

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 502/98

the 18<sup>th</sup> day of DECEMBER 2002

CORAM: Hon'ble Shri B.N. Bahadur, Member (A)  
Hon'ble Shri S.L. Jain, Member(J)

C.J. Solanki  
residing of C/o  
Pravesh Zaver Waghela,  
Maharashtra Government Colony,  
Building No. 3, Room No. 427,  
Kherwadi, Bandra (East), Mumbai.

...Applicant.

By Advocate Shri G.K. Masand.

V/s

1. Union of India through  
the Secretary,  
Ministry of Defence  
New Delhi.
2. Vice Admiral  
Chief of Personnel  
Naval Head Quarters,  
New Delhi.
3. Flag Officer  
Commanding in Chief  
Naval Head Quarters  
New Delhi.
4. Chief Staff Officer ( P & A )  
Western Naval Command  
Head Quarters, Shahid  
Bhagat Singh Road, Mumbai.

...Respondents.

By Advocate Shri V.S. Masurkar.

- (i) To be referred to the Reporter or not? *yes*
- (ii) Whether it needs to be circulated to other Benches of  
the Tribunal? *No*
- (iii) Library. *yes*

*S.L. Jain*  
(S.L.Jain)  
Member(J)

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 502/98

the 18<sup>th</sup> day of DECEMBER 2002

CORAM: Hon'ble Shri B.N. Bahadur, Member (A)  
Hon'ble Shri S.L. Jain, Member(J)

C.J. Solanki  
residing of C/o  
Pravesh Zaver Waghela,  
Maharashtra Government Colony,  
Building No. 3, Room No. 427,  
Kherwadi, Bandra (East), Mumbai.

...Applicant.

By Advocate Shri G.K. Masand.

V/s

1. Union of India through  
the Secretary,  
Ministry of Defence  
New Delhi.
2. Vice Admiral  
Chief of Personnel  
Naval Head Quarters,  
New Delhi.
3. Flag Officer  
Commanding in Chief  
Naval Head Quarters  
New Delhi.
4. Chief Staff Officer ( P & A )  
Western Naval Command  
Head Quarters, Shahid  
Bhagat Singh Road, Mumbai.

...Respondents.

By Advocate Shri V.S. Masurkar.

O R D E R

{Per S.L Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act 1985 to quash and set aside the order dated 26.8.1992 (Exhibit A), 20.12.1996 (Exhibit B) and 12.8.1997 (Exhibit C) passed by Disciplinary Authority, Appellate Authority and the Revisional Authority respectively with a direction to the respondents to reinstate the applicant in

*S.L. Jain* —

...2...

service to the post of Peon with all consequential benefits including continuity of service, seniority, backwages etc.

2. The Disciplinary Authority vide order dated 26.8.1992 after receipt of the report from the Enquiry Officer imposed the penalty of Compulsory Retirement with full terminal benefits as admissible to his qualifying service. The applicant preferred an Appeal which was decided vide order dated 20.12.1996 rejecting the same as barred by time. The applicant preferred Revision application which was decided by rejecting the same vide order dated 12.8.1997 upholding the penalty.

3. The charge sheet relates to applicant's unauthorised absence from 21.5.1990 to 4.5.1991. On perusal of the order of the Revisional Authority we find that charge sheet was forwarded at the applicant's address by Registered post, which was returned by the postal authorities with the remark "not claimed". The learned counsel for the applicant argued that as the charge sheet is not received by the applicant and the postal authority has made endorsement "not claimed" it cannot be held that the charge sheet was received by the applicant or he has refused to accept the same.

4. The learned counsel for the respondents argued that the respondents in view of Rule 30 of CCS(CCA) Rules 1965 have issued the charge sheet by Registered post and therefore they have

*P. G. Sharma* —

...3..

complied with the provisions and it be held that the charge sheet is duly served on the applicant.

5. The learned counsel for the applicant relied on 1991 SC SLJ 245 Union of India and Others V/s Dinanath Shantaram Karekar wherein it has been held that postal department returned the Registered cover with the remark "Not found....", it is held that it cannot be legally treated as served. No further efforts have been made to serve charge sheet.

6. In our considered opinion the case of "not found" and "not claimed" cannot be treated at par. In case of "not claimed" the Postman leaves the message for the addressee to collect the article from the concerned Post Office. The learned counsel for the respondents argued that a message left on the address on the cover of the Registered letter certainly it is a communication to the members of the family and if the applicant does not collect the said registered cover it cannot be held that the charge sheet is not served. On the other hand the learned counsel for the applicant argued that where "not claimed" is mentioned by the Postal authorities the fact remains that the addressee was not available when the Postman reached to the residence ~~place~~ place mentioned on the Registered letter and therefore the case of "not claimed" and case of "refused", "not found" cannot be treated at par. Before we arrive to the finding, in a case where the word "not claimed" is mentioned not to collected the registered letter - is there a wilfull Act of the applicant or in fact he has not

PC. 8/11/98

been informed by the members of his family residing with him about the message left by the Postman is to be ascertained and arrive to the conclusion that in fact, the family members to whom the Postman has left the message has communicated it to the applicant. In the present case, we are not equipped with evidence on either side.

7. The learned counsel for the respondents pointed out that Exhibit R-6 a notice was published in Newspaper on 30.3.1993. Suffice to say that this was a notice published after the Disciplinary Authority has arrived to a finding of guilt and passed the order of punishment stated above. As such the said Exhibit R-6 is not relevant to arrive to a finding that charge sheet was served on the applicant. Exhibit R-6 can only be relevant for consideration in case the applicant claims that after imposition of penalty as the said Newspaper is not widely circulated, he being not aware of the communication by News Paper could not file an appeal in respect of the order of punishment passed by the Disciplinary Authority timely.

8. The learned counsel for the respondents on the basis of Exhibit R1, R2, R3 and R4 argued that on R1 and R4 the applicant has signed in Gujarati while on R2 and R3 he has signed in English. The learned counsel for the applicant tried to explain

*Sd/-*

....5/-

on the basis of affidavit by the applicant that the signature on R1 is dated 17.8.1976 and on R4 it is of the year 1983. Between the year 1976 to 1983 the applicant has learned to sign in English and after learning the same he continued to sign in English, therefore there is nothing abnormal in it. Suffice to say that the applicant cannot be prevented to change his signature at any time.

9. The question of signature gets importance on account of the fact that vide R/5 one letter the postal authorities claims to have delivered which was sent to the applicant's permanent address and on that basis the learned counsel for the respondents argued that the applicant was duly served with charge sheet. If we peruse the postal seal of the said acknowledgement R/5 it is dated 15.10.1991, it do not contain the charge sheet, but it was a letter to the applicant intimating him about the date and time of the inquiry held against him.

10. On the basis of 1996 (1) SC, SLJ 440 State Bank of Patiala and others V/s S. K. Sharma, the learned counsel for the respondents argued that now the test of prejudice is to be applied, as the applicant has not raised such a plea of non service of charge sheet in appeal memo and also in revision memo, no prejudice is caused to him. We have perused carefully appellate memo and revisional memo and we are of the considered

*J. L. Sharma* —

....6/-

opinion that the applicant has not raised the plea of non-service of charge sheet either in appeal memo or in revisional memo.

11. The material point to be decided by this Tribunal is that whether the knowledge of the disciplinary proceedings which according to the learned counsel for the respondents was conveyed to the applicant vide R/5, the applicant is bound to participate in further enquiry when even charge sheet was not served and whether the applicant is debarred to raise such a plea for the first time before the Tribunal in a case of judicial review.

12. The applicant denies to have received any letter on 15.10.1991 and states that R/5 does not bear his signature. It is true that applicant cannot be at two places on one and the same day at the same time. It is worth mentioning that there is a presumption that official acts performed in due course of business unless rebutted by reliable evidence. Thus, a presumption arises that the letter which was sent to the applicant's permanent address was delivered to the applicant. We are not satisfied with the sole explanation of the applicant partially when he had changed his signatures from Gujrati to Marathi and no pleading in O.A. finds place.

13. The knowledge of the date of hearing about disciplinary case, when in fact charge sheet was not served, cannot be a substitute for the service of the charge sheet. As such we are of the considered opinion that even if it is held that the

S.L. G. M. —

....7/-

applicant was aware of the fact that the disciplinary proceeding is going on and the date of hearing is fixed therein, absence of the service of the charge sheet does not entitle the respondents to proceed with the disciplinary case.

14. Rule 27(2) (a) of CCS (CCA) Rules 1965 is worth extracting which is as under:-

"27.(2)(a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice".

15. The perusal of the same makes it clear that whether the plea is raised or not, a duty is cast on the appellate authority to examine the constitutional guarantee provided for to the delinquent employee. When a disciplinary proceeding is instituted against an employee for Major Penalty charge sheet, he is awarded the penalty as are enumerated in Rule 11 of CCS (CCA) Rules 1965. Dismissal/removal can also be awarded as penalty. Without serving the charge sheet which contains imputation, the documents, the evidence to be adduced along with the charge sheet cannot be substituted by only notice of the date of enquiry.

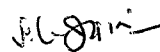
*P. J. N. /*

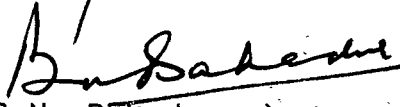
....8/-



16. The service of the charge sheet is the duty of the employer, and right of the delinquent employee to receive it. Failure to agitate the same in appeal or revision will not disentitle him to raise such plea in judicial review.

17. In the result, O.A. succeeds, the order of the Revisional Authority, Appellate Authority and Disciplinary Authority dated 12.3.1997, 20.12.1996 and 26.8.1992 (Exhibit - C, B & A respectively) are quashed and set aside with all consequential benefits. However, the respondents are at liberty to continue with the enquiry after service of the charge sheet on the applicant on the address supplied by the Applicant within 15 days from the date of receipt of copy of order (either by the Applicant in person or by his counsel). If a decision is taken to continue with the enquiry, it be communicated to the applicant in writing within one month from the date of receipt of copy of order and thereafter enquiry at the stage of Disciplinary Authority be concluded within a period of four months. No order as to costs.

  
( S.L. Jain )  
Member (J)

  
( B.N. Bahadur )  
Member (A).

NS.