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Central Administrative Tribunal, Principal Bench

Original Application No.708 of 2001

New Delhi, this the 26th day of September, 2001

Hon'ble Mr. Justice Ashok Agarwal, Chairman
Hon'ble Mr. M.P. Singh, Member(A)

M.L. Gupta
Senior Accounts Officer
O/o General Manager Telecom, Faridabad
R/o House No. 728-C/2, Patel Nagar
Gurgaon (Haryana)

- Applicant

(By Advocate: Shri S.N. Anand)

Versus

1. The Secretary
Ministry of Communications,
(Department of Telecom)
Sanchar Bhawan,
20, Ashoka Road,
New Delhi-1

2. The Chief General Manager Telecom
Department of Telecom
(Now known as Bharat Sanchar Nigam Limited)
Haryana Circle, Ambala

3. The General Manager Telecom
Department of Telecom
(Now known as Bharat Sanchar Nigam Limited)
Faridabad (Haryana)

- Respondents

(By Advocate: Shri M.M. Sudan)

O R D E R (ORAL)

By Mr. M.P. Singh, Member(A)

The applicant who is working as Accounts Officer (in short 'AO') in the Telecom department has filed this OA seeking a direction to quash the chargesheet dated 8.2.2001.

2. During the year 1994, the applicant was posted as AO in one of the offices of respondents at Gurgaon. Immediately after taking over the charge, he detected certain discrepancies of short billing in respect of Subscriber Trunk Dialing (STD) and Public Call Offices (PCOs) running into 7.38 lakhs. The applicant made



strenuous efforts to streamline the working of Telecom Revenue Department. However despite the good work done by him, he has been issued with a chargesheet. The articles of charge made against him are as follows:

ARTICLE-I

"That the said Shri M.L.Gupta while functioning as AO(TR) Gurgaon during the period from 11/94 to 2/96 issued provisional bills to STD PCO holders telephone numbers 330544 and 321071 at Gurgaon. In respect of STD PCO no.330544, he kept 37000 calls under dispute for the billing period 01.10.94 to 31.10.94 by issuing a provisional bill of Rs.4141/- against a bill of Rs.47827/- and 13000 calls kept under dispute by issuing a provisional bill of Rs.2491/- against a bill of Rs.17727/- for the billing period 1.11.94 to 30.11.94, he also issued another provisional bill for Rs.2169/- against a bill of Rs.17268/- for the billing period 01.11.94 to 15.11.94 and kept 13000 calls under dispute. He also issued a provisional bill of Rs.10473/- against a bill of Rs.25075/- in r/o STD PCO No.321071 for the billing period 01.10.94 to 31.10.94 by keeping 12000 calls under dispute. He thus has violated clause 11 and 15 of DOT guidelines annexed with DOT ND No.31-13/91-PHB dated 14.8.92 causing benefit to STD PCO licensees and loss to the department. He also did not pursue the cases vigorously for settlement.

By the above act, he has shown lack of integrity and lack of devotion to duty violating 3.1 (i) & 3.1 (ii) of CCS Conduct Rules, 1964.

ARTICLE-II

That the said Shri M.L.Gupta, while functioning as AO(TR) Gurgaon during the period from 11/94 to 2/96 restored STD PCO No.GRG 330486 without getting payment of pending bills made by the subscriber against bill dated 1.10.94 for Rs.16625/- Thus Shri M.L.Gupta has violated Para 169 of P&T Man Vol XIV and benefited the STD PCO licensee causing loss to the department.

By the above act Shri M.L.Gupta has shown lack of integrity and devotion to duty and there-by violating rule 3.1 (i) & 3.1 (ii) of CCS Conduct Rules, 1964."

3. The contention of the applicant is that the chargesheet has been issued for an action taken by him during the year 1994. Long delay of seven years in

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issuance of the aforesaid chargesheet for the alleged misconduct of the applicant has done grave prejudice to him. According to the applicant, the respondents cannot be allowed to hold an enquiry on the basis of stale charges being sought to be levied against him without explaining the reasons for such a long delay. Apart from this, the chargesheet has also been issued to him with malafide intention inasmuch as the same has been served merely to deny him promotion, particularly when he has become due and eligible for promotion to the higher grade. Aggrieved by this, he has filed the present OA seeking the aforesaid relief.

4. The respondents in their reply have explained the delay for the events which took place after 29.8.97 till the chargesheet was issued to the applicant. They have relied upon the judgement of the Hon'ble Supreme Court in the case of Union of India & ors. vs. Upendra Singh, 1994 (27) ATC 2000, wherein it was held as under:

"In the case of charges framed in a disciplinary inquiry the Tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be."

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5. The respondents have also stated that the decision of serving a major penalty chargesheet on the applicant was taken on merit and that there was no malafide on their part in serving the same. According to them, the delay in serving the chargesheet is mainly due to the fact that they have consulted the Central Vigilance Commission (in short 'CVC') on the issue of issuing the chargesheet either under Rule 14 or Rule 16. The department wanted to issue the chargesheet for imposing the minor penalty whereas the CVC has advised to issue chargesheet for imposing major penalty. Apart from this, two MOCs joined and demitted office in quick succession and that is why the file got delayed.

6. Heard the learned counsel for the parties and perused the records.

7. Learned counsel for the applicant stated that the applicant was working on the post of Chief Accounts Officer on ad-hoc basis. He has been reverted to the post of Senior Accounts Officer without serving any notice. Even the chargesheet has been issued after his reversion to the post of Senior AO. Learned counsel also submits that the applicant has now become eligible for promotion to the post of higher grades and issuing of chargesheet after such a long delay, will come in his way for promotion to the higher post. He also alleged malafide in serving the chargesheet to the applicant and also submitted that enquiry is not being conducted by the respondents as per prescribed procedure. He has not been given the relied upon documents by the respondents and has also been denied the opportunity to defend himself affectively. In support

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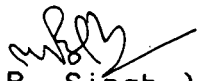
of his contention, he has relied upon the judgement of the Jodhpur Bench of the Tribunal in the case of Ranjeet Lal Jain vs. Union of India and anr. decided on 27.6.2000 and also on the judgement of the Madras High Court in the case of B.Loganathan vs. Union of India decided on 4.8.2000. Learned counsel for the applicant has also relied upon the CVC letter No. 99/VGL/66 dated 28.9.2000 contained in Appendix - 102 "Consultation with the CVC".

8. On the other hand, learned counsel for the respondents relied upon the Supreme Court judgement in the case of Upendra Singh (supra) and submitted that it is for the disciplinary authority to find the truth of the allegations made against the applicant and not for the court to look into this matter.

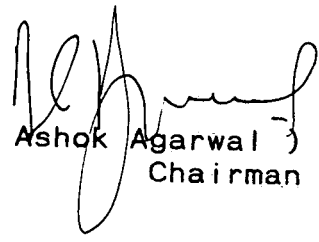
9. We have perused the judgements submitted by the learned counsel for the applicant and have also gone through the letter issued by the CVC on the subject. After perusing the judgements and the instructions issued by the CVC, we find that these are not applicable in the present case. The law laid down by the Hon'ble Supreme Court is that the Tribunal should not interfere at the interlocutory stage and it also cannot take over the functions of the disciplinary authority. It has also been observed by the Hon'ble Supreme Court that the Tribunal can interfere only if on the charges framed, no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law.



10. In this case, we do not find any ground that the charges framed against the applicant are contrary to law or no charge has been made out against him. In view of the aforestated legal position, we do not find any ground to interfere in the order passed by the respondents. For the reasons recorded above, we do not find any merit in this OA, which is accordingly dismissed. However, the respondents are directed to complete the enquiry proceedings expeditiously and applicant is expected to co-operate in the departmental enquiry.


(M.P. Singh)
Member(A)

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(Ashok Agarwal)
Chairman