

In the Central Administrative Tribunal
Principal Bench: New Delhi

Regn.No.OA-650/87

Date of decision: 17.09.1992.

Shri Avinash Chander Magon

...Petitioner

Versus

Union of India through Secretary, ...Respondents
Ministry of Communications, Department
of Telecom, Sanchar Bhawan, New Delhi & Another.

Coram:-

The Hon'ble Mr. Justice V.S. Malimath, Chairman
The Hon'ble Mr.I.K. Rasgotra, Administrative Member

For the petitioner. Shri B.K. Aggarwal, Counsel.

For the respondents Shri A.K. Sikri, Counsel.

Judgement(Oral)
(Hon'ble Mr. Justice V.S. Malimath, Chairman)

A disciplinary inquiry was held against the petitioner on certain charges. The enquiry officer submitted a report on 25.1.1982 holding that the charge levelled against the petitioner has not been established.

On receipt of the said report the disciplinary authority disagreed with the findings of the enquiry officer, held that the petitioner is guilty of the charge levelled against him and then passed the final order imposing the penalty of reduction in pay of the petitioner to the minimum of the scale of pay i.e. Rs.330/- in the scale of pay of Rs.330-560 for a period of five years with cumulative effect. The appeal filed against the said decision was dismissed by the appellate authority. The revision petition filed by the petitioner

against the said order also met the same fate. It is in this background that the petitioner has approached the Tribunal for appropriate relief.

2. Shri B.K. Aggarwal, learned counsel for the petitioner formulated two submissions in support of his case. Firstly that no notice was given by the disciplinary authority before impugned order came to be passed and secondly there is no evidence in support of the charge levelled against the petitioner. So far as the first point is concerned, it is clear that the disciplinary authority not being the inquiring authority was required to issue a show cause notice before recording the finding against the petitioner that the charge levelled against the petitioner is proved. That no such notice or opportunity was given to the petitioner is not disputed by the respondents. We, therefore, have no hesitation in holding that the imposition of the penalty without the petitioner being given an opportunity of showing cause was not legal and proper. As on this short ground the impugned order is liable to be quashed, we do not express any opinion on the second contention which has a bearing on the merits. It is open to the petitioner to raise all available contentions when an opportunity is afforded ✓ to him to satisfy the disciplinary authority that

there is no satisfactory evidence to establish the charge levelled against him.

3. For the reasons stated above this petition is allowed and the impugned order (Annexure-A-9) dated 18.11.1981, appellate order (Annexure A-10) dated 1.3.1985 and the revisional order (Annexure A-11) dated 26.5.1986 are hereby quashed and the case is remitted back to the disciplinary authority for fresh disposal in accordance with law. Liberty is reserved to the disciplinary authority to proceed further with the inquiry in accordance with law from the stage at which infirmity has been noticed in the proceedings as above. Consequently it follows that if the disciplinary authority proposes to disagree with the findings of the enquiry officer he has to record his tentative conclusion and issue a show cause as to why charge levelled against the petitioner should not be held proved. After considering the cause that may be shown by the petitioner, the disciplinary authority may proceed further to take action in accordance with law. Let the disciplinary proceedings be concluded as expeditiously as possible. This O.A. stands allowed with the aforesaid direction. No costs.


(I.K. Rasgotra)
Member (A)


(V.S. Malimath)
Chairman

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