

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD

~~O.A.No.~~
~~T.A.No.~~

884

1987.

DATE OF DECISION August, 1987

Lal Chand

Petitioner

Sri R.K. Tewari

Advocate for the Petitioner(s)

Versus

Asst. Divisional Engineer, Phones Respondent

(Court's) Awd. & another

Sri A. Mohiley

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Ajay Johri, A.M.

The Hon'ble Mr. Dr. S. Sharma, J.M.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether to be circulated to other Benches ?

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1988

RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 884 of 1987.

Lal Chand

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Applicant.

Versus

Asstt. Divisional Engineer, Phones,
(Trunks), Allahabad & another

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Respondents.

Hon'ble Ajay Johri, A.M.
Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. Ajay Johri, A.M.)

By this application, received under Section 19 of the Administrative Tribunals Act XIII of 1985, the applicant has challenged an order dated 17.3.1986 passed by the Assistant Engineer, Phones (Trunks), Allahabad imposing the punishment of stoppage of one increment and recovery from pay and prayed for setting aside the ^{3/2 for} impugned order and refund of the amount recovered from him.

2. The facts of the case are that the applicant was taken up on 1.10.1984 under Rule 16 of the C.C.S. (C.C. & A.) Rules, 1965 in connection with the booking of a trunk call from Allahabad to Bombay for under-charging the call and thereby causing loss to the Government exchequer and also cheating the Department. According to the applicant, his request for holding oral enquiry was not agreed to so he had to submit his written defence which he did on 28.10.1984. Thereafter he was awarded the punishment by the impugned order without his defence having been considered. He preferred an appeal against the order and this was rejected on 21.11.1986. According to him the charge-sheet and punishment order are bad and liable to be quashed because he was not supplied a copy of the evidence produced during the enquiry in terms of Rule 16(2) of C.C.S.(C.C.&A) Rules and the findings were not given on each imputation of misconduct. He has also said that the punishment and recovery has

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been ordered in contravention of the provisions of DG's instructions no.3 below Rule 111 of P&T Manual, Volume III.

3. The respondents have said in opposition that the applicant exhibited lack of integrity and conduct unbecoming of a Government servant in connection with the booking of a call to Bombay and he was taken up for the same. They have denied that there is any procedural flaw in the proceedings. The applicant was given reasonable opportunity to inspect the documents. A preliminary enquiry was also held and the charge-sheet was issued after going through the evidence on record. According to them the punishment has been imposed in accordance with the rules.

4. We have heard the learned counsel for the parties and perused the case file and documents. In his rejoinder the applicant has reiterated what he has said in the application in regard to the oral enquiry not having been conducted and the issues raised by him not having been examined by the respondents. According to the applicant the preliminary enquiry cannot form basis of final orders. According to the learned counsel for the applicant, the applicant was not in the Exchange from 1920 hours to 2020 hours as it was his MR/SR, the appellate order is also not a speaking order, hence not maintainable. The contentions raised by the learned counsel for the respondents were that rules and procedure were properly followed and so the punishment order cannot be challenged.

5. Rule 16 lays down the procedure for imposing minor penalties and says that no order imposing on a Government servant any of the minor penalties shall be made except after -

(a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;

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- (b) holding an inquiry in the manner laid down in sub-rules (3) to (23) of Rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;
- (c) taking the representation, if any, submitted by the Government servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;
- (d) recording a finding on each imputation of misconduct or misbehaviour.

It is thus the discretion of the disciplinary authority to hold an enquiry in the manner laid down in sub-rules (3) to (23) of Rule 14. ^{Where} ~~Where~~ evidently the disciplinary authority is of opinion that it is /not necessary to for an inquiry to be held, ~~After~~ ^{3/} after the representation or reply to the charge-sheet has been received from the employee against the proposal to take action against him the disciplinary authority has only to apply its mind to the facts and circumstances of the case and come to a conclusion whether an enquiry is still required or not. DGP&T's letter of 26.9.1973 lays down that where the delinquent employee ~~asks~~ ^{3/} for inspection of certain documents and for cross-examining of witnesses on whose statements the imputations are based the disciplinary authority will consider the request and need not reject the request solely on the ground that an enquiry is not mandatory, but if the records indicate, notwithstanding the points urged by the employee, ~~3/~~ the disciplinary authority could come to a conclusion that an inquiry is not at all necessary. The rejection of the request for holding inquiry has to be done after due application of the mind. As far as the inspection of documents is concerned, the disciplinary authority may grant him the necessary permission. According to the averments made by the respondents in para 11 of their reply due opportunity was given to the applicant to inspect the documents in the office of AE(Trunks) and he was asked to submit his defence after going through the evidence. A preliminary enquiry was held by the disciplinary authority

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before issue of the charge-sheet. The respondents have further averred that before arriving at the decision the disciplinary authority has also questioned other involved ~~persons~~^{3/} and he had himself heard the Board Operator's saying that "MAIN LAL CHAND BOL RAHA HOON LIGIYE ALLAHABAD SE BAT KIJIYE". It has been admitted by the respondents that the Trunk Board was under secret observation of the Assistant Engineer (Trunks). The charge-sheet in this case was issued by the Assistant Engineer (Trunks). Therefore, the Assistant Engineer (Trunks) himself was a concerned party in this case and it was the same Assistant Engineer (Trunks) who has ordered the punishment on the applicant. Since the disciplinary authority himself was the interested party in this case the punishment should not have been imposed by him as he himself was an important witness to whatever happened in the Trunk Exchange in regard to booking of the call from Allahabad to Bombay.

6. The appellate order has been filed by the applicant as Annexure-5 to the application. In the appellate order the appellate authority has mentioned that the charge levelled against the official ~~for~~^{3/} under-charge~~of~~^{3/} the said call was fully established. The grounds elaborated by the official in his defence vide his appeal are not convincing and as such the punishment orders passed by the Assistant Engineer (Trunks), Allahabad are quite justified. After these observations the appellate authority rejected the appeal. Though in the application the appellate order has not been specifically challenged by the applicant the cause of justice has suffered in the initial stages when AE (Trunks) who was secretly monitoring the Trunk Board and who over heard the conversation^{3/} etc. on which he took up^{3/} the applicant became himself the disciplinary authority. No person can be a Judge in his own cause^{3/} and justice cannot be meted out equitably in case the disciplinary authority himself is also a party on whose report the disciplinary action was initiated. He cannot in such circumstances

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give an unbiased and fair judgment.

7. We, therefore, feel that the punishment imposed on the applicant suffers from the lacuna of denial of natural justice and, therefore, is liable to be set aside. We accordingly quash the order of punishment and the appellate order. This will, however, not bar the respondents from initiating the case afresh, if they so desire, according to rules and keeping in view the principles of natural justice. Parties will bear their own costs.

MEMBER (J).

MEMBER (A).

Dated: August 19th, 1988.

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