

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH :
AT HYDERABAD.

O.A.No.867 of 1994.

Date of Order :- 30th September, 1997.

T. JEEVARATHNAM

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APPLICANT

VERSUS

SECRETARY, DEPARTMENT OF POSTS,
AND THREE OTHERS.

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CORAM :

HONOURABLE MR. R. RANGARAJAN, MEMBER (ADMN.)

HONOURABLE MR. B.S. JAI PARAMESHWAR, MEMBER (JUDL.)

FOR INSTRUCTIONS.

1. Whether it be referred to the reporters or not
2. Whether it be referred to all the Benches of the C.A.T. or not ?

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MEMBER (JUDICIAL)

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MEMBER (ADMINISTRATIVE)

effectively defend the allegations against him is violative of principles of natural justice.

(c) To declare that as the charge memo was not served on the applicant before his retirement, in due course, the disciplinary action contemplated in the impugned memo does not lie against him and hence he is entitled to normal pension and DCRG as otherwise admissible.

4. The applicant has challenged the service of the Charge Memo. on the following grounds :-

The Fax message of the Charge Memo was served on him on 30.6.1994 at 6.15 P.M. after the office hours; that the service of the Charge memo was in violation of the Rule 30 of the Rules; that the Fax message of the Charge memo did not contain the signature of the disciplinary authority but contained only the facsimile of the signature of the disciplinary authority; that the subject matter of the charges had earlier come up for enquiry as early as on 23.4.1991; that the respondent No.3 had cleared his retirement and hence the disciplinary authority is now estopped from reopening the case.

5. On the other hand, the respondents have filed a counter stating that on 30.6.1994 the applicant was on duty till 6.20 p.m.; that therefore the service of the Fax copy of the charge memo was in fact during the office hours; that when they received the Fax copy from Delhi, they attempted to contact the applicant who was on official tour; that on the way they met the applicant at a distance of 80 Kms. from Tiruvur-Vijayawada at 4.30 P.M.; that they

attempted to serve the Fax copy of the charge memo at 4.30 P.M.; that the applicant declined to accept the charge memo and even after several requests from the respondent No.3, the applicant was adamant; that when they

O R D E R.

(As per Hon. Mr. B.S. Jai Parameshwar, Member (Judicial))

1. Heard Mr. S. Rama Krishna Rao, learned counsel for the applicant and Mr. N.R. Devaraj, learned counsel for the respondents.

2. This is an application filed under Section 19 of the Administrative Tribunals Act. The application was filed on 18.7.1994. The point that arises for our consideration in this O.A. is :

Whether service of the charge memo. issued on 29.6.1994 through Fax message at 6.15 P.M. on 30.6.1994 - on the last day of the service of the applicant- on the applicant can be regarded as valid service as contemplated under Rule 30 of the CCS(CCA) Rules (In short, ' the Rules') ?

3. The above point^{is} raised in this background :-
The applicant while working as the Superintendent of Post Offices, Vijayawada, retired from service on 30.6.1994 i.e. on the last day of his service he was on tour on official duties at Gampalagudem/Tiruvur. The applicant submits that on that day at 6.15 P.M. the respondent No.4 forcibly delivered to him the Fax message of the Charge memo bearing No.8-6/91-Vig. dated 29.6.1994. He has filed this O.A. for the following reliefs :-

(a) To declare that the service of Memo No.8-6, Vig. dated 29.6.1994 with a facsimile signature of the ^{the} authority is void in terms of Rule 30 of CCS(CCA) Rules, 19 and under accepted official procedure.

(b) To declare that the service of Fax copy of the impugned Memo truncated by substantial mutilations, thus denying the applicant, a reasonable opportunity to

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copy of the charge memo was served on him after the office hours cannot be accepted for the simple reason that the applicant himself was on official tour and that he completed his official duties on that day at 6.20 p.m. Therefore, at 6.15 P.m. on 30.6.1994 the applicant was on official duties. Hence the contention of the applicant that the charge memo was served on him after the office hours cannot be accepted.

9. The Fax message is an advanced technology in communication and in certain cases, conveying message through Fax has been accepted by the Government in the recent times. Had the applicant been otherwise promoted or extended his service through Fax message, then the applicant would have^{gladly and} rightly accepted the same without any protest.

In our humble opinion, since the charge memo was issued on 29.6.1994 and ^{serving a copy of the same} ~~on~~ on the applicant by adopting the mode of service as contemplated in Rule 30 of the Rules was impracticable. Therefore, the authorities adopted the mode of conveying the copy of the charge memo through Fax machine.

~~method or procedure having regard to the urgency of the~~ method or procedure having regard to the urgency of the situation. The charge memo must have been served on the applicant on 30.6.1994. Hence, we find no irregularity in the respondents in adopting the method of conveying the copy of the charge memo through Fax machine.

10. The respondents have contended that though they tried to serve the copy of the charge memo on the applicant at 4.30 P.M. at a distance of 80 Kms from Tiruvur - Vijayawada the applicant declined to accept the same. We do not^{want to} go into the merits of this contention. We feel that the respondents have adopted the new technology in serving the copy of the charge memo. Therefore, the contention of the applicant cannot be accepted.

11. The applicant in para-4(e) of the O.A. has

cautioned him that refusal may amount to insubordination then the applicant accepted the charge memo at 6.15 P.M.; that the applicant was relieved at 6.20 P.M. on his retirement from service; that certain irregularities committed by the applicant were carried out by the respondent No.3 in May, 1994 and that took time for obtaining approval of the President for initiating disciplinary proceedings against the applicant; that Rule 30 of the CCS(CCA) Rules provides that the charge sheet to be served in person on the delinquent employee or to be served on him by registered post; that as the Government orders were conveyed through Fax, the same are treated or accepted as original orders; that the Fax copy of the charge memo served on the applicant can be treated as the original copy served in person to the applicant; that the allegation of mala fide on the part of the department is not sustainable as the irregularities were noticed by the preventive Vigilance Check officials; that when action is initiated as per the procedure, the question of mala fide does not arise; that the plea of the applicant that the charge sheet was not legible is a lame excuse to avoid the disciplinary proceedings and that the O.A. be dismissed with costs.

6. Rule 30 of the CCS(CCA) Rules, 1965 reads as under :-

" 30. Service of orders, notices etc. -
Every order, notice and other process made or issued under these rules shall be served in or communicated to him by registered post

7. The charge Memo. has been issued on 29.6.1994. Therefore, the material date is the date on which the charge memo. was issued. The applicant was in service on the date when the charge memo was issued.

8. It is an admitted fact that the charge memo was served on the applicant at 6.15 P.M. on 30.6.1994 on the last day of his service. The contention of the applicant that the

14. While we were about to pronounce the final order in the O.A. the learned counsel for the applicant prayed for time to submit his written submissions. He submitted his written submissions on 25.9.1997. We perused the same. We feel proper to advert to the contentions raised in it.

15. The first contention the applicant has raised is about the delay in initiating the disciplinary proceedings. In our humble view, the delay does not invalidate the disciplinary proceedings. So long as the relationship of master and servant exists, between the Government and its employee, the Government has every right to initiate the disciplinary proceedings against its employee for the misconduct or misbehaviour committed by him at any point of time during his tenure of service. In fact, the Government can even proceed against a retired Government servant for certain acts of grave misconduct or acts which resulted in pecuniary loss to it under certain conditions. In the instant case, the charge sheet has been issued on 29.6.94. The material date is the date on which the charge sheet was issued and not the service of the same on the delinquent employee. In that view of the matter, we feel that there is no delay in initiation of proceedings against the applicant.

16. Probably the subject matter of the charge related to certain acts of omission and commission of the applicant of the year 1991. The charge sheet was issued on 29.6.94. Therefore, it appears that his contention is that the charge sheet was issued after a lapse of three years and even after the applicant earned the promotion was at a belated stage. No doubt, during the year 1981, an explanation was called for from the applicant with regard to certain acts indicating in the Article 9 charges and to that, he had

enumerated certain defects in the copy of the charge memo. These defects can be cured by supplying the legible copy of the same to the applicant. Since the applicant has accepted the charge memo on 30.6.1994, we feel there is no legal impediment for the disciplinary authority to continue the enquiry initiated against the applicant. The applicant can very well request the authorities to supply him the legible copy of the charge memo, if necessary.

12. The other contention raised by the applicant is that the subject matter of the charge was once enquired into by the respondent No.3 and that he was exonerated from the charge or the authority felt no need to proceed further. If that be so, the applicant can very well bring the same to the notice of the disciplinary authority while submitting his explanation. We have no doubt in our mind that the disciplinary authority will judge impartially the explanation of the applicant and come to a decision. It is contended that the charge memo was served on him only with an intention to stall the payment of retiral benefits. We do not think so. Therefore, in our humble opinion the service of the charge memo through Fax machine on the applicant on 30.6.1994 is perfectly in order. We do not find any illegality or irregularity in the respondents in doing so. Hence we find no merits in the O.A. and the same is liable to be dismissed.

13. However, we direct the disciplinary authority to conclude the disciplinary proceedings as expeditiously as possible. We hope the applicant will extend the fullest cooperation to the disciplinary authority to conclude the disciplinary proceedings; that too, in his own interest to see that his pensionary claims are settled early.

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18. The O.A. is accordingly dismissed. No order as to costs.

RECEIVED
CERTIFICATE OF JUDGMENT

[Signature]
COUNTY CLERK
Clerk of the Court
Clerk of the Court
Clerk of the Court
Clerk of the Court

केस नम्बर	CASE NUMBER	00867124
नियम का तारीख	Date of Judgement	30/8/82
प्रति तैयार किया गया दिन	Copy Made Ready on	3/10/82
अनुपात अधिकारी (नया दिन) Section Officer (J)		