

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, ~~Delhi~~ Ahmedabad.
Ahmedabad

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

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DATE OF DECISION 4/5/90N.V. Mithapara

Petitioner Applicant

Mr. B.B. GogiaAdvocate for the ~~Petitioner~~
Applicant

Versus

Union of India & others RespondentsMr. J.D. Ajmera

Advocate for the Respondent(s)

CORAM .

The Hon'ble Mr. M.M. Singh, Administrative MemberThe Hon'ble Mr. N.R. Chandran, Judicial Member.JUDGMENT

JUDGMENT

(Delivered by the Hon'ble Shri N.R.Chandran,
Judicial Member)

The applicant is a Telephone Operator,
working under the control of Respondents 2 and 3.
The 3rd respondent issued a Charge Memo to the
applicant under Rule 14 of the Central Civil
Services (Classification, Control and Appeal)
Rules, for violation of Rules 3(1)(i) and
3(1)(ii) of the Central Civil Services (Conduct)
Rules. The following is the the Charge:

"That the said Shri N.V. Mithapara,
while functioning as Telephone Operator,
CIX Surendranagar during the period
16.40 Hrs. to 00.00 hrs. on 25-11-1977 -

1. has conspired with a group of Telephone Operators (Shri J.F. Parmar, T.O., Shri G.A. Vora, T.O., Shri G.T. Chavda, T.O. and Shri K.D. Patel, T.O.) to cause financial loss to the subscriber of Surendranagar - 693 and thereby implementing the threat given by Shri J.F. Parmar, T.O. to the subscriber.
2. has failed to bring to the notice of the higher authorities concerned the incidence of unusual booking of nine lightning priority calls by one subscriber on 25-11-1977 even though he nurtured some doubt about this.
3. has made false entries of booking a lightning call vide ticket No.N-623 dated 25-11-1977."

The applicant submitted a written explanation and an enquiry was conducted into the charges and ultimately the 3rd respondent imposed the penalty of reduction of pay of the applicant by three stages for a period of two years with effect from 1-12-1980. During the period of penalty the applicant will not earn increments and that on the expiry of the period of penalty, the reduction will have the effect of postponing his future increments.

The applicant filed an appeal to the 2nd respondent who by his order dated 4-12-1986 confirmed the penalty imposed on the applicant by the disciplinary authority under his order dated 14/20-11-1980.

The learned counsel for the applicant has mainly urged the following grounds:

(i) There was no enquiry as contemplated under Rule 14 of the CCS(CCA) Rules.

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(b)

(ii) No witnesses had been examined to establish the case against the applicant.

When the charge is that the applicant has conspired with a group of other employees, such a charge could be established only through oral evidence. Inasmuch as no oral evidence had been adduced, nothing could be proved in the enquiry.

(iii) A copy of the Report of the Enquiry Officer was not given to the applicant before the imposition of the penalty.

(iv) The documents referred to in the Charge Memo were not furnished to him.

(v) The appellate order is a non-speaking order inasmuch as the appellate authority has not considered the grounds raised by the applicant in his appeal.

(vi) The order of imposition of penalty is discriminatory since similar persons against whom similar charges had been framed, had been exonerated.

For these reasons, he prayed that the application be allowed.

On the other hand, the learned counsel for the respondents has urged that an enquiry into the charges had been properly conducted and that the documents referred to in the Charge Memo were furnished to him and the applicant did not raise any objection at the time of enquiry regarding the procedure to be adopted. The applicant also did not make any written request asking for cross-examination of certain witnesses. framed against him
The charges had been on the basis of documentary evidence which had been proved at the time of enquiry and therefore, according to the learned counsel for the respondents, no prejudice was caused to the applicant by non-production of witnesses. The learned counsel thereafter referred to the Enquiry Report and the order of penalty and concluded by submitting that the enquiry was conducted in great detail and that the conclusion reached by the Enquiry Officer

supported by evidence and therefore it would not be open to the Tribunal to interfere in the matter. He has also contended that the appellate order was passed according to law.

We have heard the rival contentions. We find on a perusal of the appellate order that the appellate authority had not adverted himself to the relevant factors as contained in Rule 27(2) of the C.C.S. (C.C.A.) Rules, which reads as follows:

"(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 11 or enhancing any penalty imposed under the said rules, the appellate authority shall consider -

- (a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
- (b) whether the findings of the disciplinary authority are warranted by the evidence on record; and
- (c) whether the penalty or the enhanced penalty is adequate, inadequate or severe."

In this case the appellate order merely says that he had gone through the appeal grounds and had come to the conclusion that the delinquent official had not properly proved to be exonerated from the charge levelled against him and had ultimately dismissed the appeal.

The Supreme Court in *Ram Chander v. Union of India and others* (A.I.R.1986-S.C. 1173) had occasion to consider the scope of Rule 27(2) of the C.C.S.(C.C.A.) Rules which is in pari material with Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968.

Therein, the Supreme Court had held that the appellate authority, ~~all the more~~, must pass a reasoned order and its finding should be recorded on the three aspects stated under Rule 27(2) of the CCS (CCA) Rules which is in pari material with Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968.

In this case the appellate authority did not consider whether the penalty imposed is adequate, inadequate or severe and had thrown the onus on the applicant to prove that he was not guilty. It only shows lack of application of mind on the part of the appellate authority.

In the circumstances, we hold that the appeal preferred by the applicant was not properly considered by the appellate authority in terms of Rule 27(2) of the C.C.S.(C.C.A.) Rules.

order dated 4-12-86 and remit the Accordingly, we set aside the appellate/ matter to the 2nd respondent for proper disposal according to law. The 2nd respondent is directed to dispose of the appeal within a period of three months from the date of receipt of a copy of this order. It is also open to the applicant to make any further supplemental representation to the 2nd respondent and if any such representation is filed, it should

(3)

also be considered by the appellate authority. Since we are setting aside the appellate order and remitting the matter to the 2nd respondent for disposal according to law, we are not recording any finding on the other contentions raised by the applicant as that would prejudice the disposal of the case. ~~Appeal~~

The application is allowed as above.

N.R. Chandran

M.M. Singh

(N.R. CHANDRAN)
JUDL. MEMBER

(M.M. SINGH)
ADMV. MEMBER

4-5-1990

Index: Yes/No