

CASE NO.:
Appeal (civil) 3365 of 2008

PETITIONER:
Union of India

RESPONDENT:
S. P. Singh

DATE OF JUDGMENT: 07/05/2008

BENCH:
TARUN CHATTERJEE & HARJIT SINGH BEDI

JUDGMENT:
JUDGMENT

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3365 OF 2008
(arising out of SLP (C) No. 4544 of 2007)

Union of IndiaAppellant

Versus

S. P. SinghRespondent

JUDGMENT

HARJIT SINGH BEDI, J

1. Leave granted.
2. The respondent, S.P. Singh, an officer of the 1973 batch of the Indian Revenue Service, was posted as Commissioner (Appeals) Central Excise, Bhopal in May 2005. He filed an application dated 10th May, 2005 seeking voluntary retirement w.e.f. 1st September,

2005, on having completed 30 years of qualifying service. On 30th June, 2005 the respondent was relieved from Bhopal and posted as Commissioner (Appeals) at Hyderabad. He accordingly handed over charge at Bhopal on 20th June, 2005 but as the officer holding the post at Hyderabad had not been likewise relieved, the respondent's transfer order was stayed and a request was made by him seeking a suitable posting pursuant to his request for voluntary retirement. Vide communication dated 25th August, 2005 sent to the respondent at his residential address H. No. 226 Sector 15-A, NOIDA, he was asked to deposit some outstanding dues so that his request for retirement could be finalized. Quite to the contrary, however, on 9th September, 2005, the respondent received an order dated 30th August, 2005 placing him under suspension and fixing his Head Quarters at Aurangabad and by another order dated 31st August, 2005 his request for voluntary retirement was also declined. An order dated 16th September, 2005 was subsequently issued whereby

he was directed to be attached to Bhopal for the purpose of receiving payment of his subsistence allowance. The orders dated 30th August, 2005 and 16th September, 2005 were challenged by the respondent before the Central Administrative Tribunal (Principal Bench), New Delhi (hereinafter referred to as "the Tribunal"). Before the Tribunal, it was contended on behalf of the respondent that as the three months' notice period for voluntary retirement had expired on 31st August, 2005 and the order of suspension had not been communicated nor received by him till that date it was to be deemed that the voluntary retirement had become effective and as such permission to retire could not be withheld thereafter, in the light of Rule 48(1)(a) of the Central Civil Services (Pension) Rules, 1972 (hereinafter called the "Rules"). It was further contended that the letter dated 30th August, 2005 had been sent to Nagpur for further onward transmission to Bhopal and it was only on 2nd September, 2005 that the suspension order had

been issued to the respondent's residential address in NOIDA, (a fact which was in the knowledge of the Department) and had been received by him on 9th September, 2005. It has accordingly been submitted that the date of communication of the order being 2nd September, 2005, the respondent could not have been suspended thereunder as his three months' notice seeking voluntary retirement had expired on 31st August, 2005 and he was thus deemed to have retired w.e.f. 1st September, 2005. It has accordingly been submitted that the order dated 30th August, 2005 was, therefore, ineffective in law.

3. The Union of India in its reply has opposed the pleas raised by the respondent and has submitted that as the order of suspension had been dispatched before 31st August, 2005 to Nagpur and thereafter transmitted to Bhopal it was deemed to have been made effective from 30th August, 2005 itself, and as such the respondent was deemed to be under suspension.

4. The Tribunal in its order dated 22nd February, 2006 examined the matter in the background of the Rules and the dictionary meaning of the word "Communication" and the ratio of several judgments of this Court, Hari Kishan vs. State of Maharashtra, AIR 1962 SC 911, State of Punjab vs. Amar Singh Harika, AIR 1966 SC 1313, State of Punjab vs Sodhi Sukhdev Singh, AIR 1961 SC 493, and Bachhittar Singh vs. State of Punjab AIR 1963 SC 395 and observed that an order had to be communicated to the person who would be affected by that order so as to make him bound by it. The Tribunal then examined the import of the judgment in State of Punjab vs. Khemi Ram AIR 1970 SC 214 and noted that a slight deviation from the principles laid down in the first set of cited cases had come about as the question as to whether the communication of an order meant its actual receipt by the concerned official as the requirement of law was that the order to be effective was required to be dispatched before the proposed date

of retirement to the correct address of the concerned officer and its receipt after the date of the retirement would be irrelevant. The Tribunal then examined the effect of Rule 48 and observed that the respondent had undoubtedly completed the requisite period of service qualifying him for voluntary retirement and also fulfilled all the other conditions as well and the only impediment to his retirement was relatable to his suspension by the order dated 30th August, 2005 in terms of the 2nd proviso to Rule 48(1)(b) which postulated that permission to seek voluntary retirement could be withheld by the appointing authority in case the Government Servant was under suspension. The Tribunal then applied the law to the facts of the case and observed that the order dated 30th August, 2005 had been dispatched to Nagpur for further transmission to the respondent at Hyderabad though he was admittedly at NOIDA at the relevant time, - a fact well within the knowledge of the Department as he had not been able to take up his appointment at Hyderabad.

The Tribunal accordingly concluded that the order had been dispatched to the wrong address and was therefore not effective as it had actually been received by him on 9th September, 2005 whereas the respondent had retired w.e.f. 1st September, 2005. The Original Application was accordingly allowed by the Tribunal.

5. The matter was thereafter taken before the High Court in writ proceedings. By the impugned judgment dated 3rd July, 2006 the writ petition has been dismissed and the order of the Tribunal confirmed.
6. The Union of India is before us by way of special leave.
7. The learned counsel for the appellant - Union of India has once again submitted that as the suspension order dated 30th August, 2005 had actually been issued on that date and the order rejecting the respondent's request for voluntary retirement too had been communicated vide order dated 31st August, 2005, the respondent could not claim to have voluntarily retired from service in the light of the 2nd proviso to Rule 48 (1)(a) as the necessary communication should be

deemed to have been made on the respondent. In this connection, the learned counsel has relied the case of Khemi Ram's case (Supra) in addition to Municipal Corporation of Delhi vs. Qimat Rai Gupta & Ors. (2007) 7 SCC 309 and U.P. State Sugar Corporation Ltd & Ors. vs. Kamal Swaroop Tondon (2008) 2 SCC 41. The learned counsel for the respondent has however supported the judgment of the Tribunal and the High Court and has contended that in view of the settled law, if the orders were to be made effective from the date of issue it was essential that they be issued to the correct address of the officer which was at NOIDA and as the said orders had been dispatched to Nagpur instead and served on him on 9th September, 2005 it could not be said that the respondent continued to be in service as his prayer for voluntary retirement had been rejected.

8. We have heard the learned counsel for the parties and have gone through the record.

9. The Tribunal has relied on several judgments of this Court to support the view an order to be made effective it has to be communicated to the officer at his correct address. In Khemi Ram's case (supra) the question as to what amounted to "communication" has been spelt out and it has been observed thus:

16. "The question then is whether communicating the order means its actual receipt by the concerned government servant. The order of suspension in question was published in the Gazette though that was after the date when the respondent was to retire. But the point is whether it was communicated to him before that date. The ordinary meaning of the word "communicate" is to impart, confer or transmit information. (Cf. Shorter Oxford English Dictionary, Vol. 1, p. 352). As already stated, telegrams, dated July 31, and August 2, 1958, were dispatched to the respondent at the address given by him where communications by Government should be dispatched. Both the telegrams transmitted or imparted information to the respondent that he was suspended from service with effect from August 2, 1958. It may be that he actually received them in or about the middle of August 1958, after the date of his retirement. But how can it be said that the information about his having been suspended was not imparted or transmitted to him on July 31 and August 2, 1958 i.e. before August 4, 1958, when he would have retired? 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 it 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. We find it difficult to persuade ourselves to accept the view that it is only from the date of the actual receipt by him that the order becomes effective. If that be the true meaning of communication, it would be possible for a Government servant to effectively thwart an order by avoiding receipt of it by one method or the other till after the date of his retirement even though such an order is passed and dispatched to him before such date. An officer against whom action is sought to be taken, thus, 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. Such a meaning of the word "communication" ought not to be given unless the provision in question expressly so provides. Actually knowledge by him of an order where it is one of dismissal, may, perhaps, become necessary because of the consequences which the decision in AIR 1966 SC 1313 (Supra) contemplated. But the case of an officer who has proceeded on leave and against whom an order of suspension is passed because in his case there is no question of his doing any act or passing

any order and such act or order being challenged as invalid".

10. The aforesaid principle must now be applied to the facts of this case. It is clear from the record that the respondent was in NOIDA and not in Nagpur when the orders had been issued. From the documents attached and, in particular, the letter dated 5th July, 2005 written by him from his address (H. No. 226 Sector-15-A, NOIDA) to the Central Board of Excise and Customs in which he points out that he had been transferred from Bhopal to Hyderabad and on going there he had been informed that the incumbent officer at that place had not been relieved on which he had returned to Bhopal and had reported for duty at the Board's Office in New Delhi on 20th June, 2005 and further requested that further orders as to his posting be issued, it is evident that the department had knowledge as to his whereabouts. The learned counsel for the respondent has also referred to the letter dated

25th August, 2005 from the Under Secretary to the Government of India, Ministry of Finance addressed to the respondent at his residence in NOIDA directing him to clear his outstandings before his request for voluntary retirement could be finalized. It is also significant from the record that the order of suspension dated 30th August, 2005 had been marked to Shri B.S. Ganu, Chief Commissioner of Central Excise, Nagpur with a request that it be served on the applicant and Shri Ganu had informed the Board Officer in New Delhi that the respondent was not posted at Nagpur nor his mailing address was available at that place and it was thereafter on September 2, 2005 (on receipt of the aforesaid letter) that the suspension order had been dispatched to the correct address of the respondent at NOIDA, and served on him a week later. It is therefore clear that despite the fact that the Department was well aware that the respondent was residing in NOIDA and had reported for duty before the Board on 21st June, 2005 as the incumbent in Hyderabad had refused to

make way for him, yet the suspension order had been sent to Nagpur. We are therefore of the opinion that though the suspension order had been dispatched by facsimile before 1st September 2005 yet it had been dispatched to the wrong address and could not be deemed to have been communicated to the respondent. We have also gone through the other judgments cited by the learned counsel for the appellant - Union of India. They have absolutely no relevance to the facts of the case and deal with separate issues. We therefore find no infirmity in the order of the Tribunal and of the High Court and accordingly dismiss the appeal. No order as to costs.

.....J.
(TARUN CHATTERJEE)

.....J.
(HARJIT SINGH BEDI)

New Delhi
Dated : May 7, 2008