

(2008) 07 AP CK 0055

In the Andhra Pradesh High Court

Case No : Writ Petition No. 19845 of 2007

S.S. Hari Prasad

APPELLANT

Vs

District and Sessions Judge-cum-Disciplinary Authority and
Another

RESPONDENT

Date of Decision : 23-07-2008

Acts Referred:

Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 — Rule 20, 20(7), 21, 42, 42(H)
General Clauses Act, 1897 — Section 27
Penal Code, 1860 (IPC) — Section 468, 471

Citation : (2008) 5 ALD 751 : (2008) 6 ALT 625

Hon'ble Judges : V.V.A. Rao, J;G. Chandraiah, J

Bench : Division Bench

Advocate : G. Vidyasagar, for the Appellant; P.V. Sanjay Kumar, SC for APHC, for the Respondent

Judgement

V.V.S. Rao, J.—The writ petition is filed seeking a writ of mandamus declaring the proceedings of the second respondent dated 11.7.2007 whereby and whereunder the application filed by the petitioner to condone the delay in his appearance and permit him to appear before the enquiring authority in the matter of regular departmental enquiry ordered by first respondent was rejected. The petitioner also assails the proceedings of first respondent dated 30.7.2007 whereby and whereunder the application of the petitioner which was filed by way of appeal against the proceedings of the second respondent was rejected. Along with the said order, a Xerox copy of the proceedings dated 27.1.2006 placing the petitioner under suspension was communicated to him.

2. The petitioner at the relevant time was working as Superintendent in the Court of III Additional Chief Metropolitan Magistrate, Visakhapatnam at Gajuwaka. He was an accused in Crime No. 346 of 2005 filed by Punjab and Sind Bank under Sections 468 and 471 of Indian Penal Code, 1860. The petitioner went on extraordinary leave from 19.9.2005 and later came to know that the

first respondent initiated disciplinary action and placed him under suspension by an order dated 27.1.2006 on the ground that a criminal case is registered against him. Charges were framed, and the Special Judge for CBI Cases, Visakhapatnam was appointed as an Enquiry Officer to enquire into allegations and charges against the petitioner and another co-employee. Petitioner statedly made a representation to permit him to participate in departmental proceedings and also submit written statement. He also prayed to stop further disciplinary proceedings till he is permitted to submit a written statement. As noticed supra, the said request was rejected by the second respondent as well as the first respondent.

3. Learned District Judge has filed a counter-affidavit in which the circumstances and events leading to the disciplinary proceedings against the petitioner and another employee are traced. Insofar as the same is relevant to the controversy in the writ petition, it is alleged that the second respondent issued notices under Rule 20(7) of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (hereafter called, CCA Rules), that notices were returned unserved as the petitioner and another were absconding, and as they failed to submit written statements, the Enquiry Officer issued notices under Rule 42(iii) of CCA Rules by causing publication of notices in Andhra Pradesh Gazette on 24.8.2006, and as the petitioner failed to appear, he cannot now be permitted to participate in the enquiry. Along with the counter-affidavit, the respondents have filed various documents including the statement of articles of charges (at page Nos.77 to 91 of paper book). A copy thereof is also served on the learned Counsel for the petitioner.

4. This Court heard the learned Counsel for the petitioner and the learned Standing Counsel for High Court of A.P. Rule 42 of CCA Rules provides for service of orders, notices and reads as under.

42. Service of orders, notices etc.: Every order, notice and other process made or issued under these rules shall?

(i) if he is on duty, be served on the Government servant by delivering or tendering it in person;

(ii) if he is on leave or under suspension or otherwise absent be communicated to him by registered post to the address given by him, if any, or of his usual place of residence;

(iii) if it cannot be so served or communicated, be published in Andhra Pradesh Gazette.

5. A plain reading of the above would show that the method and manner of serving notice provided under clauses (i), (ii) and (iii) of Rule 42 of CCA Rules is not simultaneous. Each method is alternative to the other previous method. To be more clear, as far as possible, every order, notice and other process made under CCA Rules shall be served by delivering or tendering it to the person, if the

Government servant is on duty. If the same is not possible, Rule 42(ii) of CCA Rules provides that the communication may be sent by registered post to the address given by him or to his place of residence. This eventuality arises when the charged officer is under suspension or otherwise absent or in a given case allegedly absconding from employment.

6. If the method provided under Clause (i) and Clause (ii) of Rule 42 of CCA Rules is not possible, then only notice can be served or communicated by publishing in Andhra Pradesh Gazette. The first phrase "if it cannot be so served or communicated" would clearly indicate that only when the notice or order cannot be served under Rule 42(i) and Rule 42(H) of CCA Rules, the method of serving and communicating the order or notice as provided under Rule 42(iii) of CCA Rules can be resorted to.

7. In this case, a perusal of the record placed before us would show that the notice under Rule 42(ii) of CCA Rules was not sent by registered post, which itself is in contravention of the relevant Rule providing for service of order or notice by registered post. Be it noted, if a communication is sent by registered post to the address given by an employee or to a known place of residence, the presumption u/s 27 of the General Clauses Act, 1897, springs into action and it shall be deemed to be served. In a recent judgment in *C.C. Alavi Haji Vs. Palapetty Muhammed and Another*, , the Supreme Court while dealing With this aspect laid down as under:

Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. This Court has already held that when a notice is sent by registered post and is returned with a postal endorsement "refused" or "not available in the house" or "house locked" or "shop closed" or "addressee not in station", due service has to be presumed (vide *Jagdish Singh Vs. Natthu Singh*, ; *State of M.P. Vs. Hiralal and Others*, and *V. Raja Kumari Vs. P. Subbarama Naidu and Another*,). It is, therefore, manifest that in view of the presumption available u/s 27 of the Act, it is not necessary to aver in the complaint u/s 138 of the Act that service of notice was evaded by the accused or that the accused had a role to play in the return of the notice unserved.

8. In view of the above, we are not inclined to countenance the submission of the respondents that publication of the notice in the Gazette dated 24.8.2006 is sufficient compliance with the Rule. Therefore, we are of considered opinion that the petitioner, who, statedly, is always willing to participate in the enquiry, should be given an opportunity. Indeed, a reading of Rules 20 and 21 of CCA Rules

would show that there cannot be any effective disciplinary enquiry either by the disciplinary authority or enquiring authority without participation of the charged officer. At the stage of serving articles of charges, at the stage of submitting written statement, and at the stage of enquiry, the law contemplates fairness to the charged officer. If a charged officer, who is willing to participate in the enquiry, is denied of such an opportunity, it would be unfair and goes contrary to the spirit of CCA Rules. We are also of considered opinion that to avoid further delay, the petitioner may now submit written statement within a period of two weeks from the date of receipt of a copy of this order. It is needless to mention that all the material including articles of charges are served on the learned Counsel for the petitioner today. As and when the petitioner submits written statement, the enquiring authority shall proceed with the enquiry in accordance with Rule 20 of CCA Rules and submit a report after completion of the enquiry within a period of four months. Be it noted that this Court has not expressed any opinion on the merits of the case.

9. The writ petition is disposed of accordingly with the above observations and directions. No costs.