Union Of India & Ors vs Dinanath Shataram Karekar & Ors on 30 July, 1998

Equivalent citations: AIR 1998 SUPREME COURT 2722, 1998 (7) SCC 569, 1998 AIR SCW 2772, 1998 LAB. I. C. 3021, 1999 (1) ALL CJ 134, (1998) 4 ALLMR 707 (SC), (1999) 1 SERVLJ 180, (1998) 3 SCR 933 (SC), 1999 ALL CJ 1 134, 1998 (4) ALL MR 707, 1998 (4) SCALE 659, 1998 (6) ADSC 511, 1999 (3) SRJ 70, (1998) 6 JT 1 (SC), 1998 (3) SCR 933, 1998 ( ) LAB LR 1097, 1998 (6) JT 1, (1998) 4 LAB LN 14, (1998) 2 CURLR 849, (1998) 4 SCALE 659, (1999) 94 FJR 10, (1998) 80 FACLR 446, (1998) 2 LABLJ 748, (1999) 1 SCT 667, (1998) 4 SCJ 287, (1998) 8 SERVLR 648, (1998) 6 SUPREME 534, 1998 SCC (L&S) 1837, 1999 (1) BOM LR 230, 1999 BOM LR 1 230

Author: S. Saghir Ahmad

Bench: S. Saghir Ahmad

PETITIONER:
UNION OF INDIA & ORS..

Vs.

RESPONDENT:
DINANATH SHATARAM KAREKAR & ORS..

DATE OF JUDGMENT: 30/07/1998

BENCH:
S. SAGHIR AHMAD, G.B. PATTANAIK.

ACT:

HEADNOTE:

JUDGMENT:

J U D G E M E N T The original respondent, Dinanath Shantaram Karekar, who died during the pendency of the proceedings before the Central Administrative Tribunal Bombay and has since been

replaced by the present respondents, was appointed as unskilled labour in the Naval Armament Depot, Bombay. He was subsequently promoted to the post of Gun Repair Labourer, Grade-I. On 25th October, 1973, he was declared quasi-permanent on that post with effect from 1.8.1966. He was, however, removed from service by order dated 19th August, 1985 after regular departmental enquiry. This order was upheld in the Departmental appeal. The order of removal as also the appellate order were challenged by him before the Tribunal on the grounds, inter alia, that neither the charge sheet nor the show-cause notice were ever served upon him and, therefore, the entire proceedings are vitiated. The Tribunal has found that the charge sheet which was issued to him by registered post was returned with the postal endorsement "not found", while the show-cause notice was published straightaway in Dainiki Sagar, Navshakti. The Tribunal found the service of the charge-sheet and the show cause notice on the respondent as insufficient and therefore, set aside the order dated 19th August, 1985, by which be was removed from service.

Learned counsel for Union of India has strenuously urged that since the respondent had been absenting himself from the office unauthorisedly, the service of charge sheet sent to him through registered post should be treated as sufficient. This contention cannot be accepted. Respondent was as employee of the appellant His personal file and the entire service record was available in which his home address also had been mentioned. The charge sheet which was sent to the respondent was returned with the postal endorsement "not found". This indicates that the charge sheet was not tendered to him even by the postal authorities. A document sent by registered post can be treated to have been served only when it is established that it was tendered to the addressee. Where the addressee was not available even to the postal authorities, and the registered cover was returned to the sender with the endorsement "not found", it cannot be legally treated to have been served. The appellant should have made further efforts to serve the charge sheet on the respondent. Single effort, in the circumstances of the case, cannot be treated as sufficient. That being so, the very initiation of the departmental proceedings was bad. It was ex-parte even from the stage of charge sheet which, at no stage, was served upon the respondent.

So far as the service of show cause notice is concerned, it also cannot be treated to have been served. Service of this notice was sought to be effeected on the respondent by publication in a newspaper without making any earlier effort to serve him personally by tendering the show caunse notice either through the office peon or by registered post. There is nothing on record to indicate that the newspaper in which the show-cause notice was published was a popular newspaper which as expected to be read by the public in general or that it had wide circulation in the area or locality where the respondent lived. The show-cause notice cannot, therefore, in these circumstances, be held to have been served on the respondent. In any case, since the very initiation of the disciplinary proceedings was bad for the reason that the charge sheet was not served, all subsequent steps and stages, including the issuance of the show-cause notice would be bad.

Lastly, in order to save the lost battle, a novel argument was raised by the learned counsel for the appellant. He contended that since the charge-sheet as also the show-cause notice, at different stages of the disciplinary proceedings, were despatched and had been sent out of the office so that no control to recall it was retained by the department, the same should be treated to have been served on the respondent. It is contended that it is the communication of the charge-sheet and the

show-cause notice which is material and not its actual service upon the delinquent. For this proposition, reliance had been placed on the decision of this Court in State of Punjab and others Vs. Balbir Singh etc., AIR 1977 SC 629.

This decision has been misread, misunderstood and is now being misapplied by the counsel for the appellants in the instant case.

As would appear from the persual of that decision, the law with regard to "Communication" and not Actual Service" was laid down in the context of the order by which services were terminated. It was based on a consideration of the earlier decisions in State of Punjab . Khemi Ram, AIR 1970 SC 214; Bachhittar Singh Vs. State of Punjab, 1962 Supp. (3) SCR 713 = AIR 1963 SC 395; State of Punjab Vds. Amar Singh Harika, AIR 1966 SC 1313 and S. Pratap Singh Vs. State of Punjab, (1964) 4 SCR 733 = AIR 1964 SC 72. The following passage was quoted from S> Pratap Singh's Judgement (supra):-

> "It will be seen that in all the decisions cited before us it was the communication of the impugned order which was held to be 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 an authority, and therefore, there would be no chance whatsoever of its changing its mind or modifying it. In our view, once an order is issued and it is sent out to the concerned government servant, it must be held to have been communicated to him, No matter when he actually received it."

It was in this background that in cases where services are terminated or a person is dismissed from service, communication of the order and not its actual service was held to be sufficient. But this principle cannot be invoked in the instant case.

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. Where the disciplinary proceedings are intended to be initiated by issuing a charge-sheet, its actual service is essential as the person to whom the chargesheet is issued is required to submit his reply and, thereafter, to participate in the disciplinary proceedings. So also, when the show-cause notice is issued, the employee is called upon to submit his reply to the action proposed to be taken against him. Since in both the situations, the employee is given an opportunity to submit his reply, the theory of "Communication" cannot be invoked and "Actual Service" must be proved and established. It has already been found that neither the charge-sheet nor the show-cause notice were ever served upon the original respondent, Dinanath Shantaram Karekar. consequently, the entire proceedings were vitiated.

For the reasons stated above, we do not find any reason to interfere with the findings recorded by the Tribunal. The appeal has no merit and is dismissed with no order as to costs.