

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 881/87 1987
T.A. No.

DATE OF DECISION 17.10.1988

Shri Kewal Krishan Petitioner

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. P. K. Kartha, Vice-Chairman(Judl.)

The Hon'ble Mr. S. P. Mukerji, Vice-Chairman(A)

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 it needs to be circulated to other Benches of the Tribunal? *No*

MGIPRRND-12 CAT/86-3-12-86-15,000

S.P. Mukerji
(S.P. Mukerji)
Vice-Chairman(A)

P.K. Kartha
(P.K. Kartha)
Vice-Chairman(Judl.)

(6)

Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. OA-881/87

Date: 17-10-1983

Shri Kewal Krishan

.... Applicant

Versus

Union of India & Ors.

.... Respondents

For the Applicant

.... Shri Sant Lal, Advocate

For the Respondents

.... Shri P.P. Khurana, Advocate.

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Shri S.P. Mukerji, Vice-Chairman (Adm.)

(Judgement of the Bench to be delivered by
Hon'ble Shri P.K. Kartha, Vice-Chairman).

The applicant, who has worked as a Telegraphist in the Parliament House Departmental Telegraph Office during 1983, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying that the impugned orders dated 26.6.1985 (Annexure A-3), 11.3.1986 (Annexure A-2) and 30.4.1987 (Annexure A-1) be quashed and that he should be given all consequential benefits.

2. The facts of the case in brief are that while working as Telegraphist in Parliament House Departmental Telegraphs Office, disciplinary proceedings were initiated against the applicant under Rule 14 of the C.C.S. (CCA) Rules, 1965 vide memo. dated 24.10.1983 alleging misappropriation of a sum of Rs.297/50 paise on account of short credits in respect of 32 telegrams alleged to have been booked by the applicant during the period from February, 1983 to September, 1983. It is also alleged that the applicant tampered with some office records. The articles of charge against him read as under:-

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"ARTICLE-I

That Shri Kewal Krishan-IV while functioning as C/S TL DTO Parliament House and while performing his duty at Public counter of the said DTO has committed an act of gross misconduct/indiscipline

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in as much as he misappropriated Government money amounting to Rs.297.50 by not crediting the actual amount realised by him from the senders of telegrams who came to tender their telegrams at DTO Parliament House between the period from February, 1983 to September, 1983, and thus has failed to maintain absolute integrity and has acted in a manner unbecoming of a Govt. servant, in violation of Rule 3(1) (i) & (iii) of CCS (Conduct) Rules, 1964.

ARTICLE-II

That the said Shri Kewal Krishan IV while functioning as above and performing his duty at Public counter of DTO Parliament House has committed an act of gross misconduct/indiscipline in as much as he tampered with the office records with the bad intention of misappropriation of Govt. cash. Thus he has failed to maintain devotion to duty as well as absolute integrity and thereby has acted in a manner unbecoming of a Government servant in violation of Rule 3(1) (i) (ii) & (iii) of CCS (Conduct) Rules, 1964."

3. The Inquiry Officer who was appointed to inquire into the aforesaid charges, submitted his report to the disciplinary authority on 14.5.1985. The Inquiry Officer held that the charges were partly proved to the extent of 16 telegrams out of 32 which involved the short credit of Rs.140/50 paise.

4. The disciplinary authority agreed with the findings of the Inquiry Officer and passed the impugned order dated 26.6.1985 (Annexure-3) imposing the penalty of reduction by five steps in his pay for a period of three years. His pay was reduced from Rs.480 to Rs.420 in the pay-scale of Rs.260-8-300-EB-8-340-10-360-12-420-EB-12-480. It was also stated that the applicant will not earn any increment of pay during the period of penalty but after the expiry of the punishment, he will draw the pay which he would have drawn but for this penalty.

5. The disciplinary authority also vide his order dated 9.10.1985 (Annexure-4) ordered the recovery of Rs.140/50

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paise from the pay of the applicant on account of the alleged short credit.

6. The applicant preferred an appeal against the award of the aforesaid penalty to the General Manager, Delhi Telephones, on 21.10.1985. The Appellate Authority, vide the impugned order dated 11.3.1986 (Annexure A-2), rejected the appeal.

7. Thereafter the applicant submitted a revision petition to the Member (Admn.), Telecommunication Board on 21.6.1986 which was also rejected by an order dated 30th April, 1987 (Annexure A-1).

8. The applicant has challenged the validity of the impugned orders dated 26.6.1985, 11.3.1986 and 30.4.1987 together with the version of the respondents on various grounds which, may be summed up as follows:-

- (a) According to the provisions contained in Rule 17 of the C.C.S. (CCA) Rules, 1965, the disciplinary authority was required to communicate his orders and supply the applicant with a copy of the inquiry report. Copy of the inquiry report was not supplied along with the punishment order. The same was supplied after 2½ months on submitting the representation for the same on account of which the process of appeal was considerably delayed.

The respondents have stated in their counter-affidavit that the inquiry report was not supplied with the punishment order due to oversight and the same was immediately supplied on the request made by the applicant. In any case, he has not stated that any prejudice was caused thereby.

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(b) The penalty of reduction of pay by five steps for three years imposed on the applicant was disproportionate to the degree of misconduct and is discriminatory and violative of the provisions of Articles 14 and 16 of the Constitution. The applicant was charged for misappropriation of Rs.297.50 paise on account of alleged short credit of 32 telegrams. The Inquiry Officer held the charge as partially proved to the extent of 16 telegrams involving a sum of Rs.140/50 paise. The remaining part of the charge related to the Telegraph Master, in charge of Telegraph Office, Parliament House, New Delhi, but no action was taken against him. The Inquiry Officer has stated in para. 5.7 of his report as follows:-

"In this context, I am also constrained to note that the conduct of SW-1 who was the Telegraph Master in charge at DTO during the relevant period, has not been above board."

The respondents have contended that the applicant was primarily responsible.

(c) Adequate opportunity of defence was not given to the applicant by the Inquiry Officer and this was in violation of the principles of natural justice. The applicant had, vide his application dated 16.2.1985 at Annexure VIII, requested the Inquiry Officer to postpone the inquiry scheduled for 18th and 19th February, 1985 to some time in the second week of March,

1985 on the ground that his Defence Assistant was out of station and was expected to return in the first week of March, 1985. A telephonic message was also conveyed to the Inquiry Officer in this regard. However, the Inquiry Officer adjourned the hearing only on the 18th February, 1985. He proceeded ex parte on 19th February, 1985 and concluded the inquiry on the same day without giving an opportunity for defence.

The respondents have not offered any specific comments in this regard.

(d) The Inquiry Officer was requested vide application dated 27.2.1985 to allow him to submit his defence statement and produce his defence witnesses. The applicant again requested on 5.3.1985 for restoration of inquiry for doing justice to him. This was not done. He, however, submitted his defence statement on 20.4.1985. He was not allowed to produce his defence evidence though he had requested for the same specifically in para.18 of the defence statement.

Oh The respondents have relied upon the Enquiry report wherein it has been stated that the applicant's representation dated 27.2.85 and 4.5.85 were not considered feasible and/or necessary after the closure of enquiry. The defence statement of the applicant dated 20.4.85 was considered by the Enquiry Officer while preparing the enquiry report.

(e) The applicant, vide his application dated 18.8.1984 had submitted the list of six additional documents for inspection. On 21.8.1984, the Inquiry Officer had passed an order wherein he had stated that he felt that these documents might be relevant from the point of view of the applicant. He ordered that these additional documents should be produced by

the Presenting Officer by 31.8.1984 and should be got inspected by the application by 7.9.1984. However, none of those documents was shown or produced in the inquiry which was in violation of Rule 14(13) of the CCS(CCA) Rules, 1965.

The respondents have not offered any comments on this contention.

(f) The Inquiry Officer and the disciplinary authority erred in holding the charges of misappropriation and tampering with the office records as proved. Their observations are based on surmises and conjectures and not on the evidence produced in the inquiry.

The respondents have contended that the charges have been proved by the documentary evidence in the shape of original Telegrams booked, MR-48 receipt books and T.I. 185A which were exhibits in the enquiry and which have been referred to in the enquiry report.

g) Neither the concerned senders of the telegrams booked by the applicant, nor the original receipts issued to them have been produced in the inquiry to prove the charges.

The respondents have contended that according to para 5.5 of the enquiry report, the charge of tampering with the records have been proved.

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h) The receipts in the Form MR-48 and the statements in Form TI-105-A, prepared during the relevant period, had been duly checked by the Telegraph Master in charge of the Office and he had found the same as correct and put his signature in token of having exercised the required check prescribed under the rules.

The respondents have contended that the amount as entered by the applicant in form T.I. 105 A and the receipts of MR-48 were checked by the TM-in-charge and found correct but the fact is that the amount of telegrams as

charged in the telegram forms differ. The verification of T.I. 105-A and MR-48 is the normal procedure adopted in all offices.

i) The Telegraph Master in charge of the office had admitted before the Inquiry Officer that there were verbal instructions from the then Chief Supdt., Central Telegraph, New Delhi that the staff of Parliament House Telegraph Office should not argue with the MPs and the VIPs and should try to accommodate them. The applicant followed the same procedure as was adopted by the Telegraph Master.

The respondents have contended that even if DIO at Parliament House is considered a sensitive office, it does not mean that the official should note different amounts on office copies and those given to the parties. There was no general instructions from the then C.S. CTO regarding making adjustments by realising less amount from the V.I.Ps.

(j) The applicant has been awarded the major penalty of reduction by 5 steps of his pay for a period of three years under the impugned orders. At the same time, a recovery of Rs.140.50 paise was also ordered and deducted from the salary of the applicant vide order dated 9.10.1985. This amounted to double jeopardy within the meaning of Article 20(2) of the Constitution.

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The respondents have denied the above contention.

(k) The impugned orders are not speaking orders and as such, are violative of the principles of natural justice.

The respondents have denied the above contention.

9. The learned Counsel for the respondents contended that a reasonable opportunity was afforded to the applicant during the inquiry. He has also made available to us the relevant file relating to the departmental inquiry against the

applicant.

10. We have carefully gone through the records of the case and have heard the learned Counsel for both the parties. The Inquiry in this case was held on 28.7.84, 21.8.84, 10.1.85, 11.1.85 and 19.2.85. The applicant had participated in the inquiry on 28.7.84, 21.8.84, 10.1.85 and 11.1.85. He had telephonically conveyed to the Inquiry Officer on 16.2.85 that his Defence Assistant was out of station and he was expected to return in the first week of March, 1985. He, therefore, requested the Inquiry Officer to postpone the inquiry date from 18th and 19th February, 1985 to some time in the second week of March, 1985. The telephonic inquiry was followed by a written communication on the same day. However, the Inquiry Officer adjourned the hearing fixed for 18.2.1985 but resumed the hearing on 19.2.85 in the absence of the applicant. In the order sheet dated 19.2.85, the Inquiry Officer has stated that he had received a telephonic message in regard to the postponement of the inquiry. However, he did not consider it necessary to postpone the inquiry further and observed that, "It appears that he is indifferent to the inquiry being held and, therefore, it is not desirable that the useful time of IO and PO be wasted unnecessarily. The inquiry proceedings have, therefore, been held ex parte as provided under Sub-Rule (20) of Rule 14 of CCS (CCA) Rules, 1965."

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11. With regard to the above decision of the Inquiry Officer, it appears to us that the Inquiry Officer was justified to proceed ex parte in the event of the applicant adopting dilatory tactics. In the present case, the inquiry Officer has exercised his discretion in a judicial manner. The facts and circumstances of the case indicated that the applicant was resorting to dilatory tactics. In the circumstances, the holding of further enquiry ex parte was legally in order.

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12. On a perusal of the inquiry report, it would appear that the finding of the Inquiry Officer is based on some evidence. The plea of the applicant during the inquiry was that the DTO at Parliament House, New Delhi, was a sensitive office and a majority of the customers or persons coming to DTO for booking their telegram messages were MPs and other VIPs. There were occasions when MPs and other VIPs booked telegrams and when money receipt was prepared and issued to them, they declined to pay the amount to the extent mentioned in the receipt and paid less. In such cases, the amounts were charged in the money receipts for the actual amount so paid by the particular MP or VIP and the telegram form receipt was modified accordingly. Quite often, the amount mentioned in the telegrams was not modified. This was the prevalent practice in DTO and it was also followed by the Telegraph Master also, who was in charge of the DTO, as and when he booked such telegrams. The applicant stated that there were standing instructions from the then Chief Supdt., CTO, New Delhi, that staff of DTO, Parliament House, are not to argue with MPs and VIPs and to try to accommodate them even at the cost of some relaxations. This fact was also admitted as correct by SW-1, who was the Telegraph Master in charge of DTO during the relevant period. Such deviations from the prescribed procedure or instructions were being done by him as well as by the Telegraph Master in charge "in the larger interest of the department and was in the knowledge of the then C.S., CTO, ND also."

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13. The Inquiry Officer has stated that as a Government servant, the applicant was not to accept less amount in any case, thus violating the procedure and rules laid down by the department. If at all he wanted to, or was forced to do so, he should have sought the approval of the competent authority in writing. The applicant failed to do so.

14. We are inclined to agree with the assessment of the evidence made by the Inquiry Officer in regard to the conduct

of the applicant in the matter of the alleged charging of less amounts from MPs and VIPs. The Inquiry Officer was quite fair in holding that out of 32 telegrams mentioned in the statement of imputations, the applicant was responsible only in respect of 16 telegrams. The fact that the Telegraph Master in charge was also manning the public counter some time and that the Inquiry Officer also noted that his conduct during the relevant period has not been above board, will not absolve the applicant of all blame.

15. As this is not a case where there is no evidence to support the charge, it would not be appropriate on our part to interfere with the findings of the Inquiry Officer. As the Supreme Court has observed in State of Andhra Pradesh Vs. Shri Ram Rao, AIR 1963 SC 1723 at 1727, "The departmental authorities are, if the inquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence, is not a matter which can be permitted to be canvassed before the High Court in a proceedings for a writ under Article 226 of the Constitution."

16. We are also not convinced by the various other contentions raised by the applicant as regards denial of reasonable opportunity to defend himself in the enquiry. To our mind, the applicant was given a reasonable opportunity during the enquiry. The fact that some of the documents summoned by the applicant were not made available to him does not vitiate the proceedings. The findings of the Enquiry Officer are based on documentary evidence the authenticity of which cannot be impeached.

17. One of the contentions raised by the learned Counsel for the applicant was that the impugned orders dated 26.6.1985, 11.3.1986 and 30.4.1987 are not speaking orders. This contention does not

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appear to be legally tenable. The Supreme Court has held in *Tara Chand Khatri v. Municipal Corporation of Delhi and Others*, 1977 SCC(LLS) 151 that while it may be necessary for a disciplinary or administrative authority exercising quasi-judicial functions to state the reasons in support of its orders if it differs from the conclusions arrived at and the recommendations made by the enquiry officer in view of the scheme of a particular enactment or the rules made thereunder, it would be laying down the proposition a little too broadly to say that even an order of concurrence must be supported by reasons. It cannot also be laid down as a general rule that an order is a non-speaking order simply because it is brief and not elaborate. (See also *State of Madras v. A.K.Srinivasan*, AIR 1966 SC 1827).

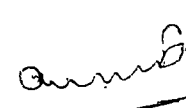
18. On going through the impugned order dated 26.6.85, it will be seen that the Disciplinary authority has come to his conclusion after carefully considering the report of the enquiry officer, the defence submitted by the applicant and other relevant papers of the case placed on record. The appellate orders dated 11.3.86 and 30.4.87 were passed after fully considering the various points raised by the applicant and after due application of mind to the records of the case. These orders are speaking orders.

19. The contention of the applicant that the imposition of penalty of reduction by 5 steps of his pay for a period of three years by the impugned order dated 26.6.85 and the order of recovery of Rs.140.50 paise, vide order dated 9.10.1985 amount to double jeopardy within the meaning of Article 20(2) of the Constitution is not legally tenable. The object of Article 20(2) is to protect a person from being subjected to prosecution and conviction more than once for the same offence. It is well settled that 'punishment' within the meaning of the aforesaid clause

would not include penalty imposed in a disciplinary action in the case of government servants. (Vide Venkataraman v. Union of India, AIR 1954 SC 375). In Punnose v. Manager P & T Motor Service, Cochin & others, 1977 (2) SLR 399, the Kerala High Court held that the imposition of two punishments, i.e., one of censure and another for recovery of money for causing damage to the vehicle of the Department, was not illegal. There is no bar to two penalties being imposed cumulatively on a government servant.

20. There is, however, some force in the contention of the applicant that the penalty imposed was disproportionate to the gravity of the offence. The Telegraph Master who was also responsible for the lapses has not been dealt with departmentally like the applicant. The amount of Rs.140.50 paise which was found to be misappropriated by the applicant has already been recovered from his salary. To our mind, the penalty of reduction by 5 stages in the pay of the applicant for a period of three years was, in the facts and circumstances of the case, disproportionate to the misconduct and that in the interest of justice, the penalty should be modified to withholding of increments for a period of two years from 26.6.1985. Accordingly, we order and direct that the penalty of reduction by five stages in the pay of the applicant for a period of three years should be modified to withholding of increments for a period of two years ^{without any future effect.} from 26.6.85. The application is disposed of on the above lines, with no order as to costs.


17.X.88
(S.P. Mukerji)
Vice Chairman(A)


17/10/88
(P.K. Kartha)
Vice Chairman (J)