

Central Administrative Tribunal
Principal Bench: New Delhi

8

O.A. No. 2757/92

New Delhi this the 23rd day of January 1998

Hon'ble Shri S.R. Adige, Vice-Chairman(A)
Hon'ble Dr. A. Vedavalli, Member (J)

Shri Kanhaya Lal Sharma
S/O Shri Kishan Narain
employed as Telegraph Master (T)
channel Tester Fault-Control-I,
C.T.O. New Delhi.

.....Applicant

(By Advocate: Shri Sant Lal)

Versus

1. The Union of India, through
The Secretary, Ministry of Communications,
Department of Telecommunications,
Sanchar Bhawan, New Delhi-110001.
2. The General Manager (Maintenance),
Northern Telecom Region,
Kidwai Bhawan, New Delhi-110001.
3. The Deputy General Manager (Telegraphs)
Central Telegraphs Office,
New Delhi-110001

.....Respondents

(By Advocate: Shri R.P. Aggarwal)

ORDER (Oral)

By Hon'ble Shri S.R. Adige, Vice-Chairman (A)

Applicant impugns disciplinary authority's order dated 26.2.90, imposing the punishment of with-holding of one increment for a period of two years without cumulative effect and the appellate authority's order dated 9.11.90 reducing the penalty to with-holding of increment for a period of one year without cumulative effect, as well as the revision order dated 16.6.92 at Annexure A-3 up-holding the appellate order.

A

9

2. The applicant was proceeded against departmentally on the ground that while functioning as TM(T) and while attached to C.T.O. New Delhi, he committed a grave misconduct/indiscipline inasmuch as he went on hunger strike unauthorisedly by pitching a shamiana in the office compound on 20.10.86 and thereby indulged in agitational activities in contravention of rule 7 CCS (Conduct) Rules and acted in a manner unbecoming of a Govt. servant in violation of Rule 3 (1) (iii) of CCS (Conduct) Rules, 1964.

3. We have heard applicant's counsel Shri Sant Lal and respondents' counsel Shri R.P. Aggarwal.

4. Various grounds have been taken by Shri Sant Lal to challenge the impugned order. One of the grounds taken by him is contained in paragraph 5.5 of the OA, namely that Rule-14 (18) (CCA) Rules, 1965 ~~was~~^{is} not adhered to, inasmuch as after the prosecution had closed its evidence, the E.O. did not generally question applicant on the circumstances appearing against him in the evidence, although it was mandatory for him to do so.

5. Respondents in their reply contend that it was not mandatory for the E.O. to do so, and adherence to this rule would depend upon the facts and circumstances of each case. It is contended that under preceding Rule 14 (17) the applicant could have examined himself in the inquiry to explain any circumstances appearing in the evidence against him but he chose not to do so as he had nothing more to submit. Shri Aggarwal has also emphasised the above during the course of his submission.

A

6. Rule 14 (18) CCS (CCA) rules reads thus:-

The enquiring authority may after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him".

7. From the above rule, as well as the preceding rule 14(17), it is clear that an option is available to the delinquent whether or not he would like to examine himself on his own behalf, but if he has not examined himself, it becomes mandatory upon the E.O., after the Government servant closes his case to generally question him on the circumstances appearing against him in the evidence. We are not persuaded to accept Shri Aggarwal's argument that as the word "shall" occurring in rule 14(18) above can be read as "may", this requirement is not mandatory. We are fortified in our opinion by various rulings cited by Shri Sant Lal including Ram Singh Vs. U.O.I. 1988 (4) SLJ-210; R. Robert Vs. U.O.I. 1991 (16) ATC-671 and M.K. Vaidarajan Vs. Sr. Dy. D.G. PMSE Wing. GSE Bangalore 1991 (16) ATC 822 and Diwan Ram Vs Delhi Administration 1991 (1) CSJ 274.

8. Shri Aggarwal has referred to the scope and ambit of the judicial review, as determined by the Hon'ble Supreme Court in Union of India Vs. B.C. Chaturvedi 1995 (6) SCC 750, State of Tamil Nadu Vs. S. Subramaniam 1996, SCC (L&S) 627, and State of Tamil Nadu Vs. L.V. Perumal 1996 (L&S) SCC 1280, but none of those rulings cited by him

(11)

abridge the authority of the Tribunal to intervene judicially in departmental proceedings, where there has been a patent non-adherence to a rule provision in the conduct of the same, as is noticed in the present case before us.

9. In the light of what has been stated above, we do not consider it necessary to discuss the other grounds raised in the O.A. This O.A. succeeds and is allowed and the impugned orders referred to in paragraph-1 above are quashed and set aside. Respondents are directed to restore the applicant's increment with consequential benefits within three months from the date of receipt of a copy of this order. No costs.

A. Vedavalli

(DR.A. VEDAVALLI)
Member (J)

S.R. Adige

(S.R. ADIGE)
Vice-Chairman (A)

cc.