

(2009) 12 DEL CK 0273

In the Delhi High Court

Case No : Writ Petition (C) No. 7140 of 2009

Ram Kishan Yadav

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-12-2009

Acts Referred:

Citation : (2009) 12 DEL CK 0273

Hon'ble Judges : Suresh Kait, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Randhir Jain, Deepak Aggarwal and Dhananjay Jain, for the Appellant; B.V. Niren and Akriti Gangotra, for the Respondent

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J.—Rule. D.B.

2. Heard for disposal.

3. Original record of the respondent has been perused.

4. The services of the petitioner were terminated when an order of dismissal from service was passed. The order was passed after an ex-parte enquiry was conducted against the petitioner.

5. After the order of dismissal from service was passed by the Disciplinary Authority, the petitioner preferred an appeal which was dismissed. Statutory remedy of revision was availed by the petitioner. Even the revision petition has been dismissed.

6. The petitioner has challenged the order passed by the Disciplinary Authority on 13.6.1998; the order passed by the Appellate Authority on 16.8.1999; and the order passed by the Revisional Authority on 02.04.2008.

7. Apart from other grounds urged by the petitioner before the statutory authorities, he took a stand that the charge- sheet, which has resulted in the

penalty order being passed, was never served upon him. Said plea has been reaggitated in the writ petition.

8. With respect to the said plea of the petitioner, the authorities concerned have simply noted that the charge-sheet was sent by post at the address given by the petitioner.

9. From the record produced by the respondents in Court today, it is apparent that the petitioner had given two addresses. The first was his permanent address being his ancestral house in Village Zahidpur, P.O. Bhurthal, Tehsil Kosli, District Rewari, Haryana and the other being the temporary address at 124, J-Block Locoshed, Kishanganj, Delhi.

10. The later was the government accommodation allotted to the father-in-law of the petitioner.

11. The record produced by the respondent further shows that the charge-sheet was sent under registered A.D. post at the address 124, J-Block Locoshed, Kishanganj, Delhi and was received back unserved.

12. If that was so, it was expected of the respondent and in particular the Disciplinary Authority, to serve the petitioner by sending the charge-sheet at his permanent address.

13. Ignoring that the charge-sheet sent under registered A.D. post at the temporary address had been received back unserved, the enquiry was conducted. We note that even the Enquiry Officer sent the notice for appearance at the aforementioned address 124, J-Block Locoshed, Kishanganj, Delhi. The same was also received back unserved.

14. What has pained us is the fact that when the petitioner filed an appeal against the order passed by the Disciplinary Authority, he raised the plea that he was never served with the charge memo, for the reason the same was sent at the temporary address given by him when he joined service. At that point of time his father-in-law was in occupation of the flat at 124, J-Block Locoshed, Kishanganj, Delhi. He informed that after his father-in-law retired from service possession of the flat was handed over to the employer. With reference to the said grounds specifically urged in the appeal, the Appellate Authority i.e. the Deputy I.G. Police, CRPF sent a query dated 22.6.1999 to the unit concerned enquiring whether the charge memo as also the notice of appearance sent by the Enquiry Officer was or was not served upon the petitioner.

15. On 14.7.1999 vide letter No. P.VIII-5/97-EC-II, the Appellate Authority was informed with reference to its letter dated 22.6.1999 that the postal envelope under which the charge-sheet and the notice of appearance respectively issued by the Disciplinary Authority and the Enquiry Authority were received back undelivered from the postal authorities.

16. Yet inspite of the said information being available to him, the Appellate

Authority ignored the plea of the petitioner and by simply narrating that the charge memo was posted at the temporary address given by the petitioner proceeded to hold that there was no procedural infirmity committed.

17. It is enough for us to note that where a person has provided a temporary and a permanent address to the employer, and the Service Rules require that a charge-sheet should be served upon the person concerned, if the charge-sheet sent at the temporary address by registered A.D. post is received back undelivered, the Authority concerned is obliged to send the charge-sheet at the permanent address.

18. Principles of Natural Justice have been violated. Since the Statute requires charge-sheet to be served upon the delinquent officer; noting the afore-noted facts, we allow the writ petition and quash the impugned orders dated 13.6.1998, 16.8.1998 as also the order dated 02.04.2008. We set aside the findings of the Enquiry Officer which we note are ex parte in nature.

19. Noting that the taint in the action of the respondent is of not serving the charge-sheet upon the petitioner, we take on record the fact that in Court today, a photocopy of the charge-sheet (to be treated as an original) has been handed over to learned Counsel for the petitioner.

20. Learned Counsel for the petitioner, in turn has handed over the same to the petitioner. Let the petitioner respond within six weeks. We clarify that it would be open to the Disciplinary Authority to nominate a fresh Enquiry Officer who would hold an enquiry after notifying a date of appearance to the petitioner.

21. Lest there be any confusion as to the address of the petitioner, we note that future correspondence as desired by the petitioner would be at the following address:

Constable Ram Kishan Yadav S/o Sh. Hari Singh R/o Village Zahid Pur, P.O. Burthal, Tehsil Kosli, Distt. Rewari (Haryana).

22. In what manner the period between the date when service of the petitioner were terminated and till enquiry is conducted should be treated for purposes of service record, would be decided by the Competent Authority.

23. The writ petition stands disposed of in the aforesaid terms.

24. No costs.

25. Dasti.