

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1042/92

Date of Decision: 22/7/99

Pratap K.Gulabani, Applicant.

Shri V.M.Bendre Advocate for
Applicant.

Versus

The Union of India & Ors. Respondent(s)

Shri S.C.Dhawan. Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice-Chairman,

Hon'ble Shri. D.S.Baweja, Member(A).

(1) To be referred to the Reporter or not? *✓*

(2) Whether it needs to be circulated to *M* other Benches of the Tribunal?

R.G.Vaidyanatha

(R.G.VAIDYANATHA)
VICE-CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.1042/92

Thursday.....this the 27th day of July 99

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member(A),

Pratap K.Gulabani,
Vinod Apartments,
304, IIIrd floor,
Netaji Road,
Ulhasnagar - 421 004.
(By Advocate Shri V.M.Bendre)

...Applicant.

Vs.

1. The Union of India through
The General Manager,
Central Railway,
Bombay V.T.
2. Sr. Divisional Accounts
Officer, Central Railway,
Bombay V.T.
3. Financial Adviser and Chief
Accounts Officer,
Central Railway,
Bombay V.T.
(By Advocate Shri S.C.Dhawan)

...Respondents.

: O R D E R :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply. We have heard the learned counsel appearing on both sides.

2. The applicant was working as Clerk Gr.I in the office of the second Respondent at Bombay. He remained absent from office from March, 1982 to 1990. According to the applicant he came in contact with Sadhus and Sanyasis and was mentally perturbed and under a state of depression. He had lost all interests in worldly affairs. He visited various places and had no conscious

mind at all. He cannot even remember or recall as to what happened during that period. Nobody knew about his whereabouts during that period till he returned to his place some time in 1986 or 1987 in a semi-conscious state of mind. But, he continued in the same state till he got treatment and fully recovered by 1989 or 1990. Then, he went to office to join his duties when he came to know that the Department had initiated disciplinary action and had removed him from service for unauthorised absence. He says that he does not remember anything as to what had happened between 1982 and 1990. It is alleged that charge sheet was not served on the applicant. The applicant was not informed about the enquiry proceedings. The applicant did not even receive the order of punishment. The applicant was not given opportunity to defend himself in the enquiry. He sent a mercy appeal to the Competent Authority which came to be rejected by order dt. 22.6.1992.

The applicant has, therefore, filed this OA challenging the legality and validity of the order of removal from service and for a direction to the respondents to reinstate him to service with all consequential benefits.

3. The respondents have pleaded that the application is barred by limitation. The applicant was removed from service by order dt. 11.8.1986 which he is now challenging in the present application filed in 1992. It is stated that, earlier the applicant had remained unauthorisedly absent for certain period from 31.3.1982 and in that connection an earlier charge sheet dt. 18.3.1983 was issued, which was duly served on the applicant. The applicant failed to attend the said enquiry proceedings. All

notices sent in that enquiry were served on the applicant. The applicant had written a letter praying for mercy. The Disciplinary Authority took a lenient view of that matter and closed the enquiry case by treating the period of absence from 31.3.1982 to 11.4.1984 as leave without pay and will not count for granting increment.

The respondents have further stated that applicant remained absent unauthorisedly from 11.9.1994 and therefore, a second charge sheet for major penalty was issued on 19.2.1996. The charge sheet was sent to applicant by post which was returned undelivered and a copy of the notice was also affixed on the outer door of the applicant's residence. After the appointment of the Enquiry Officer, notices about enquiry were sent to the applicant. The applicant never entered appearance. Then, an ex-parte enquiry was held. On the basis of the ex-parte enquiry the order of penalty dt. 11.8.1996 was passed under which applicant came to be removed from service. It is also stated that Provident Fund amount due to applicant after adjusting certain amount was sent to his address by letter dt. 27.3.1987 and the cheque has been encashed by the applicant. That the applicant's version that he was mentally upset etc. is not true. It is therefore, prayed that the application be dismissed with costs.

4. The learned counsel for the applicant contended that charge sheet was not served on the applicant and notice of enquiry was not served on the applicant and therefore, the whole proceedings are vitiated and the order of penalty will have to be quashed. The learned counsel for the respondents while asserting that the claim is barred by limitation, also pointed

out that number of notices were sent to applicant and one of that was refused by him and that enquiry has been done according to law and no case is made out for interference.

5. We have perused the entire materials on record and the original enquiry file placed before us by the learned counsel for the respondents. In the original enquiry file, we find number of letters sent to applicant by post. We find that some of the letters were returned unserved and one postal cover has been returned with an endorsement of "refusal". If a notice is refused by the addressee, then it can be held to be proper service. Respondents have also pointed out that notices were pasted on the outer door of the applicant's house. But, the applicant's whole case is that from 1982 to 1990 he was not mentally alright and had lost interest in life and was moving about with Sadhus and Sanyasis to different places like Haridwar, Rishikesh etc. But, in our view, this theory of the applicant that he was under mental depression and that he was roaming around Sadhus and Sanyasis etc. cannot be accepted because the applicant has not placed any material to support this version. On the other hand, in the enquiry file, we find some materials which dis-credit and disprove applicant's theory.

The applicant's case is that right from 1982 to 1990 he was not mentally alright, but the record show that applicant had gone to Dubai and then Sharjah and was sending leave applications from there. We have already seen that the Department had issued first charge sheet and at applicant's request a lenient view was taken by treating the first period of absence as leave without pay. The applicant attended the office from 11.4.1984 and worked till 10.9.1984. Therefore, the applicant's theory that from 1982

onwards till 1990 he does not remember anything and he never attended the office and was roaming about with Sadhus and Sanyasis cannot be accepted when he has attended the duties for about 5 to 6 months from April to September, 1984. It could be seen from the official records that during 1982 to 1984 applicant was living at Sharjah and has sent some letters from there to the Department asking for leave. If during 1982 to 1984 the applicant was living at Sharjah, it destroys his theory that from March, 1982 he was mentally upset and he was roaming about with Sadhus and Sanyasis. In fact, there is a letter dt. 11.9.1984 in the file under which applicant asked for 20 days leave for operation. How this is possible when according to applicant from 1982 March he was roaming about with Sadhus and Sanyasis throughout India. Then in the enquiry file at page 169 we have one letter dt. 31.8.1984 which he has written from Sharjah stating that he is proceeding to Dubai. Then, there are four to five letters written from Sharjah asking for extension of leave during 1982 to 1983. So, these facts clearly destroys the applicant's theory that he was mentally upset and he was roaming about with Sadhus and Sanyasis throughout India and he was mentally upset and did not know what things happened. In our view, the whole theory of the applicant appears to be an artificial version to some how get over the order of penalty. In the entire OA the applicant nowhere mentions that he had gone to Sharjah or Dubai. This clearly shows that he has not come to the Tribunal with clean hands.

The learned counsel for the applicant placed reliance on two authorities.

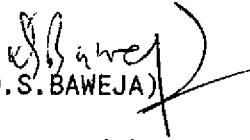
The first case is 1999 (1) SC SLJ 201 (Kuldeep Singh Vs. Commissioner of Police), but it has absolutely no relation to the point under consideration. There, it was a case of regular enquiry held and not a case of ex-parte enquiry at all. In our view, the said decision has no bearing on the facts of the present case.

The second case is the one reported in 1999 (1) SC SLJ 245 (Union of India Vs. Dinanath Shantaram Karekar), where the question was whether the service is sufficient when the charge sheet sent by Registered Post was returned with an endorsement "not found". The Supreme Court pointed out that after the charge sheet was returned unserved, no further efforts were made to serve the charge sheet and in the circumstances the single effort to serve the charge sheet was not sufficient and hence the enquiry proceedings are vitiated. But, in the present case, the enquiry file shows that number of times the charge sheet was sent by post and the charge sheet was affixed on the outer door of the applicant's house and one postal cover has been returned with an endorsement 'refused' and in the facts and circumstances of the case we can hold that there was presumption of proper service.

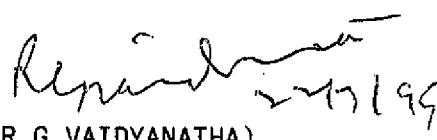
6. After going through the materials on record, we do not find any merit in the applicant's case. On his own admission he was absent from duty for nearly eight years and odd. He comes to report to duty in 1990 when he was told that he has already been removed from service in 1986. Still, he files the present OA in 1992 challenging the order of penalty of 1986. On the face of it, the application is barred by limitation, delay and laches. Further, the applicant's theory that he was mentally upset and was roaming about with Sadhus and Sanyasis is belied by the

documents which shows that he was living at Sharjah and Dubai during those years. It may be, to cover up his absence from India he must have come with the present application with an artificial theory of going away with Sadhus and Sanyasis etc. The enquiry file shows that number of notices have been sent to the applicant and some were unserved and notices were pasted on the outer door of the applicant's residence and what is more, one such notice has been received with an endorsement 'refused' which in law is sufficient service. Hence, in the facts and circumstances of the case, we find that enquiry has been done according to law and unauthorised absence is admitted and undisputed and therefore, the order of penalty does not call for interreference by this Tribunal.

7. In the result, the application fails and is hereby dismissed. No order as to costs.


(D.S. BAWEJA)

MEMBER (A)


(R.G. VAIDYANATHA)

VICE-CHAIRMAN

B.