

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 594/91

Transfer Application No:

DATE OF DECISION: 12.10.1994.

V.V.Patil. Petitioner

Shri S.P.Kulkarni Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Shri S.S.Karkera. Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,

The Hon'ble Shri M.R.Kolhatkar, Member(A).

1. To be referred to the Reporter or not ? *Yes*
2. Whether it needs to be circulated to other Benches of the Tribunal ? *No*


(M.S.DESHPANDE)
VICE-CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, BOMBAY.

Original Application No.594/91.

V.V.Patil. Applicant.

V/s.

The Union of India & Ors. Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,
Hon'ble Shri M.R.Kolhatkar, Member(A).

Appearances:-

Applicant by Shri S.P.Kulkarni.
Respondents by Shri S.S.Karkera.

Oral Judgment:-

{Per Shri M.S.Deshpande, Vice-Chairman} Dt. 12.10.1994.

By this application the applicant challenges the order of dismissal passed against him as a result of a departmental inquiry initiated against him.

2. The applicant was appointed as an extra departmental sub post master on 1.5.1979 and worked in that capacity up to 25.3.1983. On 25.3.1983 a put off memo was served on him. A criminal case was initiated against him on charges under section 409 and 477A of the Indian Penal Code, but he was acquitted. A departmental inquiry was then initiated against the applicant. The contention of the applicant is that none of the letters which ^{are} ~~is~~ said to have been issued by the department in respect of the charges framed against him were served on him and the inquiry against him proceeded ex parte. The Enquiry Officer made a report on 30.9.1986 holding all the three charges against the applicant proved on the basis of the evidence of the witnesses who were examined and on the basis of the documentary material before him. The Disciplinary Authority accepted the Enquiry Officer's report and passed an order on 3.5.1989 imposing the punishment of removal. The applicant appealed on 7.9.1989, but

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Due at the last known address of the employee. If the document sent by Registered Post, Acknowledgement Due, is not accepted by the addressee and is returned by the Post Office to the sender, further action may be taken as if the document has been served and due notice has been given to the employee concerned. According to the learned counsel for the applicant these instructions would show that service through Registered Post can be availed off only after a record of facts is made by the officer concerned and it is only in that event that the document may be sent through Registered Post. As we have already pointed out, the thrust of Rule 30 and the instructions issued in August, 1965 was only that the Gazetted Officer should not be deputed. It does not render the other alternative furnished by the Rule any the less efficacious if the registered post service is availed off. Shri ^{Kulkarni} ~~Karkera~~ for the applicant relied on the observations of the Hyderabad Bench of this Tribunal in G. Lakshmana Rao V/s. Union of India & Ors (1993(20) ATJ 410). In para 11 of the Judgment it was observed that no material was placed before the Tribunal to show that the Competent Authority was satisfied that the applicant was wilfully evading the acknowledgement of the charge memo that was sought to be served on him, and, no reasons were recorded at any time by the competent authority that the applicant was wilfully evading the service of charge memo on him. There the position which fell to be considered was whether the return of the charge memo which had been sent at the last known address by Registered Post and had been returned with the remarks that the 'Addressee's whereabouts not known', could have been as contemplated by Rule 30 ibid. There the case was not one of refusal ^{by the addressee} to accept service. In the present case 7 letters were sent by Registered Post and they were all returned with the remark 'refused'.

The envelopes contained the copies of the charge sheet which was to be served on the applicant. Reliance was placed also on the observations of the Supreme Court in Dr.R.C.Tyagi V/s. Union of India & Ors. (1994) 27 ATC 112). Para 7 of the Judgment would show that the Enquiry Officer himself stated that the notices sent were returned with endorsement "left without address" and on other occasion, "on repeated visits people in the ^{said} house that he has gone out and they do not disclose where he has gone. Therefore, it is being returned."

The Supreme Court observed in these circumstances that:

"May be that the appellant was avoiding it but avoidance does not mean that it gave a right to Enquiry Officer to proceed ex parte unless it was conclusively established that he deliberately and knowingly did not accept it. The endorsement on the envelop that it was refused, was not even proved by examining the postman or any other material to show that it was refusal by the appellant who denied on oath such a refusal."

It is in the context of the denial on oath by the delinquent that the examination of the postman or any other material was ^{as essential} regarded by the Supreme Court, the ^{came to be made} above observations in the context of the facts of that case.

4. The ~~other~~ respondents have produced before us the entire record of the inquiry and it is apparent that on 7 occasions Registered letters were sent to the applicant and all those letters were refused. It is not ^{here} the case that the applicant had stated on oath that the letters were never tendered to him and that he hadnot ~~refused them.~~ Such a statement came to be made only in the appeal memo that was filed before the Appellate Authority. The facts in the present case are therefore, different from those in the two cases on which reliance

....5.



has been placed and we do not think that the proposition that service should not be made by Registered Post unless personal service had been attempted has been laid down in either of these two cases.

5. It was next urged that after he was served with the order of the Disciplinary Authority the applicant sought copies of the documents on which he wanted to rely for preferring an appeal. Though Shri Kulkarni urged that the applicant was entitled to have the copies of all those documents for preparing the appeal, no rule was pointed out to us on which such ^a right could be based. A reference was made to Kashinath Dikshit V/s. Union of India & Ors. (1986(2) ATR SC. 186). The proposition there was ^{that} in the event of refusal to supply copies of statements recorded during the preliminary inquiry and the documents listed in the charge sheet, it amounted to denial of reasonable opportunity. These observations were made at the stage of the departmental inquiry and not with regard to the obligation of the department at the appellate stage.

6. We find that the applicant had by his own conduct deprived himself of the opportunity to defend himself at the departmental inquiry and he cannot now make a grievance that he was not given an opportunity to defend himself. He deliberately kept away from the inquiry and we see no merit in the present application. The application is therefore dismissed. No order as to costs.

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A)

M.S. Deshpande

(M.S. DESHPANDE)
VICE-CHAIRMAN