

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 7th day of June, 2001.

Original Application No.530 of 1996.

CORAM :-

Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

Hon'ble Maj Gen KK Srivastava, A.M.

Pravawati W/o Mr. Ram Narian,

R/o Mohalla-Azit Ganj, 130/291, Makhanlal Ka

Hata, P.P. Transport Nagar, District Kanpur,

Regular Majdoor.

(Sri RP Singh, Advocate)

..... Applicant

Versus

1. Union of India through Secretary Ministry of
Communication.

2. The General Manager, Communication,
Kanpur-208001.

3. Accounts Officer (Cash) Office of
Kanpur Manager, the Mai, Kanpur.

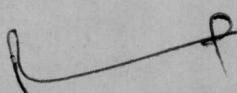
(Sri Amit Sthalekar, Advocate)

..... Respondents

ORDER (Oral)

By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

By this OA the applicant has challenged the order dated 17-10-1995 by which the disciplinary authority punished the applicant by reducing her pay from Rs.786 to Rs.750/- per month for a period of five years with cumulative effect. The order also provided that the applicant will not earn increment during the period of punishment. The aforesaid order was challenged in appeal.



However, the appeal was dismissed by the order dated 28-2-1996.

2. The applicant was serving as a regular Majdoor in the office of General Manager, Telecommunication, district Kanpur. She was served with a memo of charge on 19-10-1993. The charge against the applicant was that on 21-5-1993 she reached office late, but in the attendance register the sign ^{of} ~~crossed~~ by red ink was obliterated by her by putting blue ink, and thereafter she put her signature. The second charge was that when the memo of indiscipline was served on her she took it and threw it after tearing. The third charge is that the applicant was noticed absent on 20-7-93 but in attendance register her signatures were found as if she was present in the evening shift. The Inquiry Officer after hearing the parties and the applicant filed enquiry report dated 10-2-1995 a copy of which has been filed as Annexure-SA-1. Learned counsel for the applicant has submitted that the Inquiry Officer did not find the applicant guilty of the misconduct and recorded a finding that the same has not been proved by convincing evidence. He also observed that she may be given benefit of doubt. It is submitted that as the applicant was exonerated of the charges, the disciplinary authority either could accept the enquiry report or if he disagreed with the report, he should have served a memo of disagreement on the applicant and after giving her an opportunity of hearing only, he could have passed the order. Learned counsel for the applicant has submitted that the procedure adopted by the respondents was illegal and violative of the principles of natural justice and the impugned order cannot be sustained. Reliance has been placed on the judgement of the Hon'ble Supreme Court in case of Yogenath D. Bagde Vs. State of Maharashtra and another, 1999 SCC (L&S) 1385.

3. Sri Amit Sthalekar, counsel for the respondents, on the other had submitted that the applicant was served with the enquiry report and she was given full opportunity to submit her explanation before the disciplinary authority.

✓ ~~Proceedings before disciplinary authority~~ ✓ The disciplinary authority passed the order after taking into consideration of the facts and circumstances and the order does not suffer from any error of law.

4. We have considered submissions of the counsel for the parties. It is not disputed that in the enquiry report findings favourable to the applicant were recorded. The Inquiry Officer recorded specifically that the charges have not been proved by sufficient evidence and the applicant is entitled for benefit of doubt. In such circumstances, it was obligatory on the disciplinary authority to serve a memo of disagreement on the applicant and give her opportunity of explanation and hearing before passing the order of punishment. The Hon'ble Supreme Court in the case of Yogenath D. Bagde clearly held in paragraph 31 that employees should be given opportunity of hearing if disciplinary authority disagrees with the report of the Inquiry Officer. The relevant portion of paragraph 31 is being reproduced below:-

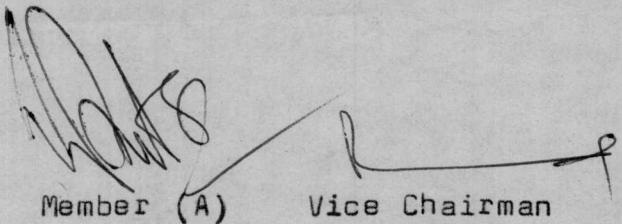
"..... If the findings recorded by the enquiry officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the disciplinary authority has proposed to disagree with the findings of the enquiry officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the disciplinary authority does not bring about the closure of the enquiry

proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the disciplinary authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent upto the final stage".

5. In the present case it is undisputed that the disciplinary authority failed to serve a memo of disagreement on the applicant and passed the order of punishment without giving her opportunity of hearing, the aforesaid view expressed by the Hon'ble Supreme Court is squarely applicable to the facts of the present case. The applicant is entitled for relief. The mere service of enquiry report cannot serve the purpose.

6. For the reasons stated above, this OA is allowed. The impugned orders dated 17-10-1995 and 28-2-1996 are quashed. However, it shall be open to the respondents to pass a fresh order after complying with the provisions of law and in that event the enquiry shall commence from the stage the Inquiry Officer submitted his report before the disciplinary authority.

7. The OA is disposed of accordingly with no order as to costs.



Member (A) Vice Chairman

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Rev Npp. No. 62/01
in
O.A. No. 530/96.

20.05.03

Hon'ble Mr. Justice R.R.K Trivedi, V.C.
Hon'ble Maj Gen KK Srivastava, A.M.

Sri A Sthalekar learned counsel for the applicant/ respondents and Sri A.K. Jaiswal learned counsel for the respondents.

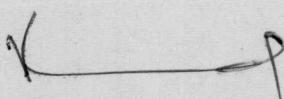
We have heard learned counsel for the parties on merits as we have recalled our orders dated 7.6.2001 order dictated separately.

It is not disputed that the telecommunication department has been converted into a corporation known as Bharat Sanchar Nigam Ltd and services of the applicant, who is class 4 employee, has been absorbed in the Corporation and this Tribunal has no jurisdiction to hear the disputes against Bharat Sanchar Nigam Ltd, as no notification has been issued by Central Government under section 14 (2) of Administrative Act 1985, conferring the jurisdiction on this Tribunal.

The legal position in this regard has been well settled by judgments of Division Bench of Delhi High Court in C.M.WP. No. 2702/01 decided on 24.08.01 in case of Shri Ram Gopal Verma Vs. U.O.I & ors. reported in 2002(1) A.I.S.L.J 352 and Bombay High Court in case of B.S.N.L. Vs A.R. Patil reported in 2002(3) A.T.J Page-1.

In the circumstances, the O.A. is dismissed as not maintainable. The applicant may raise his grievance before the appropriate forum.


Member-A.


Vice-Chairman.

Manish/-