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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH

AT HYDERABAD

ORIGINAL APPLICATION NO. 466/90

DATE OF JUDGEMENT: 16-6-1993. 1993

Between

G. Lakshmana Rao

.. Applicant

and

1. The Secretary to Govt.,
Department of Posts, New Delhi

2. The Director of Postal Services
Andhra Pradesh Southern Region
Kurnool

3. The Superintendent of Post Offices
Mehabubnagar Division
Mehabubnagar

.. Respondents

Counsel for the Applicant :: Mr KSR Anjaneyulu

Counsel for the Respondents :: Mr NV Ramana

CORAM:

HON'BLE SHRI A.B. GORTHI, MEMBER (ADMN.)

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

JUDGEMENT OF THE DIVISION BENCH DELIVERED BY HON'BLE
SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

This is an application filed under Section 19
of the Central Administrative Tribunals Act, to set aside
the dismissal order of the respondent dated 22.4.1982
confirmed as per orders dated 18.8.1989 and direct the
respondents to take back the applicant in service with
all consequential benefits and pass such other order or
orders as may deem fit and proper in the circumstances
of the case.

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2. The facts giving rise to this OA in brief, may be stated as follows:

3. In the year 1980, the applicant was working as ~~post~~ Sub-postmaster, Koukuntla Sub/Office in Mehabubnagar Division. For alleged mis-appropriation and falsification of accounts, etc., a criminal case was registered as against the applicant in Devarkonda Police Station in Cr.No.76/80. After due investigation by the police, the applicant was charge sheeted under Sections 409, 467, 471, 471(A) of IPC before the Judicial Magistrate of First Class at Atmakur in Kurnool District. During the pendency of the criminal proceedings, according to the respondents, the applicant absented from duty. A disciplinary enquiry was initiated and an enquiry officer was appointed to inquire into the charges under Rule 14 of CCS(CCA) Rules. Charge memo and notices during the enquiry sent ~~to~~ the applicant by the respondents by registered post, were returned to the respondent with the remarks of the postman, that the addressee's whereabouts are not known or that, the addressee has left the place.

4. The enquiry officer, who was appointed by the Disciplinary Authority conducted the Departmental Enquiry as against the applicant and proceeded ex-parte as against the applicant and after recording evidence from the witnesses, and taking into consideration, the documentary evidence that was placed before him, submitted his report to the Disciplinary authority. The Disciplinary Authority passed orders on 22.4.82 dismissing the applicant from service

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The order of dismissal was communicated by Registered Post to the applicant at the last address known, but, the said communication containing the order of dismissal was returned with the usual remark that the addressee ~~was~~ ^{has} left without instructions and hence, returned to the sender.

5. The criminal case earlier referred to for the alleged offences under Sections 409, 471, 467, ^(A) 471 of the IPC ended in acquittal of the applicant as per the Judgement of the Judicial Magistrate of First Class, Atmakur dated 13.3.89 as the applicant was given the benefit of doubt. After the criminal case ended in acquittal, the applicant then rushed with ^{the} representation dated 27.3.89 to the authorities stating since he was acquitted by the criminal court, that he may be taken back to duty and pay him all the arrears of salary for the period from 1.12.80 onwards. In the said representation, the applicant claimed ignorance of the departmental action initiated against him which culminated in the dismissal of the applicant from service. The said representation of the applicant dated 27.3.89 was rejected by the 3rd respondent, i.e. Superintendent of Post-offices, Mahabubnagar as per his letter dated 18.8.89. As the respondents refused to take back the applicant into service, in view of the dismissal order dated 22.4.82, the applicant has approached this Tribunal for the relief(s) as already indicated above.

6. Counter is filed by the respondents opposing this OA.

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7. In the counter filed by the respondents, it is maintained that the applicant had full knowledge of all the disciplinary proceedings initiated against him and that the applicant had intentionally avoided participation in the said disciplinary proceedings, and the dismissal orders dated 22.4.82, had been passed after due inquiry, it is not open for this Tribunal to interfere with the said order of dismissal. Some other contentions are also raised on behalf of the respondents, and it is not necessary to advert to the same in view of the short point on which this OA is being decided.

8. We have heard Mr KSR Anjengulu, Counsel for the applicant and Mr NV Ramana, Standing Counsel for the respondents.

9. In the Departmental enquiry, the applicant was charged with the alleged mis-conduct of mis-appropriation of the amounts in respect of Savings Bank and other deposits and also for absconding from duty without leave. The charge memo that had been drawn against the applicant in the departmental inquiry had been sent at the last known address by Registered post. But the same had been returned with the remarks that the addressee's whereabouts were not known. It is the case of the applicant that he was not residing at the place where the ^{said} registered letter was sent containing the charge memo against him. It is also his case that none of the covers sent either by the Enquiry Officer or the Disciplinary authority were received by him and he was not residing at the place where the said covers

were sent. The applicant has not specifically pleaded exactly where he was residing till the criminal case terminated in his favour ending in acquittal. But, whatever it might be, it is the duty of the Enquiry Officer, as well as, the Disciplinary Authority to see that the charge memo was duly communicated to the applicant. It is the contention of the learned counsel appearing for the respondents that there had been honest attempts on the part of the respondents to serve the charge memo by Registered Post to the applicant and also every notice and order relating to the disciplinary enquiry and that the applicant had intentionally evaded the said charge memo and other notices and orders that were registered sent to him by Registered Post. A bunch of unserved/covers starting from the dates 3.4.81 to 30.4.82 is placed before us to prove the bonafides of the respondents.

10. When the charge memo drawn as against the applicant was sent by register d post and was returned with an ~~RECEIVED~~ endorsement, and if it was the opinion of the competent authority based on the said endorsement that the applicant was intentionally evading service of charge memo to him, it was the duty of the competent authority to record with reasons its satisfaction that the applicant was intentionally evading the service of charge memo and ~~then~~ ought to have taken steps to get the said charge memo served on the applicant by substituted service. As indicated already, before resorting to the substituted service of charge memo on the applicant, the competent authority had to record its satisfaction that the applicant was

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evading the due service of notice and so steps had been taken to effect service of notice by substituted service. But a perusal of the records indicate that the competent authority has not at all recorded in ~~the~~ ^(its) proceedings at any time that the applicant was evading the service of charge memo. After recording the reasons of its satisfaction as aforesaid, service of charge memo could have been effected by substituted service by affixture at a conspicuous place at the office where the applicant had formerly worked ~~to~~ the notice board in the said office and also to the residence where the applicant resided last. After effecting the service of charge memo on the applicant by affixture, competent authority after satisfying ~~to~~ itself that the charge memo had been duly served on the applicant, then should have proceeded as against the applicant in the disciplinary enquiry. If such a procedure had been followed, it would not have been open for the applicant to contend that the proceedings were ex-parte and that, he had no knowledge of the same. As a matter of fact, such steps as are required under ~~the~~ law had not been taken as against the applicant to effect service of charge memo. The competent authority had been going on sending notices by Registered post even though they were returned with endorsements as stated above. In this context, we may re-produce Rule 30 of CCS(CCA) Rules with instructions of the Government of India.

"30. Service of orders, notices, etc.

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.

GOVERNMENT OF INDIA INSTRUCTIONS (printed under Section 30 in Swamy's Compilation of CCS(CCA) Rule provide-

- i) Service of orders at the residence of sub-ordinate

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staff not to be made by Gazetted officers:-It has come to the notice of the Director-General that in certain cases, gazetted officers have gone to the residence of sub-ordinate staff with a view to serve orders, notices, etc., which the officials were trying to avoid for one reason or the other. The Director-General considers that the practice of deputing gazetted officers to serve such notices/orders on sub-ordinate staff at the later's residence is highly objectionable, besides, being ~~unpleasant~~ embarrassing to the gazetted officers concerned.

This question has since been considered that, wherever, an officer is satisfied that a subordinate is wilfully evading the acknowledgement of a document, he should record all the facts within his knowledge which lead him to this conclusion on the file, and having done so, the document should be sent to the official concerned by registered post acknowledgement 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.

It may also be impressed on all the employees that if any one fails to turn up to accept a document, intended for him when required to do so, he is liable to be treated as absent from duty without leave and will suffer all the consequences of such absence.

In a rare case, where it may be absolutely necessary to depute an official for delivering a document at the residence of an employee, a gazetted officer should, in no case be deputed for the purpose and an official not higher in rank than Inspector of Post Offices/Town Inspector/Phones Inspector, etc., be deputed for this purpose if necessary."

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11. As a matter of fact, the rule emphasizes that all the facts that were within the knowledge of the competent authority which lead him to the conclusion that the Govt. servant was wilfully evading the service of documents, should be recorded on the file and having done so, the document should be sent to the official concerned by Registered Post. The rule also makes it clear, that personnel service has also to be resorted to in exceptional cases. As could be seen, personnel service has not been resorted to, on the applicant, by the competent authority, as the charge memo sent by Registered Post was returned unserved. As already pointed out, no material is placed before us 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 are recorded at any time by the competent authority that the applicant was wilfully evading the services of charge memo on him.

12. As the charge memo had not been served on the applicant either by Registered Post or by Personnel service, and, as no steps had been taken by the competent authority, as already pointed out, to effect service of notice on the applicant by any methods known to law, namely, by substituted service by affixture or by publication in a daily newspaper, we see no other alternative except to hold that the enquiry is vitiated due to the fact, that all the proceedings had been conducted behind the back of the applicant and that, the principles of natural justice are violated. In view of our finding that the disciplinary proceedings are vitiated, as the applicant had no notice of the same and had no knowledge of the same, the dismissal order as against the applicant is liable to be set aside.

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13. The learned counsel appearing for the respondents vehemently contended as the applicant approached the respondents to reinstate him soon after his acquittal in the criminal case on 13.3.1989, would give rise to an inference that the applicant had knowledge of the disciplinary proceedings. But he denies before the Tribunal as having knowledge of the disciplinary proceedings at any stage. In view of the denial by the applicant of his knowledge about the disciplinary proceedings against him, the respondents are put to strict proof that there had been service of charge memo in the departmental enquiry on the applicant. As already indicated, such proof, as required under law, is not forthcoming in this case with regard to the service of charge memo on the applicant. So, on mere surmises and conjectures, it is not open for us to draw any inference that the applicant had knowledge of disciplinary proceedings as against him. So, the contention of the learned counsel for the respondents cannot be accepted.

14. In the result, we set aside the dismissal order of the 3rd respondents dated 22.4.1982 that was confirmed as per orders dated 18.8.89. As the alleged misconduct of the applicant is a serious one, the respondents are directed to start de-nova enquiry proceedings as against the applicant in accordance with law. With the above said directions, OA is disposed of with no orders as to costs.

T. C. R.
(T. CHANDRASEKHARA REDDY)
Member (Judl.)

A. B. GORTI
(A. B. GORTI)
Member (Admn)

Dated: 16-7-1993

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Deputy Registrar (S).

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN
AND

THE HON'BLE MR. A. B. GORTY : MEMBER (AD)
AND

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

AND

THE HON'BLE MR. P. T. TIRUVENGADAM : M (A)

Dated : 16 - 7 - 1993

ORDER/JUDGMENT:

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

in
O.A. No. 466/90

T.A. No.

(w.p.)

Admitted and Interim directions
issued

Allowed

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default

Rejected/ Ordered

No order as to costs.

Central Administrative Tribunal
DESIGNATED BENCH
28 JUL 1993
HYDERABAD BENCH
20/7/93

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no initial
HABF M(A) on
opinion slip.