CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

R.A. NO. 44/1995
M.A. NO. 393/1995
in
O.A. NO. 1498/1990

New Delhi this the 6th day of February, 1996.

HON'BLE SHRI N. V. KRISHNAN, ACTING CHAIRMAN
HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (J)

Bijender Kumar
S/O Late Shri Net Ram,
R/O A-163, Gali No.4,
Kabir Nagar,
East Badarpur, Shahdra,
Delhi-110032. ... Applicant

(By Shri S. K. Gupta, Advocate)

-Versus-

1. Director (Mtee),
Kidwai Bhawan,
New Delhi.

2. Chief General Manager (MTCC),
Kidwai Bhawan,
New Delhi-1.

3. Director General,
Department of Telecommunication,
New Delhi-1.

4. The Secretary,
Ministry of Telecommunication,
Sanchar Bhawan,
New Delhi. ... Respondents

(By Shri P. H. Ramchandani, Advocate)

O R D E R (ORAL)

Shri N. V. Krishnan, Acting Chairman —

The applicant seeks review of the order dated 14.12.1994 passed by this Bench dismissing the O.A. filed by the applicant. The O.A. was related to his grievance against the punishment imposed on him in disciplinary proceedings. Among the many grounds raised in the O.A., one was that the enquiry officer had completely exonerated the applicant in his report, but, however, the disciplinary authority did not

accept that report and disagreed with the findings of the enquiry officer and found the applicant guilty of a lesser charge than what was framed against him and imposed on him the penalty of stoppage of increments for two years. It was, therefore, contended in the O.A. that the impugned order of the disciplinary authority should be quashed because, in the circumstances, the disciplinary authority was bound to issue a notice to the applicant informing him that he was disagreeing with the enquiry officer's report for reasons mentioned by him and give an opportunity to the applicant to show cause why he should not be found guilty, despite the enquiry officer's report; and that as this had not been done, that order should be quashed.

2. In the review application it is pointed out that this basic ground has not been dealt with in the order sought to be reviewed.

3. Notice was issued to the respondents who have filed their reply in which it is contended that this by itself would be no cause for review as no prejudice is caused to the applicant.

4. When the matter came up earlier, we requested the learned counsel for the applicant to address us on that issue, namely, that even if we had not looked into that ground, whether the original order requires any review on that ground, because there are decisions of the Supreme Court which indicate that non issuance of notice in such cases by itself would not vitiate an order, unless it is further established that prejudice has been caused to the applicant on that

count. We had in mind the decisions of the Supreme Court in Managing Director, ECIL vs. B. Karunakar : JT 1993 (6) SC 1 and a subsequent decision in Kishan Lal vs. State of J & K : 1994 (27) ATC 590.

5. The learned counsel for the applicant addressed us on this issue today. He drew our attention to the fact that, in the charge framed against the applicant, there was a specific allegation that the applicant was caught red-handed in passing an international call unauthorisedly. The enquiry officer considered the charge under three heads, one of which was whether he was caught red-handed or not, and under all three heads he returned the finding that it was not proved. He points out that even the disciplinary authority states in his order dated 29.8.1988 that, in practice, it is not possible to catch anyone red-handed while passing an international call. However, based on the statement of two other workmen, the disciplinary authority found that, though the charges could not be proved directly, there was enough circumstantial evidence to suggest the complicity of the applicant in passing the international call.

6. The learned counsel submitted that if only these reasons had been provided to the applicant by the disciplinary authority, before he passed the final orders and informed him that because of these reasons he was disagreeing with the enquiry officer's report, the applicant would have had an opportunity to contend that as the main charge of being caught red-handed was found to be not proved by the enquiry officer, which was found to be non acceptable by the disciplinary authority, he could have claimed that he should be

exonerated; by not giving him this notice, he has been deprived of this opportunity and thereby prejudice has been caused to him.

7. We pointed out to the learned counsel for the applicant that in a case like this, if that was a ground, that should have been urged for a preliminary decision before anything was done. We also wanted to know from him as to how he can now claim that prejudice has been caused when on the merits of the case, the appellate authority had dismissed his appeal and we have also passed an order dismissing the O.A. on merits.

8. The learned counsel submitted that as a matter of fact he had submitted to the General Manager (Maintenance) who is the appellate authority, that the disciplinary authority had disagreed with the enquiry officer's report without giving him an opportunity and he requested that authority to look into the lapses as early as possible. That representation dated 12.2.1989 has been filed along with an additional affidavit in the review application.

9. We, therefore, pointed out to the learned counsel that the applicant ought to have pressed that matter for final decision, but instead of doing so, he also filed a regular appeal on merits which was disposed of by the appellate authority against him.

10. We are of the view that as laid down by the Supreme Court such procedural irregularities cannot, be held to vitiate the orders passed by the respondents. It may be noted here that the requirement of giving a notice to the applicant in such circumstance is not

a part of the C.C.S. (C.C.A.) Rules, 1965. That was a law laid down by the Supreme Court in Narain Mishra's case (1 969 3 SLR 657) where this was the only issue discussed.

11. Subsequently, following the decision of the Supreme Court in the ECIL's case (supra) another decision was rendered by the Supreme Court in the case of Kishan Lal (supra). That was a case where the statutory rule itself required that a notice should be issued to the employee but such notice was not issued. Therefore, the order of the respondents was quashed by the High Court. The Supreme Court held that the High Court was in error in quashing the order on the only ground that the notice was not issued and that the High Court should have examined whether the non-issue of the notice prejudiced the applicant. The case was remanded with this direction therin. It is in accordance with that decision that we wanted this point to be argued. We are of the view that as the applicant has got decisions rendered by the appellate authority and by us on the merits of the case and as we have found that there is no merit in this application, we have naturally to find that even if a notice was issued to him, that would not have improved the matters and, therefore, no prejudice was caused to him by the non-issue of the notice.

12. In the circumstances, we do not find any merit in this Review Application on that ground which is the only ground raised in the R.A. The R.A. is accordingly dismissed.

(Smt. Lakshmi Swaminathan)
Member (J)

(N.V. Krishnan)
Acting Chairman

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