

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 261 of 2001.

Dated this Thursday, the 14th day of August, 2003.

CORAM : Hon'ble Shri Justice S. K. Singh, Vice-Chairman.
Hon'ble Shri S. K. Agarwal, Member (A).

Shri B. B. Waghela,
Ex-Safaiwala,
C/o. Sahubai Kansur,
Ramabai Colony,
D.B. Pawar Chawl,
Behind Gani Arts,
Ghatkopar (East),
Mumbai - 400 075.

... Applicant.

(By Advocate Shri A. I. Bhatkar)

VERSUS

1. Union of India through
the Chief of the Naval Staff,
Naval Headquarters,
Sena Bhawan,
New Delhi - 110 001.
2. The Flag Officer Commanding-
in-Chief,
Headquarters Western Naval
Command, S.B. Singh Marg,
Mumbai - 400 001.
3. The Admiral Superintendent,
Naval Dockyard,
Mumbai - 400 023.

... Respondents.

(By Advocate Shri V. S. Masurkar)

O R D E R (ORAL)

PER : Shri Justice S. K. Singh, Vice-Chairman.

Heard Shri A. I. Bhatkar, Learned Counsel for the
applicant and Shri V. S. Masurkar, Learned Counsel for the
Respondents and perused the pleadings.



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2. The applicant who was employed with the respondents as Safaiwala was served with a charge-memo in which the charge levelled against the applicant was that he unauthorisedly remained absent from duty from 01.11.1995 till the date of issue of the memorandum and hence has not maintained devotion to his duty and, therefore, has violated Rule 3(1)(ii) of the C.O.S. (Conduct) Rules, 1954.

3. A statement of imputation of misconduct or misbehaviour on which the article of charge had been framed together with the list of document by which and a list of witnesses by whom the charge was proposed to be sustained were also forwarded to him alongwith the memorandum dated 30.05.1996 by means of Registered Post. The applicant, however, did not submit any statement of defence in reply to the memorandum dated 30.05.1996 and accordingly the enquiring authority conducted the enquiry ex-parte and submitted his report holding the applicant guilty of the charge on the basis of the evidence recorded by him during the course of enquiry. A copy of the enquiry report was sent to the applicant again by Registered Post but the applicant failed to submit any explanation whereupon the Disciplinary Authority on consideration of the enquiry report accepted the findings recorded by the Enquiry Officer and came to the conclusion that the applicant unauthorisedly remained absent from duty from 01.11.1995 till the date of issue of memorandum i.e. 30.05.1996. Accordingly, the Disciplinary Authority awarded the penalty of removal from service vide order dated 21.02.1997 (Annexure A-1). The applicant preferred appeal against the said order which came to be dismissed vide order dated 11.07.1997 being Annexure A-2.



A perusal of the Appellate Order would indicate that the applicant was granted personal hearing on 25.06.1997 but he failed to adduce any additional evidence in his defence. The Appellate Authority accordingly upheld the penalty order of removal from service imposed by the Disciplinary Authority. The applicant then preferred a representation, which after consideration came to be rejected on 15.02.2001 (Annexure A-8). The Revisional Order has been brought on record by way of amendment to the Original Application, which, as it stood before its amendment, was directed against the order passed by the Disciplinary Authority as maintained by the Appellate Authority's order.

4. The submission made by the Learned Counsel⁵² that neither the charge sheet nor the show cause notice was served on the applicant and, therefore, the entire enquiry shall be deemed to have been conducted in breach of principles of natural justice and, therefore, the order of punishment inflicted by the Disciplinary Authority and as maintained by the Appellate Authority and Revisional authority stands vitiated. In support of his contention, the Learned Counsel for the applicant has placed reliance on a decision of the Supreme Court in Union of India v/s. Dinanath Shantaram Karekar [1999 (1) SC (SLJ) 245] where the Supreme Court has held as under :

"Where the disciplinary proceedings are intended to be initiated by issuing a charge-sheet, its actual service is essential as to person to whom the charge-sheet is issued is required to submit his reply and, thereafter, to participate in the disciplinary proceedings. So also, when the show cause notice is issued, the employee is called upon to submit his reply to the action proposed to be taken against him.

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Since in both the situations the employee is given an opportunity to submit his reply the theory of "Communication" cannot be invoked and "Actual Service" must be proved and established. It has already been found that neither the charge-sheet nor the show-cause notice were ever served upon the original respondent, Dinanath Shantaram Karekar. Consequently, the entire proceedings were vitiated."

5. In reply, Shri V. S. Masurkar, Sr. Standing Counsel representing the department, has submitted that the applicant was asked by registered post to resume to his duty before initiation of the disciplinary proceedings but he did not turn up and the charge-sheet was issued by registered post but the envelope returned with postal endorsement "Not Known". It is not disputed that the registered envelope was sent as per the address given by the applicant to the office. The mode of service of orders, notices, etc. is prescribed in Rule 30 of the COS (CCA) Rules, 1965. For ready reference the rule is quoted below :

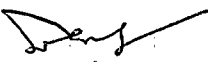
"Every order, notice and other process made or issued under these rules shall be served in person on the Government servant concerned or communicated to him by registered post."

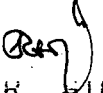
It would be evident from the afore-extracted provision that the department had tried to serve the applicant in the manner prescribed by rules. Rule 63 and 64 of the P. & I. Manual (Volume-III) also enable the authorities to hold ex-parte enquiry if the letter is received undelivered or if the letter having been delivered, the official does not submit a written statement of defence on or before the specified date or at a subsequent stage does not appear in person before the Enquiry Officer. In any case, the applicant was given personal hearing at the appellate stage but even at the appellate stage he could not produce any evidence in defence, having remained absent for months

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together. The Disciplinary Authority, in our opinion, rightly inflicted the penalty of removal from service on the applicant. The decision cited by the Learned Counsel for applicant is distinguishable in view of the fact that in that case only one attempt was made and in any case the delinquent in that case was not afforded any opportunity of hearing at the appellate stage. In the present case, as pointed out herein above, the applicant was given personal hearing and also opportunity to adduce evidence at the appellate stage. The fact that he remained absent for months together is not disputed even before us.

6. In the circumstances, therefore, we find no ground made out for interference under Section 19 of the Administrative Tribunals Act, 1985. The O.A. is dismissed. We, however, make no order as to costs.


(S.K. AGARWAL)
MEMBER (A).


(S. R. SINGH)
VICE-CHAIRMAN

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