

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 3147/2002

NEW DELHI 14TH DAY OF JULY 2003

HON'BLE SMT. LAKSHMI SWAMINATHAN, VICE CHAIRMAN(J)
HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

G.L. Juneja,
Ex. Sub. Divisional Engineer (Telegraph)
Kosli (Rewari), Haryana

Presently r/o WZ-220/J-60 Vishnu Garden,
New Delhi.

.....Applicant

(By Shri B.S. Mainee Advocate)

VERSUS

1. The Secretary,
Ministry of Communications,
Department of Telecommunication,
Sanchar Bhawan, 20 Ashoka Road,
New Delhi
2. The Member (Services)
Telecom Commission, Govt of India,
Min. of Communications ,
Department of Telecommunications,
20, Ashoka Road, New Delhi
3. The Chief General Manager,
Telecom (BSNL)
Haryana Telecom. Service,
107, The Mall, Ambala Cantt.

.....Respondents

(By Shri M M Sudan, Advocate)

ORDER (ORAL)

BY HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Orders No. 8-67/98-Vig. II dated 14.1.2002 passed
by the Member (Services) , Department of Telecom. and dated
23.9.2002 passed by the President are under challenge in this
OA.

2 Heard S/Shri B S Mainee and MM Sudan, learned
counsel respectively for the applicant and the respondents.

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3. Applicant was Sub-Divisional Engineer Group 'B' in the Office of Telecom District Manager (TDM) Rohtak incharge of legal matters. One Kartar Singh who had applied for setting up of a PCO under MARR Scheme, having failed in the attempt filed a suit against the Department in May 94. Under the directions of the Addl. Sr. Sub Judge, Bahadurgarh, further enquiries were undertaken and the PCO was installed in some premises other than Kartar Singh's. Angered by the above Kartar Singh filed a complaint against the applicant alleging demand of illegal gratification. On 16.11.94, when the applicant was coming out of a restaurant at Rohtak, was accosted by Kartar Singh and a few others who were later identified as Police Officers man-handled him and took him to the Office of Addl. Dy. Commissioner, after removing his pants, and arranged washing of his hand and pant pocket. FIR was lodged alleging that he had received a bribe of Rs.800/- . He was arrested and bailed out. On 4.12.2000 he was charge - sheeted for having accepted Rs. 800/- as bribe, being the part payment of Rs.5,000/-, which was the bribe for permission to set up PCO under MARR. While denying the charges the applicant desired the supply of nine relevant documents and gave a list of six witnesses. One important document was not supplied and only three witnesses were examined. During the enquiry Kartar Singh denied that the application for MARR, PCO was filed by him. Forensic report showed that his hand wash did not contain Phenolphthalen showing that he had not touched the currency. Thus it was a case of no evidence, still the I.O. returned a finding of guilt "on circulated evidence" which was based only on conjectures and surmises, showing that recovery of the currency was from his pant pocket. The report was totally unacceptable in that the applicant was not concerned with the

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licensing of PCO, there was no proof of demand and/or acceptance of the bribe, applicant's representations dated 11.12.2001 against the I.O.'s report, was not considered by the Disciplinary Authority who dismissed him from service on 14.01.2002. Aggrieved by the above, the applicant filed an appeal on 4.3.2002, detailing various points, but the same was rejected on 23.9.2002. Hence this OA.

4. Grounds raised in the OA and reiterated during oral submissions, by Sh. B S Mainee, learned counsel for the applicant are as below:

- i) the applicant had been falsely implicated by Kartar Singh;
- ii) the civil suit filed by Kartar Singh contested by the applicant was dismissed by the Civil Court;
- iii) installation of PCO in another premises was based on the recommendations of experts;
- iv) Kartar Singh's complaint against him was motivated;
- v) enquiry was not conducted properly;
- vi) TA bill and TA diary of the applicant had not been produced inspite of his request;
- vii) three of the defence witnesses were not produced;
- viii) Kartar Singh had denied that the application for PCO was made by him;
- ix) applicant was not concerned with the sanction of PCO and thus had no motive for promising another PCO for Kartar Singh;
- x) it was a case of ^{no} evidence;
- xi) there was no proof of demand and supply of bribe;
- xii) the applicant's hand wash did not show any chemical;
- xiii) independent witnesses had not supported the stay of the respondents;

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- xiv) enquiry report was faulty and his representation against it was not properly considered by the disciplinary authority;
- xv) his unblemish record of 37 years had not been considered;
- xvi) the appellate authority did not supply to him the copy of the UPSC's report and
- xvii) the order was discriminatory and malafide .

OA should therefore be allowed and the impugned orders be set aside, pleads Sh. Mainee, learned counsel for the applicant.

5. Respondents contest the above. In their reply, reiterate by learned Sr. Standing Counsel Sr. M M Sudan, it is pointed out that following FIR No. 464 dated 16.11.94, on the alleged demand of bribe by the applicant from one Kartar Singh, a trap was arranged resulting in the applicant being caught red handed with Rs.800/- which was meant as part payment. The applicant denied the charges. At the end of the enquiry I.O. held the charge as proved to the extent 8 tainted notes of Rs.100/- each had been recovered from the pant pocket of the applicant. After considering the applicant's reply I.O.'s report and CVC report the Disciplinary Authority dismissed him from service, which was subsequently upheld by the Appellate Authority. Proceedings were initiated by the Deptt. as the applicant was caught red handed, with Rs. 800/-, which was shown as part payment, in terms of the complaint. During the enquiry except document at S1 No.4, which was not available all the documents were made available. No protest was made by the applicant at that time but it has surfaced for the first time in the OA. Of the six witnesses indicated by the applicant, three were examined and two did not turn up inspite of summons and

opportunity being given. Enquiry Officer had considered all the aspects of the case before filing his report. It is denied that this was a case of no evidence. The whole action arose following the receipt of complaint that the applicant had sought for bribe in connection with the licensing of a MARR PCO. It was clearly borne out by the events of 16.11.94, when the amount of Rs. 800/- was recovered from the applicant. This was sufficiently ~~strong~~^{show} circumstantial evidence. The Disciplinary Authority had passed the orders after examining all the aspects and perusing all the documents and papers, with full application of mind. The same was the case of the appellate order, which was issued along with UPSC's advice (No.73/88/2000 SI dated 29.7.2002). Applicant's reference to the decision of Hon'ble Supreme Court, was of no assistance, as it related to CVC's advice and thus could be distinguished. Respondents have contested all the grounds raised in the OA stating that their action from the stage of the trap to the issue of the orders - original and appellate - had been gone through properly. Every reasonable opportunity had been given to the applicant and as would be seen the proceedings have been gone through correctly and the applicant had accepted the same by signing the daily order sheets. Allegation made against Sh. H C Ahuja, the I.O. is baseless as ^{he} became Vigilance Officer, only three years after the event and was not connected in any way with the investigation procedures. The main thrust of I.O.'s report has been the recovery of 8 tainted notes of Rs.100/- each recovered from the applicant's pant pockets and the same was correct. As the enquiry proceedings have been gone through correctly, there was no ground to assail the same. The whole procedure arose from the complaint which was followed by the trap in which the applicant had been caught red-handed. Thus proved, the act of bribe taking. I.O.'s

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report, Disciplinary Authority's decision and the Appellate Authority's order were issued after due deliberation of the matters, the same did not call for any interference, urges Shri Sudan, learned Standing Counsel.

6. During the oral submissions, Sh. Mainee, strongly reiterated his pleas. According to him the whole case was a concocted story and was one of no evidence. It was not correct to hold that there was any recovery from the applicant, led alone red handed. The tainted notes have been shown as recovered from pant pocket, if the applicant where they had been put in by the respondents. Procedures had been flouted throughout and the applicant was not given proper opportunity to explain his case. Respondents were only keen to punish the applicant forgetting his unblemished record of 37 years. On the other hand the respondents point out that they had acted correctly and all the procedures were followed.

7. We have carefully deliberated upon the rival contentions and perused the relevant papers brought on record. The applicant, a Sub Divisional Engineer, Group 'B' in the Telecom. organisation states that he has been punished in a case of no evidence, foisted upon him by the mischief of one person, whose request to have a licence for a PCO under MARR scheme, ^{was turned down, &} who made by making a false complaint that he had demanded and received illegal gratification, and that too after going through improper and illegal proceedings taken. The respondents, on the other hand, indicate that the proceedings were initiated against the applicant on the basis of a complaint that he had demanded a bribe of Rs.5,000/- , the first instalment of which amounted to of Rs.800/- which has in fact been recovered from him and that the applicant

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had been proceeded against correctly. The main thrust of Shri Mainee, learned counsel arguing for the applicant is that there has been no recovery at all from him and it was wrong to state that he was caught red handed. In fact the "hand wash" arranged in the office of the Additional Dy. Commissioner turned out to be negative as far as he is concerned, which showed that he had not taken any money. He further argues that recovery of any amount, if had been effected from the pant pocket, it must have ^{been} the amount trust into ~~to~~ by the respondents after he was stripped of the same before being taken to the office. The applicant was not at all guilty. He also has stated that a number of procedural irregularities have been committed by the respondents. First, a number of relevant documents were not made available to him and second a few of the witnesses were not produced. Examination of all the papers show that this allegation is not at all correct. The applicant merely reiterated that his hands were not tainted by the chemical on its being washed. The same alone however, cannot come to his rescue as it is found that there has been recovery, eight notes of Rs.100/- denomination duly signed by the witnesses from his pant pocket. The applicant had been trapped following a complaint filed by one Kartar Singh on 16.11.94 to the effect that he had asked for payment of bribe of Rs. 5,000/- out of which a part payment of Rs.800/- was to be made. The respondents have taken action in organising the trap which had resulted in the recovery. The fact that it was not taken over physically from ^{his hand} him does not alter the fact that the same was in his possession i.e. in his pant pocket. The applicant cannot plead, in the circumstances, that he had no knowledge of the currency or that it has been planted on him. The recovery is thus proved. As far as procedural irregularities indicated by the applicant, the first is that all the

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documents which he has asked for were not made available to him. It is found from the counter affidavit that all the documents excepting item No. 4 which was the TA Bill/TA Diary have been made available to the applicant. Document at item No.4 could not be given, as it was not available, a fact which was brought to the notice of the applicant itself. Similarly the applicant's averments that few of the defence witnesses he wanted were not made available also does not stand to reason as it is found that out of 6 witnesses 3 had been made available and the other had not turned up in spite of best efforts made by the respondents. This also is evident from the daily ^{order 131} sheet of enquiry, which is not opposed. The applicant could/should have produced the witnesses as he was the person to be benefited from their evidence instead of leaving it to the respondents who were not in a position to procure the presence of these witnesses. Another argument by the applicant is that Shri Ahuja who was posted as Inquiry Officer was earlier in charge Vigilance Branch, and as such was already prejudiced. This is not correct. Shri Ahuja had held the charge of Vigilance from 1997 to 2000 i.e. much after the event involving the applicant had occurred on 14.11.94. He was also not concerned with investigation in any manner. It is thus seen that all the objections raised by the applicant stand disproved. It is seen that the respondents have gone through the proceedings from the stage of 'trap' to that of the imposition of finding correctly and have accorded full opportunity for the applicant to defend his case. Further, the orders of the Disciplinary Authority and the Appellate Authority are detailed and lucid and have examined all the issues. They cannot be faulted. Keeping in mind the circumstances of the case wherein an officer with long record of 37 years of service were found accepting bribe, we cannot hold that the

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punishment accorded to him was too harsh to ^{shock} ~~hurt~~ the judicial conscience as laid down by the Hon'ble Supreme Court in the case of B C Chaturvedi Vs UOI [1996 (32) ATC 44]. We have no reason to hold that the punishment should have been less severe.

8. In the above circumstances we are convinced that applicant has not made out any case for the Tribunal's interference. O.A. therefore fails and is accordingly dismissed.

(Govindan S. Tampi)
Member (A)

Patwal/

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)