

(2000) 11 MP CK 0029

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 1105 and 1294 of 2000

Union of India and others

APPELLANT

Vs

Rajeev Pathak

RESPONDENT

Date of Decision : 24-11-2000

Acts Referred:

Central Civil Services (Classification, Control and Appeal) (Amendment) Rules, 1984 — Rule 11
Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14(2)
Central Civil Services (Conduct) Rules, 1964 — Rule 3(1)

Citation : (2001) 1 MPHT 484

Hon'ble Judges : N.G. Karambelkar, J; Mr. S.P. Srivastava, J

Bench : Division Bench

Advocate : Shri T.C. Singhal, for the Appellant;

Judgement

S.P. Srivastava, J.—The proceedings initiated against Rajeev Pathak, a Sub-Inspector in Central Bureau of Narcotics and posted in the office of the Narcotics Commissioner, Gwalior, culminated in the imposition upon him the penalty of dismissal under Rule 11 (ix) of the CCS (CCA) Rules, 1984 as amended holding that he had acted in a manner unbecoming of a Government servant contravening the provisions of Rules 3 (1) (ii) and (iii) of CCS (Conduct) Rules, 1964 by absenting from duty for the last several years since 1989 vide the order dated 28-7-1993. This order was challenged by Rajeev Pathak before the Central Administrative Tribunal by means of O.A. No. 266 of 1997.

2. The Tribunal while condoning the delay in filing the application held that the order of dismissal passed by the Disciplinary Authority proceeding ex parte in the departmental proceedings was void ab initio and could not be given effect to. The Narcotics Commissioner was directed to permit Rajeev Pathak to join the last place of his posting within fifteen days from the date of receipt of the copy of the order passed by the Tribunal but it was left open to the respondent- authorities to proceed with the Disciplinary proceedings from the stage immediately after the issue of the charge-sheet to Rajeev Pathak providing that for the period of

absence from the date Rajeev Pathak had proceeded on casual leave till he joined. The authority shall be at liberty to treat that as "dies non" without any pay allowances. It was also observed that if Rajeev Pathak wished to cover some of the said period through leave at his credit including half pay leave, if any, in that event for such period, he would be allowed pay and allowances accordingly and such period shall also be counted as qualifying services as per rules.

3. Feeling aggrieved by the impugned order passed by the Tribunal Rajeev Patrick, the dismissed Sub-Inspector, as well as the authority, im-pleaded as the respondent, have challenged the same by means of separate writ petitions. The Union of India and others have filed Writ Petition No. 1105/2000 challenging the said order, passed by the Tribunal while Rajeev Pathak has filed Writ Petition No. 1294 of 2000 challenging the same impugned order.

4. Since, both the writ petitions arise out of the same order passed by the respondent-Tribunal had been heard together and are being disposed of by a common order.

5. We have heard the learned counsel representing the petitioners in Writ Petition No. 1105 of 2000 and Rajeev Pathak the petitioner of Writ Petition No. 1294 of 2000, who has appeared in person.

6. We have also carefully perused the record.

7. The learned counsel for the petitioner in Writ Petition No. 1105/2000 has produced the service book of the petitioner as well as the record of the proceedings which have also been perused.

8. The petitioner, Rajeev Pathak at the time of joining the service had declared Kapurthala, Punjab as his permanent home town. The permanent home address recorded in his service book in his own hand-writing was 19-A, Officers Colony, Kapurthala, Punjab.

9. A perusal of the service book of Rajeev Pathak, the petitioner further indicates that he had appended his signature on his service book on 26-2-1985, which indicate that the information furnished there did not require any change. The signature of the petitioner, Rajeev Pathak on 26-2-1985, endorsing the correctness of the permanent home address as indicated therein necessarily led to the conclusion that the same address without any alteration continued to be of his permanent home address.

10. During the year 1988, the petitioner, Rajeev Pathak remained on 227 extraordinary leave and joined only on 30-1-1989. He again applied for four days casual leave for the period from 17-4-1989 to 21-4-1989, which was sanctioned by the competent authority. Thereafter, he sent two medical certificates vide his letter dated 8-5-1989, which indicate that he was suffering from L.S. Sprain and requested for the extension of the leave upto 17-6-1989. Thereafter, neither he submitted any leave application nor turned up to join his duties and remained absent despite two telegrams dated 12-12-1989 and 16-1-1990, having been

sent to him by the Department at his permanent home address available in his service book.

11. Disciplinary proceedings were started against the petitioner, Rajeev Pathak with the submission of the charge-sheet, charging him that he had failed to maintain devotion to duty and acted in a manner unbecoming to a Government servant in contravention of [he provisions of Rule 3 (i), (ii) and (iii) of C.C.S. (Conduct) Rules, 1964.

12. In view of the non-cooperative attitude of the petitioner, Rajeev Pathak, the inquiry officer adopted the procedure envisaged under Rule 14 (2) of CCS (CCA) Rules, 1965.

13. The inquiry officer submitted his report dated 17-8-1992. In his report, it was indicated that the Registered AD., covers dated 3-2-1992, 18-2-1992, 9-3-1992 and 21-4-1992, had been issued summoning Rajeev Pathak to appear before him for the open departmental enquiry but these letters were not received by him at the address, 26, Ravindra Colony, The Mall, Patiala (Pun-jab).

14. The notices dated 9-3-1992 and 21-4-1992 sent to Rajeev Pathak under the registered cover returned back undelivered with the postman's remark that he used to reside in the past in the premises No. 26, Ravindra Colony, The Mall, Patiala, but has left the same.

15. Considering the oral and documentary evidence produced in support of the charges on 30-6-1992, the inquiry officer found that Rajeuv Pathak was residing at 12/17, Thatipur Colony, Gwalior, and had supplied his home address as 19-A, Officer's Colony, Kapurthala, Punjab. Thereafter, he had shifted to 26, Ravindra Colony, The Mall, Paliata (Punjab). He never intimated his parent office at Gwalior where he was employed about the change of his address and left in dark his office about his whereabouts and he was deliberately avoiding to intimate his new address to the department. The inquiry officer was of the view that Rajeev Pathak did not knowingly informed his neighbours also about the change of his address. He was also of the view that Rajeev Pathak very cunningly left Patiala and was not even easily traceable by the police for which request has been made by him.

16. The inquiry officer came to the conclusion that the delinquent official was wilfully absenting from the duty in an unauthorised manner in breach of the provisions of the CCS (Conduct) Rules, 1964 as specified in the charge sheet.

17. The disciplinary authority after considering the facts and circumstances brought on record agreed with the findings of the inquiry officer and imposed upon Rajeev Pathak, the penalty of dismissal from the service vide the order dated 28-7-1993. A copy of the order was sent to Rajeev Pathak at Kothi No. 26, Ravindra Colony, The Mall, Patiala (Punjab) and was also pasted on the notice board.

18. Rajeev Pathak, the petitioner had filed O.A. No. 266/97 before the Central

Administrative Tribunal, which has given rise to this writ petition giving his residential address as 143, Sector 7, Urban Estate, Karnal, Haryana. He had prayed for a declaration that he was entitled to joint the service at his previous place of posting and had also prayed for a direction requiring the respondents to allow him to join his duties and giving the place of posting and further requiring them to treat him on duty since 17-4-1989, and pay to him all back wages as per rules.

19. Before the Tribunal, Rajeev Pathak, the petitioner had taken up the case that he had obtained the casual leave for the period 17-4-1989 to 21-4-1989 for going to Patiala to meet his mother where he fell ill and went under mental depression. He claimed that he had sent information in this regard to his Department vide his letters dated 8-5-1989, 10-5-1990 and 11-5-1991, despatched under postal certificates. It was asserted that later on his condition deteriorated and he could not give information regarding his whereabouts to the respondents and after recovering from the illness on 26-3-1994, he submitted his joining report supported by the medical fitness certificate on 28-3-1994, but he was not allowed to join the duties.

20. The claim of Rajeev Pathak was contested by the respondent/ Department denying his allegations. It was however admitted that he had submitted a letter dated 8-5-1989 requesting for extension of the leave upto 17-6-1989, on ground of his illness in Patiala. But, thereafter, he did not turn up for duty nor gave any reply to the telegram dated 12-12-1989 and 16-1-1990 sent to him at his home address available in his service book. Referring to the disciplinary proceedings initiated against the petitioner, Rajeev Pathak and the findings returned by the inquiry officer, it was indicated that the Deputy Narcotics Commissioner vide his order dated 28-7-1993, accepting the findings of the inquiry officer had imposed the penalty of dismissal from the service on Rajeev Pathak and that order had attained the finality. It was also claimed that the application was presented with inordinate delay and further that no appeal had been filed by him challenging the order dated 28-7-1993, whereunder he had been dismissed from the service.

21. The record of the disciplinary proceedings initiated against Rajeev Pathak indicates that a registered letter No. F. No. 22/3/Confl./91/497 to 498 dated 18-3-1991, was sent to him at his permanent home address 19-A, Officers Colony, Kapurthala, Punjab vide the Post Office receipt No. 5005 dated 22-3-1991.

22. The aforesaid registered letter acknowledgment due was not returned back undelivered. The aforesaid letter containing the charge-sheet wherein the articles of charge against Rajeev Pathak had been framed and the details of the documentary evidence on the basis whereof the aforesaid charges were framed sought to be sustained was also attached. It was, thereafter, that the information regarding the dates fixed in the enquiry proceedings had been sent by the inquiry officer on his last known address; Kothi No. 26, Ravindra Colony, The Mall, Patiala (Punjab) which address had come to the notice of the Department

through the letter sent by Rajeev Pathak when he had submitted the medical certificates seeking extension of his leave. The registered letter sent to Rajeev Pathak at the aforesaid Patiala address had been returned back with the remark of the Post Office to the effect that the addressee used to reside in Kothi No. 26, Ravindra Colony, The Mall, Patiala, 3 years ago but he had left that residence, therefore, the letter is being sent back. The letter dated 2-6-1992 sent under the registered cover had been received back with the aforesaid remark. It is, therefore, obvious that the last known address of Rajeev Pathak was his address at Kothi No. 26, Ravindra Colony, The Mall, Patiala (Punjab).

23. The Tribunal was of the view that Rajeev Pathak was under the medical treatment and was under mental derangement and such a person could not be taken to be in a position to intimate the authority concerned regarding his absence. But, even assuming that there was lacking on the part of Rajeev Pathak, it was obligatory on the part of the inquiry officer to serve the notice to him by registered post with acknowledgment due at his last known address. The Tribunal further expressed the view that the application for leave had been sent from Karnal which was known to the Department and in that situation what prompted the inquiry officer to send the notice at Kapurthala address and the applicant, Rajeev Pathak never lived at Kapurthala after the death of his father and from the correspondence made by him he was being treated at Karnal and that address was given to the respondents by him. In this connection, the Tribunal had observed that the aforesaid fact had not been denied by the respondent- authorities in their reply which indicate that the facts mentioned in the Original Application were deemed to be admitted by them.

24. In his rejoinder-affidavit filed by Rajeev Pathak before the Central Administrative Tribunal in the proceedings giving rise to the writ petition, in Paragraph 2 thereof, he had admitted that he had proceeded on leave on 17-1-1989 to Patiala to see his mother and there he had fallen ill. He further admitted that he had received a telegram dated 16-1-1990 along with its postal copy at his Patiala address and he had sent three letters under Postal Certificates explaining his inability to resume the duty because of physical and mental disorder and also requested for the extension of the leave. It is, therefore, obvious that Rajeev Pathak was residing at his Patiala address atleast upto 16-1-1990 as he had admitted that he had received the telegram with its postal copy dated 16-1-1990 at his Patiala address.

25. The finding of the Tribunal that the last known address of Rajeev Pathak was that the Karnal is not substantiated from any material on the record.

26. The Tribunal came to the conclusion that the inquiry officer had failed to serve the charge-sheet on the delinquent official and the disciplinary authority also failed to supply a copy of the enquiry report to the delinquent official and since the opportunity required to be given to the delinquent official under the CCS (CCA) Rules, 1965, had not been provided to Rajeev Pathak, the order of dismissal passed by the disciplinary authority was void-ab-initio and as such no

effect could be given to that order. So expressing, the Tribunal indicated that in such a case there was no question of passing an order quashing the dismissal order.

27. The Tribunal issues a direction requiring the respondent No. 2, the Narcotics Commissioner to permit Rajeev Pathak to join in the last place of posting making it clear that the respondents will be at liberty to proceed with the proceedings from the stage immediately after the issue of the charge-sheet to the delinquent official and for the period of absence from the date Rajeev Pathak proceeded on casual leave till he join, the respondent-authority shall be at liberty to treat it as dies non without any pay allowances. It was however provided that if Rajeev Pathak wishes to cover some of the said period through leave at his credit including half pay leave, if any, in that event for such period, he would be allowed pay and allowances accordingly but such period shall also be counted as qualifying services as per the rules.

28. The learned counsel for the petitioners in W.P. No. 1105/2000 has strenuously urged that the order dismissing Rajeev Pathak from the service had attained finality as no appeal had been filed against the said order.

29. Along with the return/counter-affidavit filed in W.P. No. 1294/2000, by the petitioners in W.P. No. 1105/2000, a copy of the order passed by the disciplinary authority dated 28-7-1993, dismissing Rajeev Pathak from the service has been annexed as R-I. The aforesaid return/counter-affidavit was served on Rajeev Pathak on 19-10-2000.

30. Shree Rajeev Pathak, the petitioner in W.P. No. 1294/2000, has urged that he had never been served a copy of the order dismissing him from the service prior to that date and since copy of the order had not been served, he could not file any appeal challenging the same. It is urged that since the order dated 28-7-1993, imposing the penalty upon him had not been communicated to him so far, his services cannot be deemed to have been terminated and his status as Government servant cannot be taken to have come to an end.

31. In its decision in the case of Union of India and Others Vs. Dinanath Shantaram Karekar and Others, , the Apex Court had observed that where the services are terminated, the status of the delinquent as a Government servant comes to an end and nothing further remains to be done in the matter. But if the order is passed and merely kept in the file, it would not be treated to be an order terminating services nor shall the said order be deemed to have been communicated.

32. In the present case the charge-sheet had been sent to the delinquent official by registered post at his permanent home address as recorded in his service book which even upto 26-2-1985 had not been altered though the delinquent official, Rajeev Pathak had put his signatures on the first page of the service book as a token of acknowledgment of the correctness of the entries made thereunder which include the permanent home address. The registered letter had

not been returned to the sender undelivered. There is nothing on the record relating to the disciplinary proceedings which could in any manner rebut the presumption in regard to the service of the charge-sheet sent per registered post. The competent authority had passed the order dated 28-7-1993, dismissing Rajeev Pathak from the service which order was communicated to him at the last known address i.e., Kothi No. 26, Ravindra Colony, The Mall, Patiala, Punjab and had also been placed on the notice board.

33. In the aforesaid circumstances, the question which arises for consideration is as to whether the dismissal order referred to hereinabove could be taken to have been communicated to the delinquent official.

34. In its decision in the case of State of Punjab Vs. Khemi Ram, Constitution Bench of the Apex Court had indicated that it is the communication of the order which is essential and not its actual receipt by the officer concerned and such communication was held to be necessary because till the order is issued and actually sent out to the person concerned, the authority making such order would be in a position to change its mind and modify it if it thought fit. But once such an order is sent out, it goes out of the control of such authority, and therefore, there would be no change whatsoever of its changing its mind or modifying it.

35. The Apex Court had emphasised in its aforesaid decision that once an order is issued and it is sent out to the concerned Government servant, it must be held to be communicated to him no matter when he actually received it. It was noticed that it could be possible for a Government servant to effectively thwart an order by avoiding a receipt of it by one method or the other though such an order is posted and despatched to him. It was also noticed that an officer against whom action is sought to be taken may go away from the address given by him for service of such orders or may deliberately give a wrong address and thus prevent or delay its receipt and be able to defeat its service on him. In the aforesaid view of the matter, it was observed that the meaning of the word "communicated" as indicative of that it is only from the date of the actual receipt by the delinquent official that the said order becomes effective ought not to be given unless the provision in question expressly so provides. It was, however, added that actual knowledge by the delinquent of an order where it is one of dismissal, may, perhaps, become necessary because of the consequences which the decision in the case of State of Punjab Vs. Amar Singh Harika, , contemplates. But such consequences would not occur in the case of an officer who had proceeded on leave and against whom an adverse order had been passed because in his case there was no question of doing any act or passing any order and such act or order could be challenged as invalid.

36. In its another decision in the case of State of Punjab and Others Vs. Balbir Singh and Others, , the Apex Court had reiterated its earlier view. It was indicated that an order will have to be taken as duly communicated in case the order went out of the control of the authority which had passed the order and it

was duly despatched from its office. It was, however, added that it is one thing to say that in the case of dismissal or the like the order becomes effective only after it is received by the officer concerned and a different thing to say that an order has no effect at all before it is communicated in the sense of receipt of the order by the concerned officer. In that case there were two orders which were impugned. One was the order of reversion of some of the respondents in the appeal which was dated 28-10-1966. The other was an order of termination of service of the other respondents in the appeal which was also dated 28-10-1966. Both the orders were passed by the Government of Punjab. The erstwhile State of Punjab was reorganized by the Punjab Re-organisation Act, 1966, on which date the State of Punjab ceased to exist and the successor States of Punjab, Haryana, Union territory of Chandigarh and the transferred territory came into being. The respondent, Bhagwan Singh whose service had been terminated was allocated to Haryana and then to Himachal Pradesh and the other respondents who had been reverted came to be allocated to the new State of Punjab. The High Court had taken the view that the impugned order were communicated to the respondents concerned on or after November 1, 1966. The aforesaid finding was referred by the Apex Court holding that the view taken by the High Court was not correct.

37. In the present case, as has already been indicated hereinabove, the petitioner, Rajeev Pathak after applying for the leave had gone away and did not report for duty till the communication of the order of dismissal from the service. According to his own case, he had reported for duty on 28-3-1994, much after the communication of the order dismissing him from the service. His case has been that no copy of the order dated 28-7-1993 had been received by him. A copy of the said order, was however, annexed along with the counter-affidavit/return filed by the respondents in W.P. No. 1294/2000, which was served on Rajeev Pathak on 19-10-2000. The petition which thus emerges is that a copy of the order of dismissal passed against him stands supplied to him.

38. Rajeev Pathak, the delinquent official on whom the penalty of dismissal from the service has been imposed has a statutory alternative remedy of appeal against the order of dismissal.

39. The question as to whether the presumption available in regard to the service of the charge-sheet upon the delinquent official in the facts and circumstances of the present case was effectively rebutted or not is yet to be decided. The other question in regard to the effect of not taking steps for getting the permanent home address supplied by the delinquent official which stands recorded in the service book, the correctness whereof was not disputed at least till 26-2-1985, and the effect of omission to get the said permanent home address altered thereafter in case there was any change is also to be considered and decided. Further, another question as to whether the delinquent official was in such a disturbed mental condition that he could not even supply the correct address during all the period he remained absent from the duty and whether

there was any sufficient explanation for his not reporting to duty during all this period has also to be decided. It may also be noticed that the non-supply of the enquiry report to the delinquent official does not necessarily vitiate the entire disciplinary proceedings warranting a mechanical setting aside of the order and the effect of such omission has to be considered in the light of the peculiar facts and circumstances of a particular case. These questions can be decided effectively by the appellate authority and in case sufficient ground has been made out, the appellate authority can permit the delinquent official to lead the additional evidence in support of his case.

40. Considering the facts and circumstances of the present case, we are clearly of the view that the aforesaid questions involve an enquiry into the disputed questions of fact. The Tribunal has not gone into these questions at all and it has approached the case from a wrong point of view ignoring the implications arising under the decision of the Apex Court referred to hereinabove. Further, we are of the view that it will not be appropriate to hold the enquiry into the aforesaid questions in the present proceedings especially when it is open to the delinquent official to agitate this matter before the appellate authority which could effectively go into all these questions after affording an opportunity to the delinquent official.

41. In face of the order of dismissal from service dated 28-7-1993, a copy of which had been served on the delinquent official as indicated hereinabove, it is neither possible nor permissible to treat Rajeev Pathak, the petitioner in service ignoring the said order which has to continue to retain its binding effect unless it is set aside or modified by the competent authority in appropriate proceedings under the provisions of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

42. Taking into consideration the totality of the facts and circumstances as brought on record, we find it proper to direct that in case the petitioner, Rajeev Pathak files an appeal challenging the order dated 28-7-1993, before the competent appellate authority within a month along with a certified copy of this order, the said authority shall consider the said appeal on merits and shall not refuse to entertain the same on the ground of limitation.

43. These writ petitions in the circumstances are disposed of finally with the observations and directions indicated hereinabove.