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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.415/2002

This the 28th day of November, 2002.

HON'BLE SHRI JUSTICE V.S.AGGARWAL, CHAIRMAN

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

V.P.Arya S/O Mata Prasad Arya,
working as Assistant Director (BT-1)
in the O/O BSNL, Sr. DDG(BW) 36
Janpath, New Delhi,
C/O Shri Sant Lal, Advocate,
C-21(B), New Multan Nagar,
Delhi-110056.

... Applicant

(By Shri Sant Lal, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of Communication,
Deptt. of Telecom, Sanchar Bhawan,
New Delhi-110001.

2. Member (Services),
Telecom Communication,
D.O.T. Sanchar Bhawan,
New Delhi-110001.

... Respondents

(By Shri Shankar Anand, Advocate)

ORDER (ORAL)

Hon'ble Shri V.K.Majotra, Member (A) :

Applicant has assailed penalty of reduction in pay by one stage from Rs.8500/- to Rs.8250/- in time scale of Rs.7500-250-12000 for a period of one year with immediate effect with a stipulation that applicant would not earn increment of pay during the period of such reduction and on expiry of that period, the reduction would have the effect of postponing his future increments of pay. The aforestated penalty was upheld in appeal.

2. The learned counsel of applicant questioned the penalty orders on the following grounds :

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- i) Whereas in the related case, four other officials/officers were also involved, the disciplinary authority did not hold common proceedings against all of them as laid down in rule 18 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.
- ii) Applicant was not supplied copies of chargesheets issued in the cases of other personnel against whom separate chargesheets were issued.
- iii) Although the enquiry officer accepted 39 documents on record, the same were not proved by any witness as required in terms of rule 14(14) ibid.
- iv) The incharge of the inspection team whose report was relied upon was not examined in the enquiry.
- v) The charged officer was not examined in terms of Rule 14(18) ibid, compliance whereof is mandatory which has been violated by the enquiry officer.
- vi) The enquiry officer did not refer to any point appearing against him in the enquiry for the purpose of enabling him to explain any such circumstances appearing in the evidence against him.
- vii) It is a case of no evidence.

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viii) Applicant was only a supervisory officer and whereas as per his duty he was required to verify the stores in the C.P.Stores Depot at least once every year according to the procedure, he remained incharge of the C.P.Stores Depot for a period of ten months only, and he remained very busy in the normal and additional work due to which he could not undertake the verification.

3. On the other hand, the learned counsel of respondents stated that the principles of natural justice have been complied with in the conduct of the enquiry; that there is no illegality in the same, and that the present application is liable to be dismissed. He rebutted all the pleas taken by the learned counsel of applicant and stated that applicant has been meted out a lenient treatment though he had been found guilty of the charges levelled against him.

4. As to the requirement of conducting common proceedings as per rule 18 of the CCS (CCA) Rules where two or more government servants are involved, it is relevant to reproduce provisions of rule 18(i) :

"(1) Where two or more Government servants are concerned in any case, the President or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding."

A perusal of the above provision does not indicate that it is obligatory to conduct common proceedings in cases

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where two or more government servants are concerned in a case. The competent authority, in our view, may or may not direct conducting common proceedings.

5. Although applicant had requested on 12.10.1998 for supply of copies of chargesheets issued in the other cases, his request was rejected by the disciplinary authority vide memorandum dated 20.11.1998 since the enquiry proceedings in applicant's case had already been completed and the enquiry officer had submitted his report to the disciplinary authority on 11.6.1998. In any case, it has not been established before us how applicant's case would have been prejudiced for non-supply of copies of chargesheets in the other cases. These documents cannot be stated to have any bearing on applicant's case.

6. It is not clearly laid down in rule 14(14) *ibid* how the documentary evidence has to be proved. As per the provision in the rule, documentary evidence has to be produced by or on behalf of the disciplinary authority. applicant also did not state in his appeal that 39 documents were not proved. As a matter of fact, applicant has been signing the daily ordersheets in the enquiry without any protest/objection. Such an objection at this stage has no substance.

7. In the list of witnesses, the disciplinary authority had included five witnesses for examination. It is not obligatory that all the witnesses included in the list of witnesses by the disciplinary authority must

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be examined. What has to be seen in a departmental enquiry is whether there is evidence to establish the guilt against the charged officer on the basis of the oral and documentary evidence adduced in the enquiry. Non-examination of a particular witnesses in the enquiry would not vitiate the proceedings.

8. The next plea taken up by the learned counsel of applicant was that the charged officer had not been examined in terms of rule 14(18). This rule reads :

"(18) The inquiring authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him."

The learned counsel stated that the inquiring authority did not confront applicant with the circumstances appearing against him in the evidence, therefore, he did not get an opportunity to explain the circumstances appearing against him in the evidence. The learned counsel stated that there was no strict compliance of the provisions and examination of applicant was a mere formality. In his general examination applicant had

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stated that he was in position during the period March-December, 1992; he had additional work to perform; he was transferred out at the end of December, 1992; he could not carry out verification of stores due to heavy rush of work; he could have conducted the inspection had he remained ^{there} upto 31.3.1993. From the examination of applicant as charged officer, it is clear that he got an opportunity to explain the circumstances why he was not able to conduct verification of stores. According to him, if he was given an opportunity to stay on in the post of administrative officer for one year, he would have completed the verification of stores. The procedure for verification of stores is laid down in paragraph 5 of Appendix XII of P&T Manual Vol.II and rule 116 of the General Financial Rules. As per the procedure, verification of stores has to be organised at least once every year. As per this requirement, verification of stores should be carried out at least once in a year, though it can be carried out more than once as well. In applicant's own admission, he did not carry out the verification within ten months and would have carried out the inspection had he stayed for two more months in position. Basically, applicant has admitted the allegation of not conducting the verification of stores. His plea that he would have carried out the verification had he stayed on for a couple of months more is a very feeble defence. Clearly, he has been negligent in discharging his responsibilities.

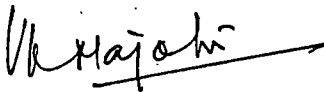
9. Whereas the learned counsel of applicant contended that the present is a case of no evidence and

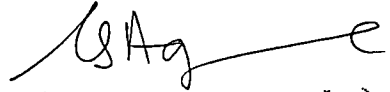
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the authorities have been biased against him, this contention has not been established before us. Bias or mala fides against the enquiry officer or the disciplinary authority or the appellate authority have not been established and if the norm of preponderance of probabilities in departmental enquiries is considered, respondents have held applicant guilty of the charges on the basis of available evidence which is considered sufficient in the present case.

10. An assertion is made on behalf of applicant that he was merely a supervisory officer and cannot be held responsible for non-verification of stores. This defence of applicant is unacceptable as stated elsewhere. A duty is cast upon him even as a supervisory officer to conduct a periodical verification of stores. Non-verification of stores due to heavy rush of work or just because he did not complete a period of one year has been considered to be feeble defence.

11. Having regard to the reasons stated and discussion made above, we do not find any fault in the impugned orders and as such, this OA is dismissed.


(V. K. Majotra)
Member (A)


(V. S. Aggarwal)
Chairman

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