

Mr. Rajeev Kumar, Advocate with Mr. Krushna Thombare,
Advocate for the respondent.

**CORAM : DIPANKAR DATTA, C.J. AND
M.S. KARNIK, J.**

**RESERVED ON : MARCH 8, 2022
PRONOUNCED ON : APRIL 21, 2022**

JUDGMENT (Per Dipankar Datta, C.J.) :

1. The respondents in Original Application No.502/1998, on the file of the Central Administrative Tribunal, Mumbai Bench, Mumbai (hereafter "the Tribunal", for short) are the petitioners in this writ petition presented before this Court on 15th March 2002. Challenge herein is to the legality and validity of the judgment and order dated 18th December 2002 whereby the original application under Section 19 of the Administrative Tribunals Act, 1985 instituted by the original applicant (hereafter "the respondent") was allowed by passing the following order:

"17. In the result, O.A. succeeds, the order of the Revisional Authority, Appellate Authority and Disciplinary Authority dated 12.3.1997, 20.12.1996 and 26.8.1992 (Exhibit – C, B & A respectively) are quashed and set aside with all consequential benefits. However, the respondents are at liberty to continue with the enquiry after service of the charge sheet on the applicant on the address supplied by the applicant within 15 days from the date of receipt of copy of order (either by the Applicant in person or by his Counsel). If a decision is taken to continue with the enquiry, it be communicated to the applicant in writing within one month from the date of receipt of copy of order and thereafter enquiry at the stage of Disciplinary Authority be concluded within a period of four months. No order as to costs."

2. The pleaded case of the petitioners reveals that the respondent, who was initially appointed as a safaiwala and thereafter selected as peon and posted in the Naval Dockyard, remained absent from 21st May 1990 to 4th May 1991 resulting in issuance of a charge-sheet dated 4th May 1991 under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereafter "the Rules", for short) for unauthorised absence. The respondent was required to submit his written statement of defence within ten days of receipt of the charge-sheet. According to the petitioners, the charge-sheet was despatched by registered post on 4th May 1991 itself to the address of the respondent. The envelope containing the charge-sheet was, however, returned with the postal remark "not claimed". Since no written statement of defence was received from the respondent, his Disciplinary Authority by an order dated 16th September 1991 considered it proper to appoint an Inquiry Officer to inquire into the charge framed against the respondent. Intimation of such appointment was also despatched on 16th September 1991 itself by registered post to the respondent. The relevant envelope too was returned with the postal remark "not claimed". Intimation regarding dates of inquiry were also sent to the respondent by registered post on 9th October 1991 and 11th November 1991, which the respondent acknowledged. In the inquiry that followed, the respondent did not appear. Consequently, the inquiry was conducted *ex parte*. The Inquiry Officer

submitted his report dated 7th March 1992 holding that the charge of unauthorized absence against the respondent stood proved. Copy of the inquiry report was despatched to the respondent, but the envelope was returned with the postal remark "left". Ultimately, the Disciplinary Authority by an order dated 26th August 1992 accepted the report of the Inquiry Officer and imposed the penalty of compulsory retirement on the respondent with full terminal benefits as admissible to his qualifying service. Such order was also despatched by registered post, but the envelope returned with the remark "not claimed". There was also a publication of the order of compulsory retirement in the newspaper named "Sandesh" on 30th March 1993. From 21st May 1990 till 30th August 1996, the whereabouts of the respondent were unknown as he did not engage in any communication with the relevant department. On 14th November 1996, the respondent carried the order of compulsory retirement in an appeal before the Appellate Authority, who rejected the appeal as time barred by an order dated 22nd August 1997.

3. What has not been stated in the writ petition is that the respondent had filed a revision petition on 10th April 1997, which was rejected on 2nd August 1997. The order of the Revisional Authority dated 2nd August 1997 is, however, a part of the writ petition at pages 44 to 47 thereof. The relevant part of the Revisional Authority's order reads as follows:

"AND WHEREAS after going through the entire relevant records, the undersigned considers that the contention made by Shri C.J. Solanki cannot be accepted for the following reasons :-

(a) Major charge-sheet was issued for his unauthorised absence from 21 May 90 to 04 May 91 only and the same was forwarded at his known addresses by registered post which was returned undelivered by the Postal Authorities with remarks 'Not claimed' besides subsequent communication received back with the same remarks.

(b) The facts and circumstances of the case as have been explained by the individual in his petition are not much convincing with respect to disprove his guilt and warrant no let up.

NOW THEREFORE, after taking into consideration the above mentioned factors, the undersigned upholds the penalty imposed on him and rejects his Revision Petition dated 10 Apr. 97 submitted under rule 29 of CCS (CC&A) Rules, 1965 against the penalty."

4. On 6th May 1998, the respondent approached the Tribunal by filing the original application challenging the aforesaid orders, which has been allowed as noted above.

5. The original application before the Tribunal succeeded on a short point. The Tribunal was of the view that no presumption could be drawn against the respondent that he refused to accept the charge-sheet merely because the envelope containing the charge-sheet was returned with the postal remark "not claimed". However, it is evident from paragraph 9 of the judgment and order of the Tribunal that a letter of intimation about the date and time of the inquiry proposed to be held against the respondent was duly served on him on 15th October 1991. It is in this context that paragraph 13 of the judgment of the Tribunal assumes importance. Paragraph 13 is quoted below:

"13. The knowledge of the date of hearing about disciplinary case, when in fact charge sheet was not served, cannot be a substitute for the service of the charge sheet. As such we are of the considered opinion that even if it is held that the applicant was aware of the fact that the disciplinary proceeding is going on and the date of hearing is fixed therein, absence of the service of the charge sheet does not entitle the respondents to proceed with the disciplinary case."

6. Referring to Rule 27(2)(a) of the Rules, the Tribunal was of the further view that the same clearly cast a duty on the Appellate Authority to examine whether the procedure laid down in the Rules had been complied with or not and whether any non-compliance has resulted in violation of any of the provisions of the Constitution of India or in the failure of justice. Upon noticing that the Appellate Authority had not adverted to such provision, the Tribunal observed that without service of the charge-sheet containing the imputations of misconduct, and the documents and evidence likely to be adduced in the inquiry, the same could not have been substituted by only notice of date of inquiry. Service of charge-sheet being the duty of the employer and the delinquent employee having a right to receive it, it was also held that failure on his part to agitate the same in appeal or revision would not disentitle him to raise such plea in the Courts of judicial review proceedings. Based on such findings, it was concluded that the disciplinary proceedings initiated against the respondent stood vitiated. The Tribunal, therefore, quashed the impugned orders and granted liberty to the petitioners to proceed in accordance with law.

7. Appearing on behalf of the petitioners, Mr. Bharadwaj, learned counsel contended that the Tribunal completely misdirected itself in granting relief to the respondent. According to him, there being evidence on record to show that the respondent had been informed of the dates of inquiry, it was at least brought to his notice and knowledge that an inquiry had been initiated against him. On the date the intimation reached him, the respondent was unauthorizedly absenting himself. If the respondent had not received the charge-sheet, yet, had genuine reasons for not reporting for duty, he could have approached the Disciplinary Authority with a prayer to make available the charge-sheet. No such attempt was made by the respondent. It is, therefore, crystal clear that the respondent did not wish to participate in the inquiry and by his conduct, evinced an intention not to be interested thereby allowing the inquiry to proceed *ex parte*. In such circumstances, it was wholly inappropriate on the part of the Tribunal to find fault in the disciplinary action taken by the petitioners. He, thus, prayed for setting aside of the impugned judgment and order as well as for dismissal of the original application.

8. The writ petition has been contested by the respondent. Mr. Kumar, learned counsel representing the respondent, submitted that the Tribunal did not commit any error in arriving at a finding that the relevant authorities had failed to discharge their duties as mandated by the Rules. According to him, the Inquiry Officer could not have been appointed without extending

opportunity to the respondent to peruse the charge-sheet and understand the charge levelled against him by the Disciplinary Authority as well as without granting opportunity to raise defence by submission of his written statement. That apart, he contended that the postal authorities not having returned the envelope containing the charge-sheet with the remark "refused", no presumption could have been drawn that the respondent had been served with the charge-sheet. The Tribunal, in his opinion, was therefore absolutely right in placing reliance on the decision of the Supreme Court in **Union of India and others vs. Dinanath Shantaram Karekar**¹ (erroneously mentioned in the judgment as 1991 SC SLJ 245).

9. Mr. Kumar further contended that the respondent was forced by compelling circumstances to remain absent from duty. He was suffering from serious psychiatric depression and undergoing medical treatment. The period from 1991 onwards was too traumatic for the respondent. He lost his mother and wife. His brother also went missing. Having been declared unfit by a psychiatrist, the respondent was not able to comprehend the reality perceptions. Being totally mentally incapacitated, he was not aware what was happening around him during those years. In 1996, he was finally cured after constant medical treatment whereafter he learnt of the order of compulsory retirement and proceeded to challenge it in an appeal under Rule 24 read

1 (1998) 7 SCC 569

with Rule 26 of the Rules but unfortunately, such appeal stood dismissed as time-barred.

10. Referring to the decision of the Supreme Court in **Krushnakant B. Parmar vs. Union of India and another**², it was contended by Mr. Kumar that it should be the endeavour of every Court/Tribunal to ascertain whether absence from duty is deliberate or due to compelling circumstances beyond the control of the delinquent employee. He contended that had the petitioners complied with the order of the Tribunal impugned in this writ petition and conducted an inquiry upon granting reasonable opportunity to the respondent, he would have satisfied the petitioners that compelling circumstances disabled him from resuming duty. While the Appellate Authority did not accept the appeal of the respondent on the ground that it was time-barred, the Revisional Authority ignored the compelling circumstances, which were brought to his knowledge by the respondent, though fleeting references could be found in the order dated 2nd August 1997.

11. Mr. Kumar also relied on the decision of the Supreme Court in **Dulu Devi vs. State of Assam and others**³ and a decision of the Gauhati High Court dated 22nd August 2013 in **Shri Agni Bahadur Chetri vs. Union of India and others**⁴ in support of his contentions that the respondent was illegally punished.

12. Resting on the aforesaid submissions, Mr. Kumar contended that the writ petition ought to be dismissed with

2 (2012) 3 SCC 178

3 AIR 2016 SC 2152

4 Writ Petition (C) No. 6155/2006

exemplary costs and since the respondent had reached the age of superannuation in 2014, the petitioners should be directed to release in his favour all service benefits as well as retirement benefits as if he was on duty for all times from 2002 till 2014.

13. We have heard learned counsel for the parties and perused the materials on record.

14. While reserving the judgment on 8th March 2022, we had called upon the Registrar of the Tribunal to transmit to this Court the records of Original Application No.502/1998. The Registrar while complying with such order has informed this Court that since the original application was disposed of on 18th December 2002, only order-sheets and order/judgment copy in the original application have been preserved and not the original application itself. In such view of the matter, we are left with no other option but to proceed on the basis of the documents annexed to the writ petition.

15. It appears from the records that this Court issued Rule on 9th October 2003. While granting order in terms of prayer clause (b) of the writ petition, which sought for stay of operation of the impugned judgment and order, a coordinate Bench of this Court directed the petitioners to release and pay "pensionary benefits to the respondent in accordance with law."

16. Although the writ petition has been pending for nearly two decades on the file of this Court, we have not found any return to the Rule on behalf of the respondent. However, since the original application instituted before the

Tribunal by the respondent is available on record without its annexures, we have duly considered the same.

17. The procedure for imposing major penalties is embodied in rule 14 of the Rules. Rule 14, to the extent relevant, provides as follows:

"14. Procedure for imposing major penalties

...
(4)(a) 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 misbehaviour and a list of documents and witnesses by which each article or charges is proposed to be sustained.

(b) On receipt of the articles of charge, the Government servant shall be required to submit his written statement of defence, if he so desires, and also state whether he desires to be heard in person, within a period of fifteen days, which may be further extended for a period not exceeding fifteen days at a time for reasons to be recorded in writing by the Disciplinary Authority or any other Authority authorized by the Disciplinary Authority on his behalf:

Provided that under no circumstances, the extension of time for filing written statement of defence shall exceed forty-five days from the date of receipt of articles of charge.

Rule 30 of the Rules deals with service of orders, notices, etc. The same reads as follows:

30. Service of orders, notices, etc.

Every order, notice and other process made or issued under these rules shall be served in person on the Government servant concerned or communicated to him by registered post.

18. Bearing in mind the above provisions, we are tasked to decide the question as to whether the Disciplinary

Authority had complied therewith. Rule 14 did cast an obligation on the Disciplinary Authority to deliver the charge-sheet together with the accompanying documents to the respondent or cause the same to be delivered to him. In terms of rule 30, the Disciplinary Authority is under obligation to serve the charge-sheet to the charged employee in person or communicate to him by registered post. The respondent was not attending duty; therefore, question of personal service of the charge-sheet on him could not or did not arise. What remained was communicating the charge to him by registered post. There is no dispute that the charge-sheet was despatched by registered post on 4th May 1991 to the address of the respondent, available in the records maintained by the petitioners. The envelope was returned with the postal remark "not claimed". This in turn gives rise to a further question, in the circumstances, as to whether there has been substantial compliance of rule 14 read with rule 30 of the Rules.

19. However, before venturing to answer the said question, it would be profitable to take note of certain decisions of the Supreme Court touching upon the relevant point, i.e., of service or delivery of an article through registered post and the presumption that can be drawn based on the provisions of section 27 of the General Clauses Act, 1897 and section 114 of the Evidence Act, 1872.

20. The first of several decisions which we find relevant is in **Harcharan Singh vs. Smt. Shivrani and others**⁵. It was a case arising out of rent control laws. The majority speaking through Hon'ble Tulzapurkar, J. had the occasion to consider the provisions of section 27 of the General Clauses Act and section 114 of the Evidence Act and it was observed in paragraph 7 as follows:

"7. Section 27 of the General Clauses Act, 1897 deals with the topic— 'Meaning of service by post' and says that where any Central Act or Regulation authorises or requires any document to be served by post, then unless a different intention appears, *the service shall be deemed to be effected* by properly addressing, prepaying and posting it by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. The section thus raises a presumption of *due service* or *proper service* if the document sought to be served is sent by properly addressing, prepaying and posting by registered post to the addressee and such presumption is raised irrespective of whether any acknowledgment due is received from the addressee or not. It is obvious that when the section raises the presumption that the service shall be deemed to have been effected it means the addressee to whom the communication is sent must be taken to have known the contents of the document sought to be served upon him without anything more. Similar presumption is raised under illustration (f) to Section 114 of the Indian Evidence Act whereunder it is stated that the court may presume that the common course of business has been followed in a particular case, that is to say, when a letter is sent by post by prepaying and properly addressing it the same has been received by the addressee. Undoubtedly, the presumptions both under Section 27 of the General Clauses Act as well as under Section 114 of the Evidence Act are rebuttable but in the absence of proof to the contrary the presumption of proper service or effective service on the addressee would arise. ***."

(italics in original)

5 (1981) 2 SCC 535.

21. The next decision in **M/s. Madan and Co. vs. Wazir Jaivir Chand**⁶ is authored by Hon'ble Ranganathan, J. for the Bench. It also arose out of rent control laws. Paragraph 6 of the decision beautifully explains the concept of service and receipt of articles despatched by registered post (with or without acknowledgement due). To the extent relevant for the present purpose, we quote hereinbelow paragraph 6:

"6. *** The proviso insist that before any amount of rent can be said to be in arrears, a notice has to be *served through post*. All that a landlord can do to comply with this provision is to post a prepaid registered letter (acknowledgement due or otherwise) containing the tenant's correct address. Once he does this and the letter is delivered to the post office, he has no control over it. It is then presumed to have been delivered to the addressee under Section 27 of the General Clauses Act. Under the rules of the post office, the letter is to be delivered to the addressee or a person authorised by him. Such a person may either accept the letter or decline to accept it. In either case, there is no difficulty, for the acceptance or refusal can be treated as a service on, and receipt by, the addressee. The difficulty is where the postman calls at the address mentioned and is unable to contact the addressee or a person authorised to receive the letter. All that he can then do is to return it to the sender. The Indian Post Office Rules do not prescribe any detailed procedure regarding the delivery of such registered letters. When the postman is unable to deliver it on his first visit, the general practice is for the postman to attempt to deliver it on the next one or two days also before returning it to the sender. However, he has neither the power nor the time to make enquiries regarding the whereabouts of the addressee; he is not expected to detain the letter until the addressee chooses to return and accept it; and he is not authorised to affix the letter on the premises because of the assessee's absence. His responsibilities cannot, therefore, be equated to those of a process server entrusted with the responsibilities of serving the summons of a court under Order V of the CPC. The statutory provision has to be

interpreted in the context of this difficulty and in the light of the very limited role that the post office can play in such a task. If we interpret provision as requiring that the letter must have been actually delivered to the addressee, we would be virtually rendering it a dead letter. The letter cannot be served where, as in this case, the tenant is away from the premises for some considerable time. Also, an addressee can easily avoid receiving the letter addressed to him without specifically refusing to receive it. He can so manipulate matters that it gets returned to the sender with vague endorsements such as 'not found', 'not in station', 'addressee has left' and so on. It is suggested that a landlord, knowing that the tenant is away from station for some reasons, could go through the motions of posting a letter to him which he knows will not be served. Such a possibility cannot be excluded. But, as against this, if a registered letter addressed to a person at his residential address does not get served in the normal course and is returned, it can only be attributed to the addressee's own conduct. If he is staying in the premises, there is no reason why it should not be served on him. If he is compelled to be away for some time, all that he has to do is to leave necessary instructions with the postal authorities either to detain the letters addressed to him for some time until he returns or to forward them to the address where he has gone or to deliver them to some other person authorised by him. In this situation, we have to choose the more reasonable, effective, equitable and practical interpretation and that would be to read the word 'served' as 'sent by post', correctly and properly addressed to the tenant, and the word 'receipt' as the tender of the letter by the postal peon at the address mentioned in the letter. No other interpretation, we think, will fit the situation as it is simply not possible for a landlord to ensure that a registered letter sent by him gets served on, or is received by, the tenant."

(italics in original)

22. The decision in **Dr. Ramesh Chandra Tyagi vs. Union of India and others**⁷ deals with a situation of the present nature where non-service of charge-sheet was held

7 (1994) 2 SCC 416

to vitiate the disciplinary proceedings. Paragraph 7 of the decision being relevant is quoted below:

"7. As regards the dismissal of the appellant it is unfortunate that he did not join. The service discipline does not permit such adamant attitude. We do not approve of the conduct of the appellant. At the same time the authorities too did not adopt any reasonable or rational attitude. They were out to squeeze the appellant and were not willing to budge and consider even when the Director of the Pune Institute requested them not to post him there as sending such a person was waste for a man of such high calibre. True, the terms and conditions of appointment provide that he could be transferred anywhere in the country. Yet the action must be fair and order legal. We have avoided entering into fairness but on legality there is no doubt. Such attitude of the administrative set-up is neither healthy nor conducive. In service culture devotion to work and duty is more important than clash of false ego. We are pained to observe that entire proceedings do not leave very happy and satisfactory impression. It was vehemently argued that there was no procedural irregularity. But that is writ large on the face of it. No charge-sheet was served on the appellant. The Enquiry Officer himself stated that the notices sent were returned with endorsement 'left without address' and on other occasion, 'on repeated visits people in the house that he has gone out and they do not disclose where he has gone. Therefore, it is being returned'. May be that the appellant was avoiding it but avoidance does not mean that it gave a right to Enquiry Officer to proceed ex parte unless it was conclusively established that he deliberately and knowingly did not accept it. The endorsement on the envelope that it was refused, was not even proved by examining the postman or any other material to show that it was refusal by the appellant who denied on oath such a refusal. No effort was made to serve in any other manner known in law. Under Postal Act and Rules the manner of service is provided. Even service rules take care of it. Not one was resorted to. And from the endorsement it is clear that the envelope containing charge-sheet was returned. In absence of any charge-sheet or any material supplied to the appellant it is difficult to agree that the inquiry did not suffer from any procedural infirmity. No further need be said as the appellant having been removed for not complying with the

transfer order and it having been held that it was invalid and non est the order of dismissal falls automatically.”

23. In **Dinanath Shantaram Karekar** (supra) the Court held that the position regarding service of a charge-sheet is different from the position regarding communication of an order of termination. Where disciplinary proceedings are intended to be initiated by issuing a charge-sheet, its actual service is essential as the person to whom the charge-sheet is issued is required to submit his reply and thereafter to participate in the disciplinary proceedings. Similarly, when 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. In the facts before the Court, it was found that there was a postal endorsement of the addressee being “not found”. The Court proceeded to hold that 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. A single effort in the circumstances of the case could not have been treated as sufficient. That being so, the very initiation of departmental proceedings was

bad. It was *ex parte* even from the stage of charge-sheet, which at no stage was served upon the respondent. Based on the aforesaid reasoning, the Court dismissed the appeal of the appellant and upheld the order of the Tribunal impugned before it.

24. The Supreme Court in **K. Bhaskaran vs. Sankaran Vaidhyan Balan and another**⁸ while considering an appeal arising out of the Negotiable Instruments Act, 1881 (hereafter the "N.I. Act", for short) was considering whether the notice sent by the complainant to the accused, which was returned as "unclaimed", did give rise to the cause of action. Since the relevant Act required receipt of the notice, the Court held that "giving notice" in the context would not be the same as receipt of the notice. Giving is a process of which receipt is the accomplishment and, therefore, it was for the payee to perform the former process by sending the notice to the drawer at the correct address. After referring to section 27 of the General Clauses Act, the Court held in paragraphs 24 and 25 as follows:

"24. No doubt Section 138 of the Act does not require that the notice should be given only by 'post'. Nonetheless the principle incorporated in Section 27 (quoted above) can profitably be imported in a case where the sender has despatched the notice by post with the correct address written on it. Then it can be deemed to have been served on the sendee unless he proves that it was not really served and that he was not responsible for such non-service. Any other interpretation can lead to a very tenuous position as the drawer of the cheque who is liable to pay the amount would resort to the strategy of subterfuge by successfully avoiding the notice."

25. Thus, when a notice is returned by the sendee as unclaimed such date would be the commencing date in reckoning the period of 15 days contemplated in clause (c) to the proviso of Section 138 of the Act. Of course such reckoning would be without prejudice to the right of the drawer of the cheque to show that he had no knowledge that the notice was brought to his address. In the present case the accused did not even attempt to discharge the burden to rebut the aforesaid presumption."

25. The decision in **C.C. Alavi Haji vs. Palapetty Muhammed and another**⁹ is another case arising out of the N.I. Act. There, a notice sent by registered post acknowledgement due to the correct address was returned with the endorsement "addressee was abroad". On facts, it was held that the requirement of section 138 of the N.I. Act has been sufficiently complied with and the decision of the High Court did not call for interference.

26. In **D. Vinod Shivappa vs. Nanda Belliappa**¹⁰, it was held that no rule of universal application can be laid down that in all cases where notice is not served on account of non-availability of the addressee, the Court must presume service of notice. It was also held that in a case where notice is not claimed even though sent by registered post, with the aid of section 27 of the General Clauses Act, the drawer of the cheque may be called upon to rebut the presumption, which arises in favour of service of notice.

27. More or less the same view has been expressed by the Supreme Court in **Ajeet Seeds Limited vs. K. Gopala Krishnaiah**¹¹ cited by Mr. Bharadwaj.

9 (2007) 6 SCC 555

10 (2006) 6 SCC 456

11 (2014) 12 SCC 685

28. Reference to the aforesaid decisions would reveal the opinion expressed by the Supreme Court in relation to attempted service of notice by a landlord upon a tenant, of charge-sheet by an employer upon an employee and of notice upon the drawer of a dishonoured cheque by the payee. Relying upon section 114 of the Evidence Act and Section 27 of the General Clauses Act, the consistent opinion of the Supreme Court is that a presumption has to be drawn if the notice/charge-sheet is despatched upon payment of the requisite charge by registered post to the addressee with the correct address. Such presumption is, however, rebuttable and the addressee is under obligation to prove by leading evidence that the Court/authority may not even presume service of notice/charge-sheet. When a postal envelope is returned to the sender with the remark "refused", it is to be deemed that there has been proper service unless there is evidence to prove the contrary. The same approach would apply in respect of postal envelopes returned with the remark "not claimed" as has been held in the decisions of the Supreme Court referred to above. A distinction, however, has to be drawn in cases where the envelope is returned with the remark "not claimed" and "not found". A situation of "not found" occurs when the addressee is not found at the address mentioned on the envelope whereas a situation of "not claimed" would occur when the addressee at the relevant point of tender/delivery of the envelope is found to be absent, either once or multiple times, and an intimation is left by the postal peon to collect the envelope from the post office.

29. Since the present case does not bring about a situation of the addressee being "not found" when the postal envelope was sought to be tendered/delivered, but a situation of the postal envelope being returned to the sender with the remark "not claimed", it can well be presumed that the postal peon intended to deliver/tender the envelope containing the charge-sheet to the respondent. Following the principles laid down in the decisions in **Harcharan Singh** (supra) and **M/s. Madan and Co.** (supra) as well as the requirements of rules 14 and 30 of the Rules, we cannot but hold that delivery of the charge-sheet by the Disciplinary Authority to the respondent must be presumed to be complete the moment the requisite pre-payment was made and the envelope containing the charge-sheet and the accompanying documents made over to the postal authorities for despatch to the respondent. It can also be presumed that the postal peon left an intimation for the addressee to collect the registered postal envelope from the post office. Obviously, such presumption is rebuttable but we find no real attempt on the part of the respondent to rebut such presumption. We, therefore, hold that the Disciplinary Authority did not breach the obligations imposed upon him by rule 14 read with rule 30 of the Rules. In such circumstances, we hold the *ratio decidendi* of the decisions in **Dr. Ramesh Chandra Tyagi** (supra) and **Dinanath Shantaram Karekar** (supra) to be clearly distinguishable.

30. There is one other aspect which is equally important. We cannot ignore the particular circumstance, which did

not go unnoticed by the Tribunal but a different conclusion was reached by it based on its insistence *qua* compliance of rule 14 of the Rules. Even if it is presumed that the respondent did not receive the charge-sheet dated 4th May, 1991, it is clear that he had notice of the inquiry being carried forward on the charge of unauthorized absence levelled against him. Assuming that there had been no previous attempt to serve the charge-sheet on the respondent and the Disciplinary Authority, as in **Dr. Ramesh Chandra Tyagi** (supra) was trying to squeeze out the appellant and in the process did not adopt any reasonable or rational attitude, yet, the normal reaction for the respondent would have been to approach the Disciplinary Authority with a request to serve the charge-sheet. Admittedly, no such endeavour is discernible on the part of the respondent. We quite appreciate that the respondent was suffering from a psychiatric problem and it may not have been perceived by him that he had a right to call upon the Disciplinary Authority to serve him the charge-sheet. However, simply because the respondent was under some physical disability should not weigh in the mind of the Tribunal or the Court to take a view against the Disciplinary Authority that it either made no attempt or any further attempt to serve the charge-sheet. The Disciplinary Authority could not have known that the respondent was suffering from psychiatric problems in the absence of any intimation given by him about his physical condition right from 21st May 1990 till 4th May 1991 and that, therefore, he was unable to resume duty. We are inclined to presume

that the Disciplinary Authority proceeded on the basis that the charge-sheet dated 4th May 1991 was duly tendered/delivered by the postal peon to the respondent and that he had not claimed the envelope despite intimation being left. In such a case, to hold that the Disciplinary Authority had committed a procedural infirmity would be indeed harsh. The situation is worsened by reason of what we have referred to above that the respondent had knowledge of the inquiry. On facts and in the circumstances, we do not hold that the Disciplinary Authority was unjustified in proceeding against the respondent *ex parte*.

31. It can be gathered from the factual narrative that not only the charge-sheet, but also other intimations as well as the order of compulsory retirement passed by the Disciplinary Authority were returned as "not claimed". The order of compulsory retirement was also published in a newspaper. It is, therefore, not a case where the Disciplinary Authority did not make any further attempt to bring it to the notice of the respondent that he stands compulsory retired from service. All that was possible, the Disciplinary Authority did which unfortunately may not have attracted the notice of the respondent; however, for the same, the Disciplinary Authority could not have been faulted by the Tribunal.

32. Mr. Kumar's reliance on rule 27(2)(a) of the Rules does not advance the case of the respondent. Rule 27 provides for consideration of an appeal. As has been noted above, the appeal was dismissed as time-barred. Since the merits of the appeal were not examined by the Appellate

Authority, there was no question of compliance with rule 27(2)(a) by the Appellate Authority. It is true that in terms of rule 29(3) of the Rules, a revision is required to be dealt with in the same manner as if it were an appeal under the Rules. The relevant part of the order of the Revisional Authority, extracted supra, does not suggest that there was no compliance with the provision contained in rule 27(2)(a); on the contrary, there is a specific finding returned by the Revisional Authority that the respondent did not participate in the inquiry although all attempts were made to serve the charge-sheet on him. We, therefore, reject the contention of Mr. Kumar.

33. We need to now deal with Mr. Kumar's last contention that the relevant authorities should have considered whether the absence was wilful or due to compelling circumstances beyond the control of the respondent. **Krsuhnakant B. Parmar** (supra) has been relied upon in this regard. Since there is no return to the Rule, we have looked into the grounds that were urged by the respondent in support of the relief claimed in the original application to ascertain whether compelling reasons were forwarded as a factor that disabled the respondent to stay away from work. The grounds that were urged read as follows:

"(a) Applicant submits that he has been condemned without any hearing whatsoever inasmuch as applicant has not been given any opportunity of giving his say as the enquiry has been held in the absence of the applicant.

(b) Applicant submits that Respondents were aware that applicant was suffering from psychiatric problems and yet the Respondents proceeded with the enquiry in the absence of the applicant.

- (c) Applicant's appeal to the Appellate Authority as well as his Revision Application to the Revisional Authority has been summarily rejected without any application of mind on the ground that the same were time barred.
- (d) Applicant is otherwise entitled to the reliefs prayed for."

34. In none of the above grounds did the respondent urge the contention under consideration and as canvassed by Mr. Kumar. Without the factual foundation being laid, we cannot conclude that the respondent did suffer from such psychiatric problem that he could not approach the petitioners prior to 1996. Even the medical certificates/prescriptions have not been brought on record of these proceedings by the respondent. We, therefore, find no ground to apply the law laid down in **Krsuhnakant B. Parmar** (supra).

35. Even otherwise, the grounds urged before the Tribunal also do not appear to be of any substance having regard to the peculiar facts and circumstances of this particular case.

36. It was the case of the respondent that he could not participate in the proceedings because of reasons beyond his control. However, the respondent did have notice of inquiry, but did not participate and even did not request the Disciplinary Authority to provide him with the charge-sheet. The fault thus lay with the respondent and not the Disciplinary Authority. The Tribunal, thus, ought not to have held that the petitioners violated the provisions regarding conduct of disciplinary proceedings by denying the respondent opportunity of hearing.

37. Insofar as ground (b) is concerned, there is no material to suggest that while inquiry was in progress, the Disciplinary Authority or the Inquiry Officer had notice/knowledge that the respondent was suffering from psychiatric problem. Therefore, such ground was also lacking in merit and could not have afforded reason for the Tribunal to interfere.

38. Although ground (c) mistakenly reflects that the Appellate and Revisional Authorities had dismissed the appeal and the revision as time barred, we have found from the order dated 2nd August 1997 that the revision was dealt with on merits. Despite the order is cryptic, the respondent did not attack such order on such ground. The ground urged, to attack the order of the Revisional Authority, being entirely wrong, the Tribunal ought not to have granted the relief of reinstatement.

39. We are also inclined to the view that the penalty imposed on the respondent is not disproportionate to the gravity of the charge levelled against him. Although removal from service was an option, the Disciplinary Authority elected the immediately preceding option under rule 11 of the Rules and allowed full terminal benefits, as admissible, to the respondent. No failure of justice has, thus, been caused.

40. For the aforesaid reasons, we are of the clear opinion that the decision of the Disciplinary Authority imposing the penalty of compulsory retirement on the respondent ought not to have been interfered with by the Tribunal.

41. In the result, the impugned judgment and order dated 18th December 2002 passed by the Tribunal in Original Application No.502/1998 stands set aside. The original application on the file of the Tribunal shall stand dismissed. All benefits flowing from the order of compulsory retirement shall be released in favour of the respondent, if not already released, as expeditiously as possible.
42. Rule is made absolute on the above terms. The parties shall, however, bear their own costs.

(M.S. KARNIK, J.)

(CHIEF JUSTICE)

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