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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.342/99

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Shri Govindan S. Tampi, Member(A)

New Delhi, this the 24th day of October, 2000

Shri R.K.Sachdeva
s/o Shri (Late) Udhoo Dass
r/o A-8/6, Sector 15
Rohini
Delhi - 110 085. Applicant

(By Shri D.S.Chaudhary, Advocate)

Vs.

1. Union of India through
the Chairman
Telecommunications Commission
Department of Telecommunications
Sanchar Bhavan
20, Ashoka Road
New Delhi - 110 001.
2. The General Manager (NTR)
Kidwai Bhavan, Jan Path
New Delhi - 110 001.
3. Director (SM & Admn.)
Office of C.G.M. (NTR)
Kidwai Bhavan, Jan Path
New Delhi - 110 001.
4. Deputy General Manager (Computer)
Mahanagar Telephone Nigam Limited
Nehru Place Telephone Exchange
New Delhi - 110 019.
5. Shri P.L.Malhotra
A.E. (Disc.I)
Office of the Director (Vigilance)
4th Floor, Khurshid Lal Bhavan
New Delhi - 110 001. Respondents

(By ^{Ms.} Shri Geetanjali Goel, Advocate)

O R D E R (Oral)

Justice V. Rajagopala Reddy:

A challenge is made in this OA to the orders passed by the appellate authority confirming the order of the disciplinary authority in dismissing the applicant from service.

(Signature)

2. The applicant, a Junior Engineer while officiating as Assistant Engineer (Installation), during 1984-86 in the office of General Manager, Delhi Telephones was alleged to have committed gross misconduct of misappropriation of the Government money by fabricating and inflating bills of items purchased locally. He is also alleged not to have maintained any records for any of the items issued locally purchased. Further he had exceeded his financial powers for making cash payments to the private parties. Since the applicant denied the charges an enquiry has been conducted and it culminated in the order of dismissal passed by the disciplinary authority on 13.7.1990. But pending disposal of the appeal, he filed OA No.2185/91 and the OA was allowed by order 1st April, 1997 remitting the case to the appellate authority to decide the case in accordance with law. But during the pendency of the OA the appeal was disposed of by order dated 12.4.1993. However, in accordance with the judgment of the Tribunal, the appeal has been considered afresh by the appellate authority ^{who} ~~and~~ upheld the punishment of dismissal by order dated 21.12.1998. The order of dismissal of the disciplinary authority as upheld by appellate authority is under challenge in this OA.

3. We have perused the proceedings of the enquiry including the enquiry officer's report, which show that the applicant had not availed the opportunity of either the inspection of the documents and cross examination of the witnesses and also filing the list of defence witnesses. He also not filed the

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defence statement after the evidence was recorded. Shri D.S.Chaudhary, learned counsel for the applicant, however, strongly contends that he was denied of the proper opportunity to defend himself.

4. We have heard the counsel for the applicant and the respondents on this aspect. A perusal of the enquiry officer's proceedings, revealed that the applicant had not been responding to the enquiry notices. Several times enquiry had to be postponed. It shows that he was not showing due interest in the enquiry. Learned counsel contends that in his representation dated 27.11.1987 to the enquiry officer he requested to change the enquiry officer but the same has not been acceded to. He was not allowed inspection of the documents. The plea appears to be not convincing. A close scrutiny of the enquiry proceedings tells a different story. He was asked to inspect the documents by letter dated 30.3.1988 upto 15.4.1988. The applicant had received the memo dated 30.3.1988 to attend the office for inspection of the documents on 11.4.1988. The applicant instead of inspecting the documents, made a representation dated 13.4.1988 wherein he informed that it was not possible for him to inspect the documents as the defence assistant was ill. This request was considered but was rejected on the ground that no medical certificate has been filed in support of the sickness. The learned counsel for the applicant contends that the action of the enquiry officer is wholly impermissible as he could have granted time for inspection of the documents as he was unable to inspect the same as the defence assistant

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was sick. We do not find any merit in this contention. No reason has been shown in these proceedings nor by the learned counsel for not filing the medical certificate by 15.4.1988 or he could have asked for another defence assistant. We are not an appellate authority to interfere with the discretion properly exercised by the Enquiry Officer and to come to a different view. It is further seen that three witnesses have been examined for the prosecution on 26.4.1988 but none of them have been cross examined though he was present during the enquiry. He could have himself cross examined the witnesses. No reason was shown as to what happened to his defence assistant, as he was ill only on 11.4.1988. As the applicant was a Junior Engineer and it cannot be presumed that he was unable to question the witnesses. We also find, to our surprise, that no application for change of the defence assistant and appointing of another defence assistant was made. After the evidence was closed he was asked to make his defence statement and file list of defence witnesses. He had neither filed the defence statement nor filed a list of witnesses. The contention that the enquiry officer could have adjourned the enquiry for a longer period to enable the defence assistant becomes well and participate in the enquiry cannot be accepted. It is no doubt, true that the enquiry officer could have adjourned the matter. It is no doubt true that he may have done so. Is it not his discretion how to hold the enquiry? But can be said that he has not properly exercised his discretion? So long as he conforms to the rules and his actions are not perverse or wholly unreasonable it is possible for us to interfere in the

exercise of judicial review jurisdiction. On top of it no satisfactory grounds or explanation is placed on record requiring the adjourning the enquiry. After all we cannot find fault with the Enquiry Officer for proceeding with the enquiry with expedition!

5. It is next contended that the disciplinary authority was not the competent authority to pass the impugned order. As the applicant has been officiating in the post of Assistant Engineer Group 'B' post the order should have been passed not by the Director but by the Head of the Department. The learned counsel for the respondents, contesting this argument, submits that this objection has not been raised before the appellate authority. It is however submitted that as the applicant was holding the substantive post of Junior Engineer (a group 'C' post) and has been only officiating on the date of issue of the charge sheet in the post of Assistant Engineer, the competent authority was the Director and not the Head of the Department. It is not disputed that his substantive post was Group 'C' post as he was Junior Engineer and on the date of the charge sheet he was only officiating in the post of Assistant Engineer. Thus, in our view, Director was the competent authority for imposing the punishment, of Group 'C' employees. The contention therefore is not accepted.

6. It is then contended that the respondents have practised hostile discrimination against the applicant as Shri E.D.Kaushik, a Junior Engineer, who was also proceeded against with the same allegations, has been let off with lesser punishment of reduction

in pay whereas the applicant has been discriminated by dismissing him from service. It is also contended that the applicant's case has been referred to the CVC whereas the case of Shri E.D.Kaushik has not been referred. This contention was squarely met by the appellate authority, in its order, which we feel has to be extracted in full:

"At the outset, it is made clear that the Appellant, or for that matter anyone, cannot claim clemency in respect of any offence or misconduct committed by him, by just comparing his case with any other. The facts and circumstances in the two cases even where the nature of charges are similar, can be different and unique in each case. Moreover, the totality and quality of evidence adduced during the inquiry in respect of such two cases can also be different. Disc. authority while considering the case and deciding upon the nature and quantum of punishment, has to take all such facts and circumstances into account beside any other factor relevant to the case. Even if it is presumed that there has been a miscarriage of justice in the case of B.D.Kaushik, J.T.O. because he has been inflicted a light penalty, not commensurate with his gravity of charge, the same can be only a subject matter of an investigation to find out if such thing has happened due to negligence or malafide design on the part of any officer/authority handling or deciding the case but not a ground to have any influence or bearing upon any other similar case. Therefore, the plea taken by the Appellant that in a similar case the delinquent officer was inflicted lighter punishment and therefore, he should also be inflicted with lighter punishment, is not held tenable. I shall judge his case only according to its own merit after considering the various facts and circumstances presented before me in the form of documentary and oral evidence adduced before the Inquiry as well as other relevant facts and circumstances, e.g. Inquiry report, Defence statement etc."

7. We entirely agree with the view of the appellate authority.

8. It is then contended that though the disciplinary authority had initially come to the conclusion to impose the lesser penalty of compulsory retirement. But in view of the advise tendered by the CVC, the extreme penalty of dismissal has been imposed by him. We do not find any irregularity in taking the

advise of the CVC in vigilance matters. The disciplinary authority may have initially come to a tentative conclusion for imposing the lesser penalty. But on consideration of the advise tendered by the CVC considering, and the enquiry officer's report and the CVC recommendations it could pass the final order imposing penalty of dismissal which cannot be said to be illegal. But it appears that the appellate authority while passing the order dated 12.4.1993 has taken the advise of the CVC. The CVC has no role to play in the appeals. The appellate authority itself has to consider the matter and dispose of the same. Be that as it may, in this case this order of appellate authority was not acted upon. In view of the Tribunal's order the appellate authority had passed a fresh order which is now impugned in this OA. The order dated 12.4.1993 was neither impugned nor acted upon. This irregularity committed by the earlier appellate authority is wholly inconsequential.

9. The OA therefore is devoid of merits and is accordingly dismissed. We do not, however, order costs.

(GOVINDAN S. TAMPI)
MEMBER(A)

Ambygopal Reddy
(V.RAJAGOPALA REDDY)
VICE CHAIRMAN(J)

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