

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.622/2012

Dated this Tuesday the 15th day of October, 2019

CORAM: R. VIJAYKUMAR, MEMBER (A)
RAVINDER KAUR, MEMBER (J)

Y.S. Meshram,
 Ex-Health Inspector, Group 'C'.
 Age 59 years
 Resident of: C/o Mohammed Yusuf,
 Plot No.703, Mahendra Nagar,
 Nagpur - 440 017.

... **Applicant**

(**By Advocate Shri A.I. Bhatkar**)

VERSUS

1. Union of India, through
 The Secretary,
 Ministry of Defence (Army)
 Sena Bhavan,
 New Delhi - 110 001.
2. The Adjutant General,
 Army Headquarters,
 Block 'L', New Delhi - 110 001.
3. The Director General of
 Medical Services (Army),
 Integrated Headquarters of
 Ministry of Defence (Army),
 Adjutant General's Office,
 'L' Block, New Delhi - 110 001.
4. The Officer Commanding,
 Station Health Organisation,
 Pune, PIN - 900 449
 C/O 56 APO.

... **Respondents**

(**By Advocate Shri D.A. Dube**)

ORDER

PER: RAVINDER KAUR, MEMBER (J)

The present OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"8(a). This Hon'ble Tribunal will be graciously pleased to call for the records pertaining to the issuance of the impugned order dated 09.02.2009 and order dated 28.02.2012 and after going through the legality and validity of the same quash and set aside the same.

(b) This Hon'ble Tribunal will be pleased to direct the respondents to reinstate the applicant in service with all consequential benefits.

(c) This Hon'ble Tribunal will be graciously pleased to pass such other and further orders as deemed fit in the facts and circumstances of the case.

(d) Cost of this application be provided for."

2. The admitted facts are that the applicant was posted as Health Inspector at Lucknow. Vide order dated 10.04.2000, he was transferred to Pune. The said order was challenged by him before the Lucknow Bench of this Tribunal vide OA No.241/2000 and vide interim order dated 08.05.2000 the transfer order was stayed. It is claimed by the applicant that despite interim relief granted in his favour and communicated to the Commanding Officer (CO), Station Health Organisation (SHO), Lucknow, he was not allowed to join his duty. Later on vide order dated 23.01.2002, the said OA was dismissed. The

applicant preferred Writ Petition before Allahabad High Court but was unable to get relief.

2.1 Vide letter dated 05.03.2002, the applicant was asked to join his duty with SHO, Pune. However, the applicant vide letter dated 15.03.2002 (Annex A-5) informed the concerned authority that since he was unwell, therefore was unable to join the duty. Thereafter, the applicant made efforts to join his duties with SHO, Pune vide his letters dated 09.07.2004, 10.10.2004 and 12.10.2005 (Annex A-6 to A-8) but he did not receive any response from the respondents.

2.2 The applicant again wrote letter dated 09.09.2009 (Annex A-9) to CO, SHO, Pune to allow him to join duties. In response thereof, he received letter dated 06.10.2009 (Annex A-10) whereby it was communicated that he was dismissed from service vide order dated 09.02.2009. Certain documents including letter dated 31.05.2006 (Annex A-11) issued by CO, SHO, Pune were also annexed to the letter dated 06.10.2009. In the letter dated 31.05.2006 in reference to his application dated 09.07.2004,

the applicant was asked to join his duties at SHO, Pune at the earliest. The applicant claims that he never received the said letter and therefore could not report to SHO, Pune to join his duties. It is submitted that the applicant had furnished his address to the respondents vide letters dated 09.07.2004, 10.10.2004 and 12.10.2005 (Annex A-6, A-7 & A-8 respectively). However, the letter dated 31.05.2006 was sent to the address "50, Vaishali Nagar, C/o. RMGAD, Nagpur - 440017" which is incorrect address as the correct address was 'C/o R. Ahmad'.

2.3 The applicant challenged the order of his dismissal vide OA No.2050/2010. The OA was disposed of vide order dated 23.11.2011 directing the applicant to prefer an appeal before the Adjutant General, Army Headquarters, South Block, New Delhi against the order of dismissal dated 09.02.2009 within a period of three months. Consequently, the applicant preferred an appeal dated 02.12.2011 (Annex A-13) to Respondent No.2. The appeal was rejected by the respondent No.2 vide order dated 28.02.2012 (Annex A-2).

2.4 The applicant has filed the present OA to quash and set aside the order dated 09.02.2009 (Annex A-1) passed by the Disciplinary Authority whereby he was dismissed from service and order dated 28.02.2012 whereby his appeal was dismissed.

2.5 It is stated by applicant that he was never served with show cause notice dated 24.10.2008, chargesheet dated 12.03.2008 (Annex A-14) vide forwarding letter dated 20.03.2008 (Annex A-15) issued due to his unauthorised absence from duty since the afternoon of 17.04.2000. It is claimed that these documents were not sent to the applicant at the address which he had informed to the respondents vide his letters dated 09.07.2004, 10.10.2004 and 12.10.2005 but were sent at the address i.e. 'House No.63, Serwani Nagar, Sitapur Road, PO Mahbullapur, Aliganj, Lucknow 07' which he had left long back. The Notice was published in the Newspapers i.e. 'Indian Express' and 'Loksatta' were not having circulation at Nagpur where the applicant was residing at the relevant time. It is stated that the disciplinary proceedings were conducted ex-parte and are thus vitiated. Further the Inquiry

Officer and the Presenting Officer have been appointed by the Disciplinary Authority simultaneously with the issue of Memorandum/chargesheet dated 12.03.2008. The intimation of their appointment was also not sent to the applicant. The applicant has alleged that the Disciplinary Authority was biased. The appointment of Inquiry Officer and Presenting Officer before filing of reply to the Memorandum/chargesheet within 10 days is unwarranted and bad in law. It is stated that the entire proceedings stand vitiated as he was not given an opportunity to present his case before the Inquiry Officer or the Disciplinary Authority as the case may be. Further that principles of natural justice have been violated in the present case. Therefore the impugned orders are liable to be quashed and set aside. The applicant in support of his contention has relied upon the judgment of Hon'ble Supreme Court in the case of Union of India Vs. Dinanath Shantaram Karekar reported in 1999 (2) Administrative Total Judgments page 221.

2.6 Regarding the observation made by the Appellate Authority in the impugned order dated

28.02.2012 that the applicant in all his letters dated 09.07.2004, 10.10.2004 and 12.10.2005 mentioned his address as "50 Vaishali Nagar, Nagpur" but the official letters sent to this address were received back undelivered. It is stated that only one letter dated 31.05.2006 was sent by the respondents at the above referred address which was not correctly mentioned. All other correspondence was sent at different addresses where the applicant was not residing. It is submitted that since the applicant was not communicated with regard to the departmental proceedings nor he was served with the inquiry report, therefore the entire disciplinary proceedings are vitiated and are bad in law therefore requires to be quashed and set aside.

3. The respondents have filed detailed affidavit in reply wherein it was mentioned that the applicant was transferred vide order dated 10.04.2000 from SHO, Lucknow to SHO, Pune. The movement order was issued on 17.04.2000. The applicant approached this Tribunal vide OA No.241/2000 against the order of transfer and obtained interim stay. However, despite that he

did not make any effort to rejoin duty with SHO Lucknow. The OA was dismissed on 23.01.2002. Thereafter also, the applicant was evading his movement to the place of transfer on one or the other pretext. The allegations that SHO, Lucknow did not allow him to join duty is denied. It is stated that the refusal of SHO, Lucknow is not documented. Even after the dismissal of his case before this Tribunal, he did not move to SHO, Pune which reflects his intention of not joining his duties there. The applicant did not join his duties despite written correspondence dated 05.03.2002 by SHO, Lucknow to join at SHO, Pune. The Writ Petition filed before the Allahabad High Court against the order in OA No.241/2000 by the applicant was also dismissed but he still did not join the duties on the pretext of being sick. Many communications were sent to him of his new address and the last known address but without any response. He did not inform his whereabouts to SHO, Pune nor made any communications with him till 09.09.2009. He was regularly sent letters but no response was received. The respondents have placed on record the copies of the letters collectively Exhibit

R-5 which were sent to the applicant from time to time. These letters are dated 31.05.2006 and 18.07.2006 requesting the applicant to join his duties with SHO, Pune, the copy of show cause notice, charge sheet and order of dismissal. Out of these, letter dated 31.05.2006 was address to the applicant at the address '50 VAISHALI NAGAR, C/o RAMGAD NAGPUR - 440 014', whereas the remaining correspondence was sent to the applicant at the address 'Town Panchsheel Nagar, Near Buddha Vihar, P.O. Dr. Ambedkar Road, P.S. Panchpaoli, Distt.Nagpur, Teh. Nagpur - 440 017, State Maharashtra and at 'House No.63, Serwani Nagar, Sitapur Road, P O Mahbullapur, Aliganj, Lucknow - 07' but these were received back with the report that no such person is residing at the given address.

3.1 It is further stated by the respondents that vide letter dated 06.10.2009 (R-7) the applicant was sent letters the details of which are mentioned in its para 3 at the address/s furnished by him but the same were returned by the postal department with the report that the individual was not residing at the given address. Regarding the letter dated 31.05.2006 it is submitted that it was sent at the address furnished by the applicant vide his application

dated 09.07.2004 (Annex R-6) which has also been placed on record by the applicant himself as Annex A-6. It is claimed that the name of the applicant, the address, city and pin code are the pre-requisite for delivery of registered letter and same were correctly mentioned except with the minor typographical error of C/o RMGAD instead of C/o R. Ahmed which does not qualify to be a grave error for the letter not to be delivered. The applicant was also contacted on phone number provided by him but no response was received. It is denied that the applicant came to know about his dismissal from service only on 06.10.2009. It is claimed that all the relevant communications were sent to him on the available address and through publication in the newspaper Exhibit R-7 and R-8 respectively.

3.2 Regarding the contention of the applicant that he was not given 10 days time to file reply to the chargesheet, it is stated that though chargesheet was issued on 12.03.2008 giving 10 days to the applicant to file reply, however, the proceedings were initiated by the Inquiry Officer only on 26.05.2008 giving considerable time to the applicant to reply the charges. To

this effect, the respondents are relying upon the order dated 28.02.2012 whereby in para 5(e) this issue has been dealt with by the Appellate Authority. The order of Appellate Authority was forwarded to SHO, Pune vide letter dated 14.03.2012 to dispatch copy of the same to the applicant at the address furnished by him in his appeal dated 02.12.2011.

3.3 It is stated that the contention of the applicant of non receipt of communication is not tenable. The applicant never accepted his transfer and indulged in unauthorised absence from duty unbecoming of a Government servant. After rejection of his OA by CAT, Lucknow on 23.01.2002, he reported to SHO Pune on 09.07.2004 and thereafter wrote letters dated 10.10.2004 and 12.10.2005. Thereafter he did not respond to the letter dated 31.05.2006 whereby he was asked to join SHO Pune. He furnished his new address only vide letter dated 09.09.2009 which was never provided to the respondents earlier. It is stated that the charges against the applicant were found proved and accordingly he was punished. It is prayed that in the facts and circumstances of the case, the OA deserves

to be dismissed.

4. The applicant has filed rejoinder and has reaffirmed his assertions in terms of the OA.

5. We have heard the arguments of Shri A.I. Bhatkar, learned counsel for the applicant and Shri D.A. Dube, learned counsel for the respondents at length and perused the material available on record.

6. Learned counsel for the applicant has argued that the applicant made all possible attempts to join his duties with SHO, Pune in terms of the transfer order dated 10.04.2000. However, despite his writing letters dated 09.07.2004, 10.10.2004 and 12.10.2005 neither he received any response from the respondents nor he was allowed to join the duties. He has contended that in all these three letters he had given communication address as 'Shri Y.S. Meshram, Health Inspector C/o R. Ahmad, 50, Vaishali Nagar, Nagpur - 440 017'. It is argued that the applicant was not served with the show cause notice or the chargesheet and even the order of dismissal but instead these documents were sent at Lucknow address where the applicant was not residing which he had left long back.

7. It is further argued that no attempt was made to serve the show cause notice and chargesheet to the applicant at his last known address available with the respondents vide Annexure A-6 to A-8. Even the publication of the notice was done in the newspapers which had no circulation at Nagpur where the applicant was residing. In support of his contention he has relied upon the Judgment of Hon'ble Apex Court in the case of Union of India Vs. Dinanath Shantaram Karekar, Civil Appeal No.1477 of 1993 decided on 30.07.1998 in support of his contention.

8. On the other hand, learned counsel for the respondents has submitted that the letter dated 31.05.2006 was sent to the applicant at the address furnished by him vide Annexure A-6 to A-8. However, the same was received back with the report that he was not residing at the given address, therefore respondent No.4 wrote letter dated 10.06.2006 (Exhibit R-10) to the SHO, Lucknow and made request to intimate the latest address of the applicant, if known. In response to, letter dated 07.07.2006 (Exhibit R-9) was received by SHO Pune whereby the following addresses of the applicant were

furnished.

“(a) HI Shri Y.S. Meshram
House No.63, Serwani Nagar,
Sitapur Road,
P O Mahbullapur, Aliganj,
Lucknow – 07.

b) HI Shri Y S Meshram
Town-Panchsheel Nagar,
Near Buddha Vihar,
P O – Dr. Ambedkar Road
P S – Panchpoli
Distt. Nagpur.
Teh – Nagpur,
State Maharashtra – 440 017.”

Thereafter on these addresses the applicant was issued the show cause notice dated 20.03.2008, the charge sheet dated 04.11.2008 followed by the dismissal order dated 24.02.2009 passed by the Disciplinary Authority. It is further argued that a notice was also published in the National Newspaper 'Indian Express' and Local Newspaper 'Loksatta', the cuttings of the newspaper are placed on record as Exhibit R-8. It is submitted that despite all these efforts, the applicant did not appear before the Disciplinary Authority nor he filed any reply to the show cause notice or to the charge sheet and consequently, he was proceeded ex-parte and punishment of dismissal from service was imposed vide order dated 09.02.2009. It is

stated that there is no infirmity in the disciplinary proceedings as all possible efforts were made to serve the applicant with the show cause notice, charge sheet as well as the order of dismissal but for the reasons that the applicant was not residing at the given address, he was proceeded ex-parte in the disciplinary proceedings.

9. After hearing the submissions of both the parties, we have carefully gone through the material available on record.

10. Admittedly the applicant did not comply with the order of transfer dated 10.04.2000. The OA filed by him against this order was dismissed vide order dated 23.01.2002 and his Writ Petition preferred before the Hon'ble High Court of Allahabad Bench at Lucknow was also dismissed. The applicant was directed vide letter dated 05.03.2002 by the SHO, Lucknow to proceed to SHO Pune and to report for duty but he did not do so on health reasons. Thereafter he wrote two letters dated 09.07.2004 and 10.10.2004 to SHO Pune making request to allow him to join duties. However, he did not receive any reply to it. He again made effort to join

his duties at Pune vide letter dated 12.10.2005. In all these three letters he had furnished his following postal address:-

"Y.S. Meshram
H. Insp.
C/o. R. AHMAD
50 Vaishali Nagar
Nagpur - 440 017."

11. The respondent No.4 sent letter dated 31.05.2006 to the applicant at the address mentioned above. However the same was received back unserved with the remarks of postal authorities that the person concerned was not residing at the given address. Thereafter no other communication was posted at this address. From the record it is observed that the respondent No.4 obtained from SHO, Lucknow the postal address of the applicant available in their record which was communicated to SHO Pune vide letter dated 07.07.2006 (Exhibit R-9) and the following addresses were furnished:-

(a) HI Shri Y S Meshram
House No.63, Serwani Nagar
Sitapur Road,
P O Mahbullapur, Aliganj,
Lucknow - 07.

(b) HI Shri Y S Meshram
Town-Panchsheel Nagar,
Near Buddha Vihar

P O – Dr Ambedkar Road
P S – Panchpoli
Distt – Nagpur
Teh – Nagpur, State-Maharashtra - 440017

For initiating the departmental proceedings, respondent No.4 issued show cause notice to the applicant at the addresses referred above furnished by SHO Lucknow whereas in fact the applicant had already communicated vide his letters Annex A-6 to Annex A-8 that his postal address was as under:-

“50, Vaishali Nagar, C/o. R. Ahmad, Nagpur – 440 017”

We cannot lose sight of the fact that the applicant was earlier residing at the address/s furnished by the SHO Lucknow to SHO Pune and later on since he was no more residing at the said address/s, he furnished his new postal address to the SHO Pune vide letters Annexures A-6 to A-8. As such, it was the duty of the concerned authority to make sufficient efforts to serve the show cause notice/charge sheet at the address mentioned in these three documents and not at the address where he was residing earlier. It is observed from the record that R-4 did not even make a single attempt to serve the show cause notice as well

as the charge sheet to the applicant at the address furnished by the applicant vide Annexure A-6 to A-8. Further it is observed that the notice was published in the newspapers which were Pune based and apparently had no circulation at Nagpur where the applicant was residing as per his last known address.

12. The applicant has relied upon the judgment of Hon'ble Apex Court in the case of Dinanath Shantaram Karekar (supra) where the Hon'ble Apex Court dealt with an identical issue. Relevant paragraphs Nos. 3,4,5 and 10 are set out herein below:-

3. Respondent was as employee of the appellant His personal file and the entire service record was available in which his home address also had been mentioned. The charge sheet which was sent to the respondent was returned with the postal endorsement "not found". This indicates that the charge sheet was not tendered to him even by the postal authorities. A document sent by registered post can be treated to have been served only when it is established that it was tendered to the addressee. Where the addressee was not available even to the postal authorities, and the registered cover was returned to the sender with the endorsement "not found", it cannot be legally treated to have been served. The appellant should have made further efforts to serve the charge sheet on the respondent. Single effort, in the circumstances of the case, cannot be treated as sufficient. That being so, the very initiation of the departmental proceedings was bad. It was ex-parte even from the stage of charge sheet which, at no stage, was served upon the respondent.

4. So far as the service of show cause notice is concerned, it also cannot be treated to have been served. Service of this notice was sought to be effected on the respondent by publication in a newspaper without making any

earlier effort to serve him personally by tendering the show cause notice either through the office peon or by registered post. There is nothing on record to indicate that the newspaper in which the show-cause notice was published was a popular newspaper which as expected to be read by the public in general or that it had wide circulation in the area or locality where the respondent lived. The show-cause notice cannot, therefore, in these circumstances, be held to have been served on the respondent. In any case, since the very initiation of the disciplinary proceedings was bad for the reason that the charge sheet was not served, all subsequent steps and stages, including the issuance of the show-cause notice would be bad.

5. Lastly, in order to save the lost battle, a novel argument was raised by the learned counsel for the appellant. He contended that since the charge-sheet as also the show-cause notice, at different stages of the disciplinary proceedings, were despatched and had been sent out of the office so that no control to recall it was retained by the department, the same should be treated to have been served on the respondent. It is contended that it is the communication of the charge-sheet and the show-cause notice which is material and not its actual service upon the delinquent. For this proposition, reliance had been placed on the decision of this Court in *State of Punjab and others Vs. Balbir Singh etc.*, AIR 1977 SC 629.

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10. Where the disciplinary proceedings are intended to be initiated by issuing a charge-sheet, its actual service is essential as the person to whom the chargesheet is issued is required to submit his reply and, thereafter, to participate in the disciplinary proceedings. So also, when the show-cause notice is issued, the employee is called upon to submit his reply to the action proposed to be taken against him. Since in both the situations, the employee is given an opportunity to submit his reply, the theory of "Communication" cannot be invoked and "Actual Service" must be proved and established. It has already been found that neither the charge-sheet nor the show-cause notice were ever served upon the original respondent, Dinanath Shantaram Karekar. consequently, the entire proceedings were vitiated.

13. In the present case, it is observed that
neither the show cause notice nor the

chargesheet was attempted to be served upon the applicant at his last known postal address as contained in Annexure A-6 to Annexure A-8. Only one effort was made to serve the show cause notice dated 20.03.2008 and thereafter charge sheet dated 04.11.2008 and that too at the addresses which were available on record with SHO, Lucknow and the applicant was no more residing there, in view of the fact that he himself had furnished his new postal address to respondent No.4 vide letters Annexure A-6 to A-8. In fact no attempt was made to serve the show cause notice and even the charge sheet at the said last known address of the applicant. No efforts were even made to serve these documents upon the applicant through special messenger or by Registered post. Even the service was not effected through publication in the newspaper which was a popular newspaper having wide circulation in the area where the applicant resided. It is held by the Hon'ble Supreme Court in the case of Dinanath Shantaram Karekar (supra) that the publication of notice is required to be done in a popular newspaper which is expected to be read by the public in

general and has wide circulation in the area or locality where the applicant lived.

14. In the facts and circumstances of the case, no sufficient efforts were made by the respondents to serve the show cause notice as well as chargesheet to the applicant and merely sending these documents at the address which was apparently known to the respondents that the applicant was not residing thereon, has in fact vitiated the entire disciplinary proceedings. We have no hesitation to hold that in the present case neither the chargesheet nor the show cause notice were ever served upon the applicant and thus the entire proceedings are vitiated. The so called service of the chargesheet and show cause notice on the applicant was insufficient.

15. In these circumstances, the impugned orders dated 09.02.2009 and 28.02.2012 are hereby quashed and set aside. The matter is remitted to the Disciplinary Authority with direction to serve the chargesheet afresh to the applicant at the address furnished by him vide letter dated 09.09.2009 and proceed as per relevant rules and regulation to conclude the

inquiry within a period of eight weeks from the date of receipt of certified copy of this order. The Competent Authority may take appropriate decision as per provision of Fundamental Rule 54(4) regarding the pay and allowances to be paid to the applicant for the period from the date of his dismissal from service till reinstatement in pursuance to this order, after verifying that during this period the applicant was not working at any other place.

16. With these directions, the Original Application stands disposed of. No order as to costs.

(Ravinder Kaur)
Member (J)

(R. Vijaykumar)
Member (A)

ma.

JD
23/10/12