent No.3 on 28.2.95 by Registered AD. However, he did not receive any reply. On 19.4.96 his mother expired and he had sent the death certificate of his mother to the respondents. There was however, some misunderstanding and the respondents thought that the applicant himself had died and therefore, they had written a letter to the applicant's wife in connection with the collection of legal dues vide their letter dated 8.9.97. The applicant submits that he was sick and he had sent registered letter to the respondents on 6.1.97 ^{informing} and that he was alive. When he was declared medically fit by the Medical Officer, Sahadara, New Delhi with effect from 04.12.98, he travelled by train from his native place to Mumbai on 6.12.98 and went to office of the respondents on 07.12.98 to join duty. But was not allowed to join duty and he was intimated that he had been removed from service with effect from 19.7.96, copy of the same was handed over to him. The applicant is aggrieved with the removal order which was passed ex parte by the

respondents, He preferred an appeal against the same on 15.12.98, the appeal was not considered. He also sent a representation on 27.1.99 about supplying him a copy of the letter dated 8.9.97, which was erroneously issued by the respondents and which was later cancelled on 17.12.97. the applicant, thereafter, filed OA No.523/99 and the Tribunal directed the respondents to consider and dispose of the appeal of the applicant dated 16.12.98 by a speaking order within a period of four months. Accordingly a speaking order was issued on 31st October, 99 by the respondents rejecting his appeal.

2. The applicant has professed ignorance about any charge sheet or enquiry or even the order of removal passed by the respondents. He submits that he had sent letters to the respondents from time to time intimating about his inability to attend duty due to ill-health of his mother and himself from his native place. He had not received any charge sheet nor he had been called for any enquiry. Therefore, the exparte removal of the applicant is against the principles of natural justice. This is contrary to the provisions of CCS (CCA) Rules, 1965 as no charge sheet has been served on him personally, he was not given any opportunity to defend his case besides declaring the applicant as dead while he was alive, it was also clearly illegal. According to the applicant, the consideration of extraneous factors while disposing of his appeal was not at all relevant to the alleged charge of unauthorised absence of the

applicant. The Appellate Authority failed to appreciate the clinical condition of the applicant and without taking into consideration the same had confirmed the harsh punishment of removal from service. No personal hearing was granted to the applicant to enable him to put forth his genuine difficulty for which he had remained unauthorisedly absent from duty. Therefore, the order of the Appellate Authority deserves to be quashed and set aside.

3. The respondents submit that there is no flaw in the procedure or violation of principle of natural justice. The application, in fact suffers from delay and laches and on this ground alone the OA deserves to be dismissed. The applicant had been informed vide letter dated 20.6.95 to report for duty immediately or to submit a medical certificate from the nearest Government/ Municipal Hospital/Dispensary if he was sick. The letter was forwarded to his local as well as permanent addresses, but the same was returned by the postal authority with the remark "not staying" from time to time about his unauthorised absence. The applicant did not inform at any stage regarding his ailment. No documents were ever received in the department bringing the reasons for his unauthorised absence. The respondents admit that there was some misunderstanding, however, they had rectified by cancelling the letter dated 8.9.96 by which they have asked the applicant's wife regarding the legal

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dues. However, this cannot be a ground because the applicant had already been removed from service vide order dated 18.7.96. This order was received by the applicant at his permanent address i.e. at Harora in Gaziabad. His forwarding of medical certificate or intimation about his absence therefore, is of no consequence. He was removed from service after following due procedure contained in the CCS (CCA) Rules 1965. All the documents in connection with the departmental enquiry including the report of the enquiry officer and the punishment order were received by the applicant, according to the respondents. Even his appeal was time barred, however, the same was considered as per the directions of this Tribunal and a speaking order was passed on 31.10.99. The applicant was directed by letter dated 20.6.95 to report for duty immediately or submit a medical certificate from the nearest Government/Municipal Hospital/Dispensary if he was sick. The letter was forwarded on his local as well as permanent address at his native place. However, they were returned undelivered by the postal authority with the remark "not staying". Before imposing the penalty, all the procedure laid down in the CCS (CCA) Rules was followed. Though the applicant was informed from time to time about his unauthorised absence, there is no material to show that the applicant had sent any reply at any time during the period of his absence and he alleges that he had sent letters. Even on enquiry report he did not submit his say in the matter. The

Appellate Authority did not grant any personal hearing after going through the entire relevant records of the case and taking into consideration the other facts and circumstances of the case. He did not find it fit case for grant of personal hearing. Even as per rules, the Appellate Authority may after considering all relevant circumstances of the case, allow the applicant, at his discretion, the personal hearing. Since it was not considered necessary by the Appellate Authority, the applicant was not given any personal hearing. The applicant miserably failed to make out any case of prejudice by not granting personal hearing to him. The respondents have, therefore, prayed for dismissal of the OA.

7. We have given our careful consideration to the pleadings on both sides. We find that the applicant has been removed from service for his unauthorised absence for the period from 1st March, 1993 till the date of issue of the charge sheet i.e. 24th September, 1995 without any prior intimation or intimation during the absence. the applicant has produced medical certificate only after he had been removed from service. Not only that, when the respondents issued a wrong letter to the wife of the applicant in connection with the death certificate of the applicant, the applicant suddenly woke up to protest against the same. Till then, he did not make any attempt to join or to inform the respondents to seek permission for remaining on leave.



We have perused the relevant records and find that the respondents at every step have intimated the applicant by registered post at his address at the native place i.e. Harora, Post Office Simbhalli, Taluk & District Gaziabad as well as at College Road, Khartan Road, Municipal Chawl, M.Phule Road, Thane, when the charge sheet was served on the applicant, the same was returned undelivered. However, there is a remark by the postal authority that "the receiver of the letter started staying in Gaziabad, he is not staying in Harora, his residential address not known." This was on 27.10.95. The respondents have, therefore, produced enough material to show that the charge sheet had been sent to the applicant, but he was not available at that address.

8. It is true that the respondents tried to serve the chargesheet on the applicant dated 24.9.1995 but the said chargesheet could not be served on him as per the endorsement made by the postal authorities referred above. Thereafter, the report of the enquiry officer or and the penalty order of the disciplinary authority was not served on the applicant. It is true that CCS (CCA)

9. It is true that CCS (CCA)Rules, Rule 30 prescribed the method of service in person or by Regd. Post and the applicant is supposed either to be served his residential address on the place of posting or the permanent address given by him, but if he is not available on the said addresses and he fails to submit

another address, the respondents being aware that the applicant is not available on the addresses submitted by him, i.e. the address of place of posting and the permanent address, then without serving a chargesheet on the applicant, if the enquiry is proceeded with and even after submission of the report by the enquiry officer, the said report and the penalty order is also not served on him, the applicant cannot be deprived of the principles of natural justice, i.e. of hearing. In such circumstances, the respondents ought to have adopted any procedure recognised by law for serving the chargesheet either by affixture on the place last resided by the applicant or by publication in Newspapers or any other mode by which the chargesheet could reach to the applicant. The respondents must have tried, after making enquiries to ascertain the address of the applicant. The respondents were bound to take the said steps.

10. Merely saying that the respondents have attempted to serve the chargesheet, report of enquiry officer along with the order by the disciplinary authority on the official address on the place of posting and on permanent address, the respondents cannot escape from the liability to serve the chargesheet and the applicant cannot be debarred from hearing.

11. We have also referred to Union of India & Others Vs. Dinanath Shantaram Karekar & Others (J.T. 1998 (6) SC 1) wherein it has been held that the document sent by registered post can be treated to have been served only if it is established that it was tendered to the addressee. Where the addressee was not available even to the postal authorities, and the registered cover was returned to the sender with the endorsement "not found", it cannot be legally treated to have been served. Merely sending charge sheet by registered post is not sufficient. Actual service should be established.

12. In the circumstances, we are of the considered ^{that the} opinion principles of natural justice ~~was~~ ^{not} adhered to and the order of the disciplinary authority dated 18.7.1996, ^{of} the appellate authority dated 31.10.1999 deserves to be quashed and set aside. ^{and re, so h} The matter shall go to the disciplinary authority to serve the chargesheet on the applicant and thereafter to proceed in accordance with law. No order as to costs.

Shanta ^{JK}
(SMT. SHANTA SHAstry)

MEMBER (A)

Jain
(S.L. JAIN)
MEMBER (J)