

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 332/87
T.A. No.

198

18.12.89
DATE OF DECISION 18.12.89

Bhim Singh

Petitioner

Shri L.P. Gaur and Shri Sant Lal

Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondent

Shri P.P. Khurana

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. Kaushal Kumar, Vice-Chairman.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether to be circulated to other Benches? Yes

kaushal kumar

(Kaushal Kumar)
Vice-Chairman

amitav banerji
(Amitav Banerji)
Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH
NEW DELHI

AKC
Date of decision: 18.12.89

O.A.332 of 1987

Bhim Singh

Applicant

Mr. L.P.Gaur}
Mr. Sant Lal}

Counsel for the Applicant

VERSUS

Union of India & others

Respondents

Mr. P.P.Khurana

Counsel for the Respondents

CORAM:

THE HON'BLE MR.JUSTICE AMITAV BANERJI CHAIRMAN
THE HON'BLE MR. KAUSHAL KUMAR VICE CHAIRMAN

JUDGMENT OF THE BENCH DELIVERED BY
HON'BLE MR. KAUSHAL KUMAR

In this Application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant who was a Technician in the Telephone Exchange, Jind (Haryana) has called in question the order dated 10.11.82 passed by the Divisional Engineer Telegraphs, Hissar by which his services were "terminated with immediate effect" and the appellate order dated 27.3.84 passed by the Director Telecom (South) Ambala upholding the decision of the Divisional Engineer Telegraphs, Hissar regarding termination of the services of the applicant with effect from 20.11.82 and further the order dated 24.11.86 passed by the revisional authority namely, Member (Personnel) Telecom board whereby the petition dated 25.6.84 of the applicant was rejected.

2. The applicant was appointed as Mechanic and posted at Jind with effect from 15.2.74 vide order dated 8.4.74 (filed as Annexure-R.1 to the Written Statement filed on

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behalf of the respondents). This order is signed by the Sub Divisional Officer Telegraphs, Hissar and clearly states that the applicant was appointed by Sub Divisional Officer Telegraphs, Hissar as directed by the Postmaster-General Ambala office Memo No. STB/E-190/II dated 13.2.74, filed as Annexure-A to the Application. Vide the said Memo the applicant was posted on completion of his training to Jind vice one Shri Jagdish Kumar.

3. On the basis of a complaint filed by one Shri Tara Chand, subscriber of telephone No.409 at Jind and preliminary enquiry which showed that the telephone exchange was found dead for a certain period on 17.2.77 and again on 18.2.77, the applicant was proceeded with under Rule 14 of the CCS (CCA) Rules, 1965 (for short 'the Rules') vide Sub Divisional Officer Jind's Memo dated 25.4.77. The gist of the allegations which formed the basis of the charge sheet as indicated in the order dated 10.11.82 are stated below:-

- "1. Made the Exchange dead on 17.2.77 & 18.2.77 intentionally and thus caused a sabotage in the Tele-exchange working.
- 2. Threatened the T.O. on duty as not to put through trunk calls of tele. No.409 Jind.
- 3. Brought about a loss of revenue by causing an obstruction (making the telephone dead etc) to put through the trunk calls.
- 4. Made mis-use of his authority while on duty by his revengeful attitude towards the sub-of Tele. no.409.
- 5. Refused to co-operate in the inquiry and even tried to take away the documents of enquiry."

4. An enquiry was conducted by the Junior Engineer Hissar who vide his report dated 9.7.81 held that "there does not appear to be any material evidence in support of the alleged happening". The Enquiry Officer submitted his report to Sub Divisional Officer Telegraphs, Jind but the order terminating the services of the applicant was passed

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by the Divisional Engineer Telegraphs. The same was subsequently upheld by the appellate and revisional authorities.

5. It has been contended by the learned counsel for the applicant that in his case the appointing authority was the Director of Telegraphs Punjab Circle on whose behalf the Memo dated 13.2.74 (Annexure-A to the Application) was issued and, therefore, initiation of the disciplinary proceedings by a lower authority namely Sub Divisional Officer Telegraphs was illegal and in violation of Article 311 of the Constitution. It has further been contended that the Sub Divisional Officer who had appointed the Enquiry Officer did not forward the enquiry report to the Divisional Engineer Telegraphs who imposed the penalty and that this was a case where the Enquiry Officer had exonerated the applicant but neither the copy of the enquiry report was supplied to the applicant along with the order passed by the disciplinary authority nor was an opportunity given to the applicant to explain his case and put up his defence before the disciplinary authority took a different view. In this connection Rule 17 of the Rules was referred to and reliance was also placed on the judgment of the Patna Bench of this Tribunal in Krishna Murari Lall Vs. Union of India & others¹.

6. On behalf of the respondents the learned counsel Shri P.P.Khurana urged that Sub Divisional Officer Telegraphs was the appointing as well as the disciplinary authority in the case of the applicant but he was competent to impose only minor penalties and, therefore, he had to refer the case of the applicant to the next higher authority for imposition of a major penalty. In this

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connection Shri Khurana referred to the old P & T Manual which was in force at the time when disciplinary proceedings were initiated against the applicant according to which Sub Divisional Officer Telegraphs was the appointing authority but as disciplinary authority he could impose only minor penalties mentioned at (i) to (iv) under Rule 11 of the Rules and since he was of the view that this was a case justifying the imposition of a major penalty he had referred the case to Divisional Engineer Telegraphs who was the next higher authority.

7. As regards the contention that the disciplinary proceedings and the imposition of penalty were vitiated because a copy of the enquiry report was not furnished to the applicant the learned counsel for the respondents pointed out that this plea had not been taken in the averments made in the Application and the learned counsel for the applicant could not raise the same at the time of arguments.

8. We have carefully considered the contentions raised on both sides and notice that this case presents certain peculiar features showing non-application of mind on the part of the disciplinary as also the appellate authority. It is seen that both in the order of the disciplinary authority dated 10.11.82 as also the order of appellate authority dated 27.3.84 the penalty imposed is one of 'termination of service'. There is no such penalty prescribed either minor or major under Rule 11 of the Rules. There are three major penalties under Rule 11 mentioned at (vii), (viii) and (ix) namely 'compulsory retirement', 'removal from service' and 'dismissal from service' all of which result in termination of service. A simple termination of service without attracting any

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penal consequence is envisaged only under the CCS (Temporary Service) Rules, 1965. Although the order of the revisional authority dated 24.11.86 passed by Member (Personnel) Telecom board does refer to 'penalty of removal from service imposed on the petitioner', we do not find any basis for the revisional authority coming to the conclusion that 'termination of services' as envisaged in the order of the disciplinary authority and the appellate authority was intended to be 'removal from service' as distinguished from 'compulsory retirement' or 'dismissal from service'!

9. We are satisfied that in the case of the applicant, Sub Divisional Officer Telegraphs being the appointing authority was also the disciplinary authority for imposition of minor penalties and the plea raised in the Application that the applicant was appointed by the Director of Telegraphs, Punjab Circle, Ambala has no substance since the Memo dated 10.2.74 filed as Annexure-A to the Application indicates merely the posting of the applicant along with others on completion of their training and does not constitute the appointment order. However, we find that the enquiry proceedings suffers from other serious lacunae. Admittedly the Memo of charge was issued by Sub Divisional Officer Telegraphs who also appointed the Enquiry Officer. It was not clear as to how the enquiry report reached the Divisional Engineer Telegraphs. In reply to the averments made in para (ii) under 'Grounds for the relief and the legal provisions relied upon' in the Application that the Sub Divisional Officer Telegraphs Jind never forwarded the case to the Divisional Engineer Telegraphs Hissar for imposition of penalties specified in Clause (v) to (ix) of Rule 11 of the Rules because he was never of the opinion that such penalties should be imposed, it has been stated in the Written Statement filed on behalf

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of the respondents as follows:-

".. It is submitted that the competent authority to impose the major penalty as a result of the disciplinary proceedings initiated under Rule 14(2) of CCS (CCA)Rules, 1965 was D.E.Telegraphs Hissar who after examination of the case choose to differ with the findings of the Enquiry Officer and ordered that the services of the petitioner be terminated. It is, therefore, wrong to allege that S.D.O.Telegraphs never forwarded the case to the D.E.T.Hissar for imposition of penalties specified under Clause 5 to 9 of Rule 14 CCS (CCA)Rules, 1965. It is submitted that there was no need for recording any findings by the S.D.O. Telegraphs because the matter lay entirely within the domain of the competent disciplinary authority which in this case was the Divisional Engineer Telegraphs."..

At the time of the arguments the respondents were directed to produce the missing link showing as to how the enquiry report reached the Divisional Engineer Telegraphs and they filed photo copy of the letter No. S.D.O/18/8/82 dated 1.1.1982 by which the enquiry report was forwarded by the Sub Divisional Officer Telegraphs, Jind to the Divisional Engineer Telegraphs Hissar. A perusal of the said letter shows that the Sub Divisional Officer did record his findings and reasons for coming to a conclusion different from that which had been reached by the Enquiry Officer. This contradicts the stand taken in the Written Statement that there was no need for recording any findings by the Sub Divisional Officer Telegraphs.

10. This is also a case where the Enquiry Officer came to the conclusion that the charge against the applicant had not been established since the complainant had not supported the allegation at the time of enquiry. Even the revisional authority in the concluding para of his order stated:-

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"Thus, even though it may be that the subscriber denied having made any complaint, it is seen from the records of the case that the findings of the

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disciplinary authority as upheld by the Appellate Authority in record to the charges against the petitioner cannot be said to be without any evidence."...

He has also stated in an earlier paragraph "The J.E. could not find trace of any fault. In the circumstances it seems difficult to brush aside the charges that the petitioner made the exchange dead. It was admitted by Shri Krishan Chand T.O. that the subscriber knocked at the trunk exchange room for getting his trunk call put through. In the circumstances, the possibility that the petitioner came to the trunk room and asked the telephone operator not to put through the call of the subscriber in question cannot also be said to be baseless."..

11. In the absence of any direct evidence implicating the applicant any conclusion reached regarding the correctness or otherwise of the allegations would appear to be based more on conjectures and surmises. Be that as it may, it is not strictly within the domain of this Tribunal to appraise the evidence or go into its sufficiency but where a charge is held to be proved contrary to the findings of the Enquiry Officer, there have to be cogent grounds as also adequate and irrefutable basis for the same.

12. Rule 17 of the Rules runs as follows:-

"Communication of Orders

Orders made by the disciplinary authority shall be communicated to the Government servant who shall also be supplied with a copy of the report of the inquiry, if any, held by the disciplinary authority and a copy of its findings on each article of charge, or where the disciplinary authority is not the inquiry authority, a copy of the report of the inquiring authority and a statement of the findings of the disciplinary authority together with brief reasons for its disagreement, if any, with the findings of the inquiring authority unless they have already been supplied to him and also a copy of the advice, if any, given by the Commission, and where the disciplinary authority has not accepted the advice of the Commission, a brief statement of the reasons for such non-acceptance."

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From the above it will be seen that furnishing of a copy of the enquiry report by the disciplinary authority to the delinquent official is a mandatory requirement of the Rule and its breach would vitiate the disciplinary proceedings. The learned counsel for the applicant Shri Sant Lal stated that the applicant in his appeal filed against the order of the disciplinary authority had taken *inter alia* the ground regarding non supply of the enquiry report and this fact stood confirmed from para (e) (iii) of the appellate order dated 27.3.84 which runs as follows:-

"(iii) That the copy of the enquiry report was sent by DET Hissar to Shri Bhim Singh Ex-Technician vide DET Hissar No.Q-808/12 dated 5.2.83 but was received back by him as undelivered. The same was again sent to Shri Bhim Singh by DET Hissar under his letter No.Q808/115 dated 2.3.83."

The learned counsel pointed out that whereas the disciplinary authority had passed the order on 10.11.82 and appeal was required to be filed within a period of 45 days as prescribed under Rule 25 of the Rules, the copy of the enquiry report was sent for the first time on 5.2.83 as admitted by the appellate authority in his order dated 27.3.84 and, therefore, this was a clear violation of the mandatory provision of Rule 17. We find sufficient force and merit in this contention urged on behalf of the applicant.

13. In Krishna Murari Lall *supra* the Tribunal observed as follows:-

"24. While disagreeing with the findings of the Inquiry Officer, the disciplinary authority has held the plaintiff guilty of the second charge, from which he was acquitted by the Inquiry Officer, without giving any notice or opportunity to the plaintiff to show cause. In the case of Narayan Misra v. State of Orissa the Supreme Court set aside the order of removal of the appellant being violative of natural justice and fair-play as the punishing authority; while differing from the findings of the Inquiry Officer and holding the official guilty of charges from which he was acquitted by the Inquiry Officer, had not given him an adequate opportunity nor any notice.

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25. In TA-114 of 1986, Shankar Lal Vishwakarma v. Union of India and others, the Jabalpur Bench of the Central Administrative Tribunal had held that when the disciplinary authority has to differ with the findings of an Inquiry Officer he ought to fully examine the evidence on record and come to a conclusion that cannot be judicially questioned. In such cases, it would also be equitable that the disciplinary authority gives further opportunity of hearing to the delinquent official to explain his case."

14. Admittedly in this case the disciplinary authority did not give any opportunity whatsoever to the applicant to explain his case before he took a view different from that of the Enquiry Officer and, therefore, this by itself would render the order of disciplinary authority liable to be quashed.

15. In view of the above discussion the Application is allowed and the order of the disciplinary authority dated 10.11.82 along with the order of the appellate authority dated 27.3.84 and the order dated 24.11.86 of the revisional authority are hereby quashed. We further direct that the applicant shall be reinstated in service forthwith not later than three months from the date of receipt of this order by the respondents and he shall also be entitled to all consequential benefits regarding payment of arrears of salary etc. There shall be no order as to costs.

Khurram
18.12.89
(Kaushal Kumar)
Vice Chairman

AB
(Amitav Banerji)
Chairman