

(2005) 11 DEL CK 0052
In the Delhi High Court
Case No : Civil Writ No. 11961 of 2005

V.K. Sabharwal

APPELLANT

Vs

N.P.T.I. and Others

RESPONDENT

Date of Decision : 28-11-2005

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 1(2), 1(3), 14, 14(1), 14(4)
Central Civil Services Pension Rules — Rule 40
Evidence Act, 1872 — Section 114
General Clauses Act, 1897 — Section 27

Citation : (2005) 11 DEL CK 0052

Hon'ble Judges : Sanjiv Khanna, J;Dr. M.K. Sharma, J

Bench : Division Bench

Advocate : Tamali Wad, for the Appellant; M.M. Sudan and Hitendra Hari, for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—The petitioner- V.K. Sabharwal was working as Deputy Director (Tech./Faculty) with the National PoTraining Institute, a Government of India society (hereinafter referred to as `NPTI") and was posted at Badarpur. By an office order dated 30.4.2001 he was transferred to Neyveli, Tamil Nadu.

2. He filed an original application against the aforesaid transfer order before the Central Administrative Tribunal and on being unsuccessful, preferred a writ petition in this Court. Pursuant to the directions passed by this Court, the representations of the petitioner against his transfer were reconsidered by the respondents but rejected vide order dated 28.8.2001.

3. This rejection was again made subject matter of an application before the Central Administrative Tribunal and a writ petition before this court but the petitioner did not succeed.

4. Thereafter the petitioner was issued a memorandum dated 23.10.2001 to join

duty at Neyveli, Tamil Nadu but the petitioner did not join. By another order dated 6.11.2001 the petitioner was asked to hand over charge and also advised to obtain no due certificate after accounting for 26 items/materials. Again by memorandum dated 23.11.2001 the petitioner was directed by the respondents to report to Neyveli, latest by 30.11.2001. The petitioner, however, failed to report for duty at Neyveli, Tamil Nadu and hand over charge in Delhi. It is also alleged that the petitioner unauthorisedly tampered with the attendance register and marked his presence at Delhi in spite of the transfer order.

5. In these circumstances, the respondents on 8.1.2002 initiated disciplinary proceedings against the petitioner and a charge sheet was issued that the petitioner had in open defiance of the lawful written orders absented himself unauthorisedly since 1.9.2001 and had not reported for duty at Neyveli, Tamil Nadu, thus putting the interest of the organisation at stake. As per the respondent the petitioner, deliberately and intentionally avoided taking service of the copy of the charge sheet and a notice was also published on 19.3.2002 in Indian Express, Neyveli Edition calling upon the petitioner to collect the charge sheet and connected documents and file his reply.

6. After considering the report of the enquiry officer vide dated 13.12.2002, the Disciplinary Authority passed an order imposing punishment of compulsory retirement from service of NPTI and considering the gravity of the misdemeanour on the part of the petitioner it was ordered that he will be entitled to 2/3rd of the pension and gratuity as admissible to him on the date of retirement.

7. The petitioner filed an appeal and a revision petition but was not successful and thereafter he approached the Central Administrative Tribunal by way of an Original Application, which was registered as OA No.1952/2004.

8. Learned Tribunal vide its order dated 12.4.2005 has dismissed the said Original Application and the aforesaid order along with orders passed by the respondents imposing punishment of compulsory retirement and reduction of pension and gratuity are subject matter of the present writ petition.

9. The learned counsel for the petitioner argued that the petitioner was never served with the charge sheet and Therefore the appointment of Enquiry Officer was illegal and for this reason, the entire disciplinary proceedings are void, ab initio and illegal. In this regard she has relied upon judgment of the Supreme Court in the case of State of Punjab v. V.K. Khanna reported in (2001) 2 SCC 330. It was further submitted that the report of the postal authorities that the petitioner had refused to accept the charge sheet cannot be relied upon and reference in this regard is made to two judgments of the Supreme Court in cases of Union of India and Ors. v. Dinanath Shantaram Korekar and Anr. reported in 1998 (6) JT SC 1 and Dr. Ramesh Chandra Tyagi v. Union of India and Ors. reported in (1994) 2 SCC 416. Allegation of bias against the Enquiry Officer have also been made. It was submitted that he was pre-determined to punish the petitioner. It was further submitted that there was violation of Rule 14(1) of the

CCS (CCA Rules), 1968 as the Enquiry Officer held that three charges were proved against the petitioner, though the charge sheet was only in respect of two charges. Lastly, it was submitted that double punishment has been awarded to the petitioner as he has been awarded penalty of compulsory retirement and also reduction of pension/gratuity also. It was also submitted that the petitioner should have been given an opportunity before penalty/punishment was imposed.

10. Learned counsel for the respondent on the other hand, referred to the order passed by the learned Tribunal as well as official records produced before us in support of his contention that number of attempts were made to serve the charge sheet on him but the petitioner refused to receive the same and acknowledge the receipt of charge sheet. It was further submitted that charge sheet was also sent under registered post but the petitioner refused to accept the same as well. In any case it was contended that the petitioner had appeared before the Enquiry officer and had also cross examined the witnesses. It was argued that the Enquiry Officer had examined only the two charges and held that the two charges have been proved. The contention that it is a case of multiple punishment was also refuted by the learned counsel for the respondent.

11. We have considered the arguments raised by the parties. Regarding the first contention raised by the counsel for the petitioner, reference may be made to Rule 14(4) of the CCS(CCA) Rules. For the sake of convenience the said rule is reproduced below:-

"The Disciplinary Authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehavior and a list of documents and witnesses by which each article or charges is proposed to be sustained and shall require the Government servant to submit within such time as may be specified, a written statement of his defense and state whether he desires to be heard in person."

12. In the present case, the charge-sheet dated 8.1.2002 was issued on 9.1.2002. As per the records produced before us and as held by the Tribunal the charge-sheet along with the enclosures was sent by hand to the residence of the petitioner. The wife of the petitioner refused to accept the charge-sheet stating that Mr. V.K. Sabharwal was in Badarpur office and the letter may be delivered to him personally in the office. The noting of the wife of V.K. Sabharwal, Mrs. Meena is specifically recorded on the envelope and the peon book and also bears signatures of Mrs. Meena Sabharwal.

13. Attempt was made to hand over and give a copy of the charge-sheet along with the enclosures to the petitioner on 9.1.2002 at the Badarpur office at about 2.p.m. The petitioner, however, refused to accept the letter containing the charge-sheet in the presence of Mr. N.K. Srivastava, Assistant Director, Ms. Mamta Kumaria, S.O., Mr. Satnam Singh, D'man, Gr.II and Mr. Dhir Singh, Peon. A specific note in this regard was also prepared and signed by the said four officers stating that the petitioner has refused to accept the letter in their presence on

9.1.2002 at around 2.p.m.

14. The memorandum dated 8.1.2002 was issued under Rule 14 of the CCS(CCA) Rules, 1965. The said memorandum contained a statement of imputation of misconduct or misbehavior in respect of each article of charge, a list of documents and a list of witnesses. The petitioner was required to submit his reply within 10 days of the receipt of the memorandum and it was specifically stated that if no such written statement of defense is received, further action in accordance with the rules will be taken including holding of an ex parte disciplinary enquiry.

15. On the basis of the documents and records, the learned Tribunal came to the conclusion that the petitioner had refused to accept the notice/memorandum dated 8.1.2002. Having examined the records, we uphold the said finding. The office note signed by Sh. N.K. Srivastava, Ms. Mamta Kumaria, Mr. Satnam Singh, and Mr. Dhir Singh, specifically records that the petitioner was handed over the said envelope on 9.1.2002 at about 2.p.m, in their presence but he refused to receive the said letter. 'Refusal', it is well settled in law, amounts to 'receipt'. Having refused to accept the charge sheet and other documents, no grievance can now be made by the petitioner that he did not receive the memorandum/charge-sheet before appointment of the Presenting Officer. We also Therefore, do not find any error in the order dated 28.1.2002 passed by the Director General of the respondent institute appointing a Presenting Officer under Rule 14 sub-rule 5(c) of the CCS(CCA) Rules, 1965.

16. Copy of the order dated 28.1.2002 passed by the Director General was again sent to the petitioner by registered post. On the envelope, it is recorded by the postal authorities that the premises of the petitioner was visited on 31.1.2002, 1.2. 2002, 2.2.2002 and 4.2.2002. Ultimately the letter was returned back with the remark that in spite of repeatedly visiting the premises, the addressee was never available.

17. By another order dated 8/11.2.2002, the Director General appointed Mr. N. Arunachalam, Executive Director as the Enquiry Officer. In the meanwhile it appears that the petitioner, through his wife, Mrs. Meena Sabharwal made a representation with the Ministry of Power seeking their intervention in the matter of transfer, salary and other pending dues. This was duly replied and answer was sent to the Deputy Secretary (T & R), Ministry of Power and the Private Secretary to Minister of State for Power pointing out the relevant facts.

18. The Enquiry Officer, initially fixed the case for hearing on 10.4.2002. The petitioner did not attend the said hearing and the letter sent to him was returned back undelivered. In these circumstances, a press notification was issued on 19.3.2002 stating that the preliminary hearing before the enquiring authority is fixed before the Enquiry Officer on 30.4.2002 and the petitioner may collect a copy of the memorandum and other documents on or before 10.4.2002. The Notification fixing the case for preliminary hearing before the enquiring authority

on 30.4.2002 was also pasted at the residence of the petitioner. The petitioner did not collect the copy of the charge sheet etc and also did not attend the preliminary hearing fixed on 30.4.2002. The copy of the order sheet dated 30.4.2002 was sent by registered post to the petitioner vide letter dated 1.5.2002 but the said letter yet again was returned back by the postal authorities with the remark `person not available". Another notice fixing the hearing on 17.6.2002 sent under registered post was also returned back with the same remarks by the postal authorities. In this notice it was stated that the statement of witnesses would be recorded in the proceedings between 17.6.2002 to 19.6.2002 and the petitioner may cross examine the witnesses.

19. On 17.6.2002, the Enquiry Officer came to know that the petitioner was present in the headquarters at Badarpur and specifically called upon him and asked him to participate in the enquiry proceedings. The petitioner agreed to participate in the proceedings and was allowed to do so. He attended the proceedings on 17.6.2002 and 18.6.2002 but thereafter again absented himself on 19.6.2002. The Enquiry Officer, by a letter sent on 24.6.2002 sent copies of the order sheets and the proceedings held on 17.6.2002 to 19.6.2002 as well as copy of additional documents to the petitioner and the hearing was fixed to be held on 15.7.2002. The said letter was sent under registered post but was returned back by the postal authorities with the remark `refused to accept".

20. With a view to give a further chance to the petitioner, copy of the order sheet and other proceedings held on 15.7.2002 were once again sent by registered post. The petitioner was also informed that the next date of hearing in the departmental proceedings was 1.8.2002. The said letter was like before returned back with the report `refused" and Therefore ex part proceedings were held before the Enquiry Officer on 1.8.2002. Similarly, the petitioner refused to accept the envelope containing the order sheet and the proceedings held on 1.8.2002.

21. The Enquiry Officer, after considering the relevant material and evidence on record thereafter submitted his enquiry report dated 18.9.2002. He inter alias held that the charges framed against the petitioner were proved beyond reasonable doubt and the petitioner had contravened provisions of sub-rule 1(2) and 1(3) of Rule 3 of the CCS (CCA) Rules, 1965 as adopted by the respondent.

22. The copy of the enquiry report along with the covering letter of the disciplinary authority were sent to the petitioner by registered post on 25.9.2002 but the petitioner refused to accept the said letter as per the report of the postal authorities and the envelope was returned back. In these circumstances and being left with no other option, the disciplinary authority published a notice in a newspaper asking the petitioner to collect copy of the enquiry report and submit his representation, if any, on the said report within a period of 15 days. It appears that the petitioner thereafter received copy of the enquiry report on 10.10.2002 and filed his reply dated 17.10.2002. The disciplinary authority after considering the reply, held that the charges against the petitioner stand proved and imposed penalty of compulsory retirement with a direction that the

petitioner would be entitled to 2/3rd of his pension and gratuity as admissible to him on the date of his compulsory retirement. It was further held that the entire period of absence from 1.9.2001 till the issue of the order dated 13.12.2002 of the disciplinary authority should be treated as unauthorised absence from duty amounting to loss of pay under proviso to Fundamental Rule 17.

23. The said order was sent by registered post to the petitioner on 17.12.2002 and was received back with a report that the addressee in spite of repeated visits is never available. Therefore, a notice was published in a newspaper on 18.3.2004 informing the petitioner about the order passed by the Disciplinary Authority dated 13.12.2002 and the punishment imposed on the petitioner.

24. The petitioner vide his letter dated 22.3.2003 wrote to the Director General that his wife had on 13.3.2003 received the order dated 13.12.2002 sent to him by speed post. However, in this letter it was also stated that he has not been served with the show cause notice and the charge sheet recording the enquiry conducted against him. The allegations made in this letter were denied by the respondent in the reply dated 28.3.2003.

25. The petitioner thereafter filed an appeal against the said order holding him guilty of charges and imposing punishment of compulsory retirement with reduction of pension and gratuity and holding that the period of absence from 1.9.2001 till 13.12.2002 should be treated as period of unauthorised absence from duty entailing loss of pay.

26. We have set out the facts in detail. It is quite apparent and clear from the facts stated above that the petitioner deliberately and intentionally on several occasions refused to accept and avoided service of the letters/notices sent to him. We do not think in the present case there has been any violation of Rule 14(4) AND (5) of the CCS(CCA) Rules, 1965. Copy of the charge-sheet along with copy of the articles of charge, the statement of imputation of misbehavior and misconduct, list of documents and witnesses were sent to the petitioner. The wife of the petitioner refused to accept the same and stated that the said letter should be served upon the petitioner who had gone to the head office. On 9.1.2002 the said letter was tried to be served upon the petitioner personally but he refused to accept and take delivery of the same. We cannot in these facts and circumstances hold that there was violation of Rule 14(4) and (5) of the CCS (CCA) Rules, 1965. The judgment of the Supreme Court relied upon by the petitioner in the case of V.K. Khanna and Ors (supra) is not applicable to the facts of the present case. In the said case it was noticed by the Supreme Court that even before reply to the charge sheet had been received and considered by the disciplinary authority, the Chief Minister had made an announcement for appointment of an Enquiry Officer thus clearly disclosing a pre-determined biased mind. In the present case the petitioner refused to accept the charge sheet and did not submit any reply. Thereafter, in absence of any reply and after considering all facts, the disciplinary authority appointed a Presenting Officer and an Enquiry Officer to proceed with the enquiry.

27. Learned counsel for the petitioner has also relied upon the judgment of the Supreme Court in the case of Dinanath Shantaram Korekar and Anr, (supra) and Dr. Ramesh Chandra Tyagi (supra) and argued that the reports of the postal authorities to the effect that the addressee was not available in spite of repeated visits or could not be found does not prove and show that the petitioner was served with the charge sheet/ memorandum. We have examined the said decisions but feel that the said decisions are not applicable in the factual background discussed above. In the present case the petitioner has specifically refused to accept the memorandum and charge-sheet which was sought to be served upon him personally. Thereafter, the petitioner appeared during the course of the enquiry proceedings on two dates and even cross examined some of the witnesses. Some of the letters written by the Enquiry Officer and the disciplinary authority have been returned back with the specific remark 'refused'. There are also a number of other letters, which were sent to the petitioner but returned back with the remarks of the postal authorities. Full facts in this regard have been stated above and to our mind these clearly disclose that the petitioner was deliberately and intentionally avoiding presenting himself and/or appearing in the enquiry proceedings.

28. We also do not find any merit in the contention raised by the learned counsel for the petitioner that the reports given by the postal authorities should not have been accepted without the postman/postal authorities being examined before the enquiry officer. There is presumption u/s 114 of the Evidence Act, 1872 with regard to the reports of the postman/postal authorities. Reference in this regard may also be made to Section 27 of the General Clauses Act, 1897. It is not the case of the petitioner that the letters sent to him under registered post were not sent at correct address or the said letters did not enclose documents to be served upon the petitioner. Further, it was open to the petitioner to participate in the enquiry proceedings and rebut presumption u/s 114 of the Evidence Act, 1872 or u/s 27 of the General Clauses Act, 1897. The petitioner cannot now be permitted and allowed to question the report of the postal authorities.

29. The second contention raised by the petitioner again has no merit. The charge-sheet as framed against the petitioner contains two distinct and separate charges. It is wrong and incorrect to state that enquiring officer had added another charge and while submitting his enquiry report has held the petitioner guilty of the said third charge. The Enquiry Officer in his report has only examined the charges and in his final conclusion after referring to the two charges framed against the petitioner has held that both the charges stand proved. He has not converted or added a new charge and held the petitioner to be guilty of new charge. The first charge as framed against the petitioner relates to his deliberate failure to carry out lawful orders by not joining duty at Neyveli and not obtaining "no due certificate" from Badarpur. The second charge relates to his tampering with the attendance register by unauthorisedly writing his name in the said register and marking attendance despite the fact that he had been relieved. The enquiry report is in respect of the said two charges. The decision of

the Supreme Court in the case of *Remington Rand of India Lt v. Tahar Ali Saifi and Anr.* reported in (1996) 3 SCC 69 relied upon by the learned counsel for the petitioner relates to a case in which the Labour Court, after recording evidence held that a single sale transaction of selling a second hand typewriter amounts to engaging in business or work of the similar nature as that of the employer. This finding of the Labour Court was set aside by the High Court and the said decision of the High Court was confirmed by the Supreme Court holding that a single act of sale would not amount to engaging in a business of sale of typewriters. The High Court and the Supreme Court also did not allow the management to raise the contention that the workman had also agreed to provide after sale service for a period of one year and Therefore had contravened the standing orders and terms of employment on the ground that this ground/charge was not mentioned in the charge-sheet. In view of our finding that the Enquiry Officer had not made any addition to the charge-sheet, the said decision is of no assistance to the petitioner.

30. No case of bias, legal or otherwise has been made out by the petitioner. The facts as have been set out above clearly show that the petitioner was given umpteen opportunities by repeated letters to participate in the proceedings and also to set out his reply and defense. He deliberately and intentionally choose not to appear and receive letters and did not initially participate in the proceedings. Thereafter, he appeared on two dates and then again absented himself. We do not, Therefore, find any merit in the plea that the respondents were biased.

31. Whether or not the petitioner had been given over any items/materials and was rightly required to return the same is a question of fact. It was for the petitioner to participate in the enquiry proceedings and point out that the respondents had wrongly asked him to obtain a "no due certificate". He by his own choice did not participate in the enquiry proceedings and the enquiry officer on the basis of the evidence and material available on record gave his findings and conclusions, which have been accepted. It may be relevant to state here that his failure to obtain a "no due certificate" was itself a charge. We do not think it will be appropriate for us sitting as a writ court to decide disputed question of fact whether the petitioner was liable to account for and return certain articles for getting "no due certificate".

32. We also feel that the punishment awarded to the petitioner cannot be regarded as a double punishment. As per Rule 40 of the CCS Pension Rules, disciplinary authority is required to pass the consequential order after imposing punishment of compulsory retirement. The order passed by the disciplinary authority cannot, Therefore, be regarded as an order of imposing double punishment on the petitioner.

33. In view of our above findings, we do not find any merit in the writ petition and the same is dismissed. However, in the facts and circumstances of the case, we pass no order as to costs.