

(2016) 11 JH CK 0111
In the Jharkhand High Court
Case No : Writ Petition (S) No. 2090 of 2014

Dilip Khalkho

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 17-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 JBCJ 49 : (2017) 1 JCR 428 : (2017) 1 JLJR 48

Hon'ble Judges : Mr. H.C. Mishra and Mr. Dr. S.N. Pathak, JJ.

Bench : Division Bench

Advocate : M/s Abhay Kumar Mishra and M.K. Choubey, Advocates, for the Petitioner; Mr. Rajiv Sinha, A.S.G.I, for the Respondent/Union of India

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner and learned counsel for the Union of India.
2. The petitioner is aggrieved by the order 27th of September, 2013, passed by the Central Administrative Tribunal, Patna Bench, [Circuit Court at Ranchi], in O.A. No. 187 of 2011(R), as contained in Annexure-3 to the writ application, whereby the application filed by the petitioner in the Central Administrative Tribunal, with the prayer to quash the communication dated 29.1.2007 and order dated 21.11.2006, whereby the petitioner had been removed from service in an ex parte departmental proceeding, as also for quashing the order dated 19.4.2011, whereby the representation preferred by the petitioner had been rejected, and further for a direction to respondent No. 3 to reinstate the petitioner on his post along with all benefits treating him in regular service, was dismissed by the Central Administrative Tribunal.
3. The brief facts, giving rise to this application, are that the petitioner was posted as Junior Intelligence Officer (JIO)-II/WT in the Subsidiary Intelligence Bureau, [hereinafter referred to S.I.B], Ranchi. The petitioner had filed

applications for leave on 5.11.2003, 5.12.2003 and he also filed applications of extension of his leave. The absence of 268 days was regularised to the petitioner and was treated as "dies non". Pursuant to the annual exercise of transfers/postings of I.B. officials all over India, the petitioner was transferred to S.I.B., Dibrugarh under S.I.B., Itanagar, vide Headquarters" order dated 24.3.2004. Thereafter the petitioner represented against his transfer and sought its cancellation, but his request was rejected by the I.B. Headquarters and the petitioner was ordered to be relieved of his duties on 31.8.2004 with instructions to report for duty at AD/E, S.I.B., Itanagar, after availing admissible joining time. The petitioner again gave representation for cancellation of the transfer order, but the same was again turned down. The petitioner did not report on duty at Itanagar and instead, he sent another application dated 10.9.2004 for extension of the joining time on the grounds of his own illness as well as that of his wife, but the medical certificates as required were not submitted. Thereafter a Telegram was issued to the petitioner on 13.1.2005, directing him to report immediately as also to submit appropriate medical certificates. The post copy of the telegram was returned back undelivered. Further communications/notices sent to the petitioner through registered post at his permanent address, also returned back undelivered by the postal authorities.

4. The fact remains that the petitioner did not join his duty. An inquiry was conducted by the Vigilance Team regarding the whereabouts of the petitioner and the inquiry report showed that the petitioner, his wife and minor child were in good health and were moving freely and the petitioner was actively pursuing his transfer case and that he had apparently managed the medical prescriptions for justifying his absence.

5. Ultimately upon the direction of the I.B. Headquarters, departmental action was initiated against the petitioner, and Memo of Charges dated 9.9.2005 was sent to the petitioner at his permanent address by the registered post, which was again returned unserved by the postal authorities. The order, appointing the Inquiry Officer as also the Presenting Officer were also sent to the permanent address of the petitioner, which were also returned back undelivered. Thereafter the petitioner was also summoned to appear for preliminary hearing vide letter dated 13.4.2006, but this communication sent to him was also returned back undelivered. Further opportunity was also given to the petitioner, but the communication in that respect also returned undelivered by the postal authorities.

6. Accordingly, an ex-parte departmental proceeding was initiated and report was submitted to the disciplinary authority on 20.9.2006. The copy of the inquiry report, holding the petitioner guilty of the charges was forwarded to the petitioner under Memo dated 12.10.2006 through registered post at his permanent address, which again met the same fate, i.e., returned undelivered. Thereafter on consideration of the inquiry report and the materials available on record, the competent authority, holding the petitioner guilty of both unauthorized absence as also disobedience of the order, imposed the penalty of

removal from service vide order dated 12.11.2006 and the order was also sent to his permanent address through registered post, which was also returned undelivered.

7. However, the petitioner gave a representation on 12.12.2006, in which, he stated that either he should be transferred back to S.I.B. Ranchi, or else his resignation from service may be accepted, since he was not in a condition to join at Itanagar, on the ground of his wife's prolonged illness. As the petitioner had already been removed from service, the question of considering the representation did not arise, and this was communicated to the petitioner on 29.1.2007, again sending therewith a copy of the penalty order, and this communication was again made at the same permanent address of the petitioner, which the petitioner received on 12.2.2007 as per the acknowledgement card, received from the postal authorities.

8. This order of penalty was appealable within the statutory period of 45 days, but the petitioner slept over the matter for more than 3? years and on 4.10.2010, he submitted a representation to the Director, Intelligence Bureau (Revising Authority), requesting for his reinstatement in service. However, in the said representation, no grounds for condonation of inordinate delay of more than 3? years was given, but the Reviewing Authority entertained the said representation of the petitioner and rejected the representation of the petitioner by order dated 19.4.2011.

9. Being aggrieved by this order, the petitioner had approached the Central Administrative Tribunal, Patna Bench, [Circuit Court at Ranchi], in O.A. No. 187 of 2011(R), which was adjudicated upon by the Central Administrative Tribunal, and by order dated 27.9.2013, the application filed by the petitioner was dismissed.

10. In the said order, the Central Administrative Tribunal, upon detailing the aforesaid facts of the case, came to a conclusion that the petitioner emerged as a recalcitrant employee, who resorted to various stratagem to avoid joining the new place of posting, which was inconvenient to him and not to his liking. The Central Administrative Tribunal also found that the petitioner was wilfully evading the notices as well as communications sent to him and all these actions of the petitioner made him unsuitable to the post, which he held in Intelligence Bureau and its S.I.B., which are the premier organisations dealing with critical and sensitive issues of internal security. The Tribunal came to a clear finding that the petitioner was solely responsible for the consequences, which had befallen him by his own acts of omissions and commissions and, accordingly dismissed the application, filed by the petitioner.

11. Learned counsel for the petitioner has submitted that the removal from service of the petitioner as also the impugned order, passed by the Central Administrative Tribunal, are absolutely illegal and arbitrary and violative of Articles 14 and 16 of the Constitution of India. It is submitted by learned counsel

for the petitioner that the records clearly showed that none of the communications/notices, sent to the petitioner, were ever served upon him, rather all were returned unserved, and accordingly, substituted service of notice ought to have been made in the matter, before initiating the ex-parte departmental proceeding against the petitioner. Learned counsel has further submitted that as it was an ex-parte departmental proceeding, in which, the petitioner had been found guilty and had been imposed with the penalty of removal from service, the same is also violative of the principles of natural justice as also the extant Rules relating to the departmental proceedings. Learned counsel has lastly submitted that the Reviewing Authority had considered the representation of the petitioner in spite of the fact that it was filed after lapse of more than 3? years, and accordingly, this amounted the condonation of delay by the Reviewing Authority, who ought to have considered the representation on merits, and the illegally passed ex parte orders ought to have been set aside. Learned counsel has, accordingly, submitted that the impugned order of removal from service of the petitioner as well as the impugned order, passed by the Central Administrative Tribunal, are absolutely illegal and cannot be sustained in the eyes of law and the same are fit to be quashed.

12. Learned counsel for the respondent Union of India, on the other hand, has opposed the prayer, submitting that all the steps, were taken by the respondents for communication at all stages of the departmental proceeding to the petitioner. The petitioner wilfully evaded all these notices and communications. In this connection, it is pointed out by the learned counsel for the Union of India from the memo of charges, which has been brought on record in the writ application, that it was the petitioner himself, who had given the leave address to the department and all the communications were made on that address itself, but the same had been returned undelivered. However, the penalty order was received by the petitioner on the same address on 12.2.2007, but no appeal thereafter was filed by the petitioner within the statutory period of 45 days and the petitioner slept over for more than 3? years. Thereafter he gave a representation, which was also considered by the Reviewing Authority, who never condoned the delay of 3? years while rejecting the representation of the petitioner, detailing all the facts of omissions and commissions of the petitioner. Learned counsel, accordingly, submitted that there is no illegality in the impugned orders and there is no infirmity in the finding given by the Central Administrative Tribunal that the petitioner is not fit to continue on the sensitive post in the Intelligence Bureau/Subsidiary Intelligence Bureau.

13. Having heard learned counsels for both the sides and upon going through the record, we find that all the communications/notices were sent to the petitioner on the leave address, as had been provided by the petitioner himself, which were returned unserved. If the petitioner had himself given the leave address and the communications/notices about the departmental proceeding were sent on that address, it was the responsibility of the petitioner to see that the

communications made at that address are duly acknowledged. That having not been done, the petitioner cannot take the plea that the departmental proceeding was illegally initiated ex parte. This apart, the Vigilance Team, after due inquiry, had found that the petitioner, his wife and minor child were in good health and were moving freely and the petitioner was actively pursuing his transfer case and that he had apparently managed the medical prescriptions for justifying his absence. The fact remains that the petitioner received the penalty order, though belatedly on the same address on 12.2.2007, but he slept over the matter for more than 3? years and did not file the statutory appeal. However he filed the representation after an inordinate delay of more than 3? years, which was again rightly rejected by the Reviewing Authority.

14. In view of the aforesaid facts and circumstances, we do not find any infirmity and/or illegality in the impugned order dated 27th of September, 2013, passed by the Central Administrative Tribunal, Patna Bench, [Circuit Court at Ranchi], in O.A. No. 187 of 2011(R).

15. There is no merit in this writ application and the same is accordingly, dismissed.