

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

ORIGINAL APPLICATION NO. 38 OF 2004.

ALLAHABAD THIS 7th DAY OF February, 2006.

Hon'ble Mr. Justice Khem Karan, V.C.
Hon'ble Mr. P.K. Chatterji, A.M

M. R.P. Rao, S/o Sri M. Nagamumeshwar Rao, Divisional Director, Social Forestry Division, Firozabad .

.....Applicant

(By Advocate: Sri Rajeev Singh)

Versus.

1. Union of India, through its Secretary, Ministry of Forest & Environment, New Delhi.
2. State of U.P. through Principal Secretary Forest, U.P. Civil Secretariat, Lucknow.

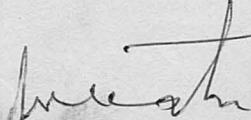
.....Respondents

(By Advocate: S/Sri K.P. Singh and S. Singh)

O R D E R

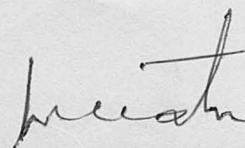
BY P.K. CHATTERJI, MEMBER-A

In filing this O.A., the applicant who is an officer of Indian Forest Service (1986) of the U.P. Cadre has challenged the order dated 15.12.2003 passed by the respondents by which two increments of the applicant has been withheld for a period of two years with cumulative effect.



2. Earlier the applicant has proceeded under Rule 8 of All India Service (Discipline & Appeal) Rules, 1969 (in short Rules of 1969) vide memo dated 12.2.1996. The applicant, during the material period, was working as Divisional Director, Social Forestry Division, Lalitpur, where he joined on 12.2.1993. He remained on the said post till February, 1996. The applicant says that while he was posted at Lalitpur, he received telephone bills in respect of the official telephone no. 2532 dated 5.5.93 for a sum of Rs. 20,782/-, followed by another bill dated 1.7.1993 for sum of Rs. 15,741/-, although the earlier bills used to run between Rs. 4000/- to Rs. 5,000/- per month. The applicant lodged a ^{protest} ~~complaint~~ to the Accounts Officer, Telephone, Jhansi on 7.7.93. The matter was also taken up with SDO, ^{complaint} ~~alleged~~ Telephones. But, still ^{alleged} inflated bills for Rs. 34,571/- was again sent on 1.9.1993. The matter was then taken up with Divisional Telephone Engineer, Jhansi, complaining that some PCO Operators was connecting the line with the official number no. 2532, but nothing was done.

3. The matter was also taken up with the District Consumer Protection Forum, Jhansi in June, 1994. Then the telephone connection was disconnected. But, the Consumer Forum, Jhansi, returned the complaint for want of jurisdiction as it pertained to the forum of Lalitpur. Shortly after this, the applicant was transferred and he left the matter to be pursued by his successor.

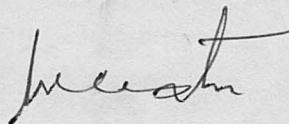


4. The applicant has further alleged that while the Telephone Department has admitted that the disputed amount was Rs. 63,036/-, but in the chargesheet issued against him, an amount of Rs. 2,47,170 was mentioned. The ~~applicant~~ ^{respondent} further alleges that although ~~it is reported in the enquiry report that~~ the chargesheet was sent to the applicant on 12.1.1996, and it was also published in the News paper, but the applicant did not submit any reply to the chargesheet. The applicant, however, says that he went to Delhi on Casual Leave on 28.2.1996. There, he fell ill and remained on leave till July, 1996. For this reason, he was not aware of the chargesheet and could not reply to it. The applicant further alleges that the inquiry was conducted without giving him a reasonable opportunity of defence and also the necessary documents were not furnished to him. He has sought the relief of quashing of the impugned order of punishment and also direction to the respondents not to take the punishment into consideration for the purpose of DPC. The grounds on which the orders have been challenged are as follows :

"(a) Because the very foundation of the chargesheet namely the bills to the tune of Rs. 2,27,170/- submitted by the Telephone Department are not final inasmuch as the matter is pending before the District Consumer Protection Forum, Lalitpur and the Telephone Department has now itself come up with the case that the outstanding dues is only Rs. 63,036/-.

(b) Because in view of the admitted position of the Telephone Department that the outstanding dues is only Rs. 63036/- the finding in the punishment order that the applicant is responsible for the loss of Rs. 218279/- is perverse and vitiated in law.

(c) Because no amount of Rs. 2,18,279/- has been paid by the office of the Divisional Forest Officer, Lalitpur

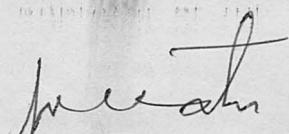


to Telephone Department and, therefore, there was no loss to the Forest Department as stated in the order.

- (d) Because the findings of the inquiry officer are based on suspicions and probabilities and the same therefore cannot take the place of proof.
- (e) Because the applicant was not supplied with the copy of the chargesheet not given opportunity to place his defence in the inquiry proceedings.
- (f) Because as per the Government orders issued from time to time, the inquiry officer should be two ranks higher to the delinquent officer, whereas in the case of the applicant the enquiry officer was only one rank higher, who was Conservator of Forests, though the enquiry officer should have been Chief Conservator of Forest.
- (g) Because despite repeated demands, the relevant documents were not supplied to the applicant for filing his reply to the enquiry report.
- (h) Because despite the order of the District Consumer Protection Forum, Jhansi, the complaint was not filed before the proper forum i.e. District Consumer Protection Forum, Lalitpur till 2002.
- (i) because there is no evidence of any nature to say that the applicant has misused the official Telephone no. 2532 for his personal use.
- (j) Because the enquiry officer held the applicant responsible on suspicion only
- (k) Because a perverse finding has been recorded that the applicant admitted that he used the official telephone for his personal purpose. The applicant never admitted the use of Telephone for his personal purpose before any authority.
- (l) Because the order amounts to prejudge the dispute pending before the District Consumer Protection Forum, Lalitpur.
- (m) Because the action of the respondent in imposing penalty is highly illegal, unreasonable inasmuch as the same shall cause stigma throughout the career of the applicant.
- (n) Because the punishment imposed by the respondent against the applicant is an arbitrary, discriminatory and violative of Article 14 and 16 of the Constitution of India."

5. The respondents in their submission denied the allegations of the applicant. It is stated by them that in the years before the applicant joined at Lalitpur, the telephone bills were restricted within reasonable limit. However, the consumption increased after the applicant joined and it amounted to exorbitant, high ~~value~~. In the chargesheet, it has been mentioned that he did not take up the matter with the Telephone authority in the proper way, instead he wanted to settle the matter through discussion. No information was sent to the Superior officers namely Conservator of Forest in time, until the matter went beyond his control. It has further stated by the respondents that the applicant should have taken up the matter first with the Consumer Forum at Lalitpur, which was the right Forum and it was not known why he had tried to settle the matter at Jhansi.

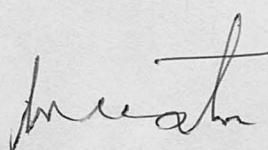
6. It has been further stated by the respondents that the disciplinary proceedings were initiated under Rule 8 of the Rules, 1969. After serving the chargesheet and also publishing the same in the Newspaper, no reply was received from the applicant and thereafter Enquiry Officer and Presenting Officer were appointed. The enquiry was conducted as per Rules and necessary opportunity was given to him, although for the reasons best known to him, he had denied the same. The respondents further state that after the enquiry, consultation was made with the UPSC as it is mandatory in the case of All India Service Officers as per Rule 9 of the Relevant Rules. The punishment order was also passed with the approval of the



competent authority at the Government level. Therefore, there is no infirmity in the disciplinary proceedings. which is in conformity in the disciplinary report.

7. The respondents have further stated that even after the telephone line in the office was disconnected, the applicant was continued to make the calls from the PCO where the amount per month were roughly similar to those for calls on the official telephone before its disconnection. These calls were also charged to the Government. By giving this fact, the respondents have stated that it would be logical to accept that the amount shown in the chargesheet were incurred for calls on the official telephone due to misuse and not due to any fault in the calls.

8. We have gone through the pleadings and heard the arguments of the counsel. The applicant has stated that the findings of the Disciplinary authority were based on suspicion. The punishment has been imposed without any clear proof that the calls were made for the purpose other than officials. We have applied my mind to this matter. The circumstantial factors which have been stated by the respondents such as the amount of the bills before the applicant joined on the post and the amount of the PCO calls after the disconnection would evidently strengthen the argument of the respondent. The applicant has further stated that while the amount disputed was to the tune of Rs. 63,000/- the amount mentioned in the chargesheet above Rs. 2 lacs. In our view, this matter is immaterial. What is

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involved is the question whether misuse was made of the departmental telephone causing loss to the Government.

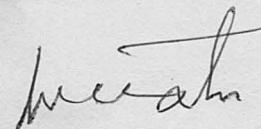
9. We have, however, noticed that the enquiry was conducted by the IO without the presence of the charged official. It has been stated by the respondents that repeated attempts were made to deliver the charge sheet but it could not be served due to his long absence. They have also denied that reasonable opportunity is not given to him for his defence. They have also rebutted the allegation that necessary documents were not supplied to him for filing his reply to the report of enquiry. They have stated that they were prepared to give him all the required documents. If he was not willing to avail of the opportunity, the respondents have nothing to do. However, we have also noticed that the ^{Findings} filing of the guilt is based on assessment of only some documents and the IO did not ask the department and to examine the witnesses to formally prove the gaminess of the charges. Even if the enquiry was exparte the requirement of fixing date, time and place of oral enquiry was necessary in view of the Division Bench Decision of the Hon'ble High Court Govind Lal Srivastava Vs. State of UP [(2005) 2 UPLBEC 1530] the pleadings do not disclose that this was done.

10. It would be pertinent to recall the following observations of the Division Bench of *Hon'ble High Court in Govind Lal Srivastava Vs. State of U.P and others* [(2005) 2 UPLBEC 1530] (*Lucknow Bench*):-

"Para 12- It is cardinal principle of law that in a domestic enquiry the charges levelled against the delinquent officer have to be proved by the Department itself, that too from the material on record and if necessary by adducing evidence. In doing so, it is obligatory on the enquiry Officer to give opportunity to the delinquent officer to controvert report such evidence or to adduce such evidence, which may falsify or belie the case of the department. In nutshell, the delinquent officer has right to demolish the case of the department or prove his innocence, but in no case the delinquent officer is required to disprove the charges before they are put to proof by the Enquiry Officer through agency of the department..... It is always essential in any proceedings, where right of defence or onus of establishing a charge is involved, clear order and intimation about date, time or place and the purpose for which the date has been fixed, should be given by the officer, who is holding enquiry. The delinquent will be hardly knowing as to what report and what additional facts, he should mention before the Enquiry Officer, when charges are not being said to be proved and even before the steps being taken for proving the charges. It is only when the charges are sought to be proved that the delinquent has a right to controvert and rebut the same".

"Para 13- The procedure of domestic enquiry need not be detailed by us..... Even mere non submission of reply to the charge sheet or not asking for opportunity of producing witnesses or evidence would not in itself be sufficient to hold that the opportunity was not availed by the delinquent, though given the Enquiry Officer, on date, time, and place who is to be fixed by him and intimated to the delinquent officer has to proceed with no enquiry by first asking the department to prove the charges by adducing such evidence, which may be necessary for the purpose and relying upon the documents, which may be relevant and thereafter has to afford an opportunity to the delinquent to cross examine the witnesses so adduced or to produce any witness or adduce any evidence in rebuttal....."

11. For the above reasons we are of the view that the disciplinary proceedings suffer from certain infirmities. It was not conducted strictly as per rules which clearly lay down the procedure of ex parte enquiry. For these reasons, we find that

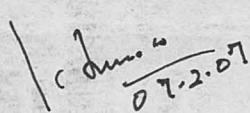


there is merit in the OA and we allow it to the extent of setting aside the proceedings from the stage of holding the enquiry and, thereafter. Accordingly, proceedings are quashed with the direction that fresh enquiry should be held into the matter strictly in accordance with the relevant disciplinary rules and, thereafter, ~~conclude~~ ^{concluded} the proceedings at the appropriate level.

12. The OA is disposed of with the above observations. No cost.



MEMBER-A


C. Dinesh
07.2.07

VICE CHAIRMAN

GIRISH/-