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Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 198/89.
--T.A.Ne--

Date of Decision : 30-3-92

Mohd. Vazir

Petitioner.

Shri K.S.R. Anjaneyulu

Advocate for the
petitioner (s)

Versus

The Surveyor General of India, Hathibarkala Estate, Dehradun-248001 (U.P.) & another Respondent.

Shri N.R. Devaraj, Addl. CGSC

Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. R.Balasubramanian : Member(A)

THE HON'BLE MR. C.J.Roy : Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

NO

HRBS
M(A).

HCJR
M(J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.198/89.

Date of Judgment 30.3.1992.

Mohd. Vazir

.. Applicant

Vs.

1. The Surveyor General
of India,
Hathibarkala Estate,
Dehradun-248001 (U.P.)

2. The Director (Survey
Training Institute),
Disc. Authority for
Major Penalties,
Survey of India,
Uppal Road,
Hyderabad.

.. Respondents

Counsel for the Applicant : Shri K.S.R. Anjaneyulu

Counsel for the Respondents : Shri N.R. Devaraj, Addl. CGSC

CORAM:

Hon'ble Shri R. Balasubramanian : Member(A)

Hon'ble Shri C.J. Roy : Member(J)

I Judgment as per Hon'ble Shri R. Balasubramanian,
Member(A)]

This application has been filed by Shri Mohd. Vazir under section 19 of the Administrative Tribunals Act, 1985 against the Surveyor General of India, Hathibarkala Estate, Dehradun-248001 (U.P.) & another, seeking a direction to quash the order dispensing with the enquiry without which the order of removal from service has been passed against him and pay him all the consequential benefits flowing therefrom.

2. The applicant had been working as Driver-cum-Mechanic under the respondents since 26.5.77. He proceeded on 3 months leave from 17.10.83 which was sanctioned to him. Due to unprecedented problems causing mental agony and domestic discord he went on extending the leave from time to time.

In the month of October, 1986 the applicant came to know through a friend about his removal from service published in Urdu in a local daily and made a representation on 10.11.86. The 2nd respondent thereafter sent a letter dt. 17.11.86 addressed to the applicant which was received by the Surveyor General's Office at Dehradun. The said letter was redirected to the applicant with a covering letter dt. 28.11.86. The letter stated that the applicant was removed from service under Rule 14 of the CCS(CCA)Rules, 1965. ^{It is alleged} and that all the impugned proceedings had been sent to a wrong address:

Mr. Mohd. Vazir,
11-2-621, Tekaji Masjid,
Nampally, Hyderabad-1.

According to the applicant, the correct address is:

Mr. Mohd. Vazir,
11-2-521, Tekaji Masjid,
Nampally, Hyderabad-1.

Thereafter, the applicant requested on several occasions to give him the copies of the speaking order, proceedings of the enquiry and other papers that have led to his removal so that he can make an appeal. The 2nd respondent had been avoiding giving him the papers sought for on one ground or ^{the} other. The most important among them was that the removal was under Rule 19(ii) of the CCS(CCA)Rules, 1965 and not Rule 14 as mentioned by oversight. It is the case of the applicant that whatever be the reason, the respondents should have conducted at least an *ex parte* enquiry. The applicant had preferred an appeal dt. 29.8.87 to the Surveyor General of India, Dehradun in which he had prayed that the order of removal from service be set aside. The appeal is yet to be disposed of. Hence the applicant has approached this Tribunal with this O.A.

3. The respondents have filed a counter affidavit and oppose the application. The ^{respondents} ~~applicants~~ have raised the question of limitation. But we find from the records that

the delay had already been condoned and the application had already been admitted vide order of the Bench dt. 14.3.89. It is stated that after the first spell of 120 days leave was approved, the applicant was informed that he should report for duty on expiry of the said leave and that no extension would be granted. It is stated that the communication was sent to the applicant under registered cover to the leave address furnished by him on his leave application. The said cover was received back undelivered with the remarks that "No such person in House No.1-101" was available. The respondents made efforts to intimate the applicant again by a letter dt. 21.1.84 stating that no extension of leave would be granted and that he should report for duty on expiry of leave to all the known addresses at Nalgonda and at Hyderabad. But the covers were returned back undelivered. The applicant neither reported for duty nor sent any communication to the respondents. An incomplete application without address was received from him on 13.6.84 requesting for grant of 4 months extraordinary leave upto 10.10.84. Again, by a letter dt. 30.6.84 the respondents had informed the applicant that from 14.2.84 onwards he was being treated as unauthorisedly absent and that disciplinary action would be initiated against him if he did not report for duty latest by 16.7.84. This letter was sent to the addresses known to the respondents as stated above but the said covers were again returned back with the remarks from the Postal authorities "Insufficient address" and "Party left R/S". Therefore, the applicant was chargesheeted for wilfully absenting himself from duty vide memorandum dt. 31.7.84. It is also contended that since the whereabouts of the applicant were not known, holding of detailed enquiry as envisaged under Rule 14 of the CCS(CCA)Rules, 1961 was not practicable. In view of the said circumstances

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the disciplinary authority had no choice but to take recourse under Rule 19(ii) of the CCS(CCA)Rules, 1965 and dispense with the detailed enquiry. After going through the relevant records and merits of the case, the disciplinary authority came to the conclusion that the applicant had wilfully and intentionally remained absent from duty from 14.2.84 (i.e., after expiry of the leave approved) and deliberately kept ^{his} whereabouts concealed from them. The disciplinary authority applied his mind and found him guilty of the charge and for good and sufficient reasons imposed the penalty of removal from service. The applicant was intimated about the outcome of the disciplinary proceedings vide letter dt. 27.8.84 but the said letter which was sent to the known addresses to the respondents was also returned unserved. It is submitted that the information that the applicant was removed from service was published in local newspapers in English and Telugu. Even then, the applicant did not turn up. ^{They could not reach him at all.} It was under these circumstances when the respondents were unable to establish ^{any} communication with the applicant that recourse was taken to Rule 19(ii) of the CCS(CCA)Rules, 1965 dispensing with the enquiry that is required under Rule 14 of the CCS(CCA)Rules, 1965.

4. We have heard the rival sides and examined the case. Rule 19(ii) of the CCS(CCA)Rules, 1965 reads as follows:

"Notwithstanding anything contained in Rule 14 to Rule 18, where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an enquiry in the manner provided in these rules, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit."

This rule is similar to Rule 14(ii) of the Railway Servants (Discipline & Appeal) Rules, 1968. The short question to be settled here is whether the respondents are right in not conducting an enquiry before passing the final punishment order. It is not in dispute that the respondents had attempted a number of times to reach the applicant

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he did not respond though
by correspondence. It is stated that on one or two
occasions he had received letters sent even to the incorrect
address:

Mr. Mohd. Vazir,
11-2-521, Tekdi Masjid,
Nampally, Hyderabad-1.

It is, therefore, contended by the respondents that it was not possible to hold an enquiry. But what defeats one's imagination is that when they were unable to reach him why the respondents did not hold an exparte enquiry and take a decision thereon. In this context we have perused a copy of the Department of Personnel O.M.No.11012/11/85-Estt.A dt. 11.11.85. These orders were issued in the wake of the historical cases of Tulsi Ram Patel & others and Satyavir Singh & others adjudicated by the Hon'ble Supreme Court. In that letter, vide para 6, the Department of Personnel had dealt with the proviso to Art.311(2)(b) which permits skipping the enquiry where the authority empowered to dismiss or remove a person is satisfied that for some reason to be recorded in writing by that authority it was not reasonably practicable to hold such an enquiry. In this context the Department of Personnel had stated that what is required is that holding of an enquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. While holding that it was not possible to enumerate all the cases in which it would not be reasonably practicable to hold an enquiry certain illustrations were given. We have seen those illustrations. It is only in an atmosphere of violence where conducting of an enquiry is impossible that the enquiry can be given a go by. It was in this context background that this Bench passed a judgment dt. 20.1.92 in O.A.No.116/88 (Ch.Suryaprakasa Rao Vs. The Divl. Rly. Manager, S.C.Railway, Vijaywada & another). We had held that the situation obtaining in that case was not such as to make an enquiry impossible. We had held that it was possible for the respondents

Copy to:-

1. The Surveyor General of India, Hathibarkala Estate, Dehradun-248001 (U.P.)
2. The Director, (Survey Training Institute), Disc. Authority for Major Penalties, Survey of India, Uppal road, Hyderabad.
3. One copy to Sri. K.S.R.Anjaneyulu, advocate,CAT, Hyd.
4. One copy to Sri. N.R.Devraj, Addl. CGSC, CAT, Hyd.
5. One spare copy.

Rsm/-

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to hold an exparte enquiry and proceed further in that case. In this case also we hold that it was certainly possible for the respondents to hold an exparte enquiry. We had held that invoking Rule 14(ii) of the Railway Servants (Discipline & Appeal) Rules, 1968 was not warranted. In this case also, invoking Rule 19(ii) of the CCS(CCA)Rules, 1965 was not warranted.

5. At the same time, the action of the applicant cannot also be condoned. He had not made arrangements to see that communications sent to his address are delivered to him. ~~He did not~~ It is only after a newspaper publication ~~that he claims~~ that he came to know through a friend that he had been removed from service.

6. Under these circumstances, we quash the order of punishment dt. 17.11.86 passed by the 2nd respondent. We, however, hasten to add that since we chose not to go into the merits of the case in detail, but instead depend on the legal position only, we have not exonerated the applicant from the charge levelled against him. The respondents are at liberty to take such action as is permissible under the rules.

7. The application is disposed of thus with no order as to costs.

R.B
R. Balasubramanian
(R. Balasubramanian)
Member(A).

lrb
(C. J. Roy)
Member(J).

Dated: 30th March, 1992.

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Dy. Regy'sen (S. U.)

Contd: ... 7/1.

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TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

THE HON'BLE MR.

V.C.

AND

THE HON'BLE MR. R. BALASUBRAMANIAN : M(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY :
MEMBER (JUDL)

AND

THE HON'BLE MR. C. J. ROY : MEMBER (JUDL)

Dated: 29/3/1992

ORDER / JUDGMENT

R.A./C.A./M.A. No.

O.A. No.

19878

T.A. No.

(W.P. No.)

Admitted and interim directions
issued

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for Default.

M.A. Ordered/Rejected.

No order as to costs.

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