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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 128 of 1987 x 198
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DATE OF DECISION 1-8-1988

Shri Maganlal M. Miyatra Petitioner

Shri B.B. Gogia Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri J. D. Ajmera Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. Trivedi : Vice Chairman.

The Hon'ble Mr. P.M. Joshi : Judicial Member.

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 it needs to be circulated to other Benches of the Tribunal.

JUDGMENT

(11)

OA/128/87

01-08-1988

Per : Hon'ble Mr. P. H. Trivedi : Vice Chairman

In this case the petitioner who is a Telephone Operator working under Junior Engineer (Trunks) Morvi, challenges the order dated 14.2.1986 of sub-Divisional officer, Telegraphs, Morvi by which after his reply to the charge sheet, order of punishment of stoppage of next increment for one year without affecting future increments has been passed against him. The petitioner filed an appeal to D.E. Telegraphs and after merger with Telecom, District Manager Telecom to whom the appeal was filed has not communicated any order thereon. In the meantime S.D.O., Telegraphs, Morvi informed the petitioner of an adverse remarks against the mis-use of STD and loss of revenue to the department. To this also an appeal/representation was filed to the District Manager Telecom, Rajkot but it has not been replied to. The petitioner challenges the order of punishment on the ground of its being a non-speaking order and having been passed without considering the points raised in the charge sheet and, therefore, suffering from non-application of mind and that the charge-sheet is merely based upon speculation and surmises and, therefore, the order is arbitrary and perverse, and that the applicant has not been supplied with the documents on which the order has been passed. He has challenged the Confidential Report on the ground of its not being properly written and communicated and has sought relief of declaring punishment order dated 14-2-1986 and the confidential report communicated by respondent No.3 dated 13-11-1986 as illegal and to be set aside.

2. In reply the respondents have stated that the petitioner has not exhausted the remedies available to him but that the punishment order has been passed after considering the reply to the charge sheet and having regard to the nature of the charge, the punishment is minor. The respondents deny that the appeal lies before the District Manager Telecom

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but has submitted that the appeal is decided by the appropriate appellate authority. The respondents state that no appeal against adverse remarks lies but a representation has been submitted to Divisional Engineer under Rule 175. The order of punishment is in terms of Rule 16 of C.C.S.(C.C.A.) Rules, 1965 and therefore there is no violation of rules or of principles of natural justice. The respondents also deny that copies of the documents were not supplied and that no oral or written application for supply of documents was made.

3. The charge sheet including the statement of imputation of misconduct or mis-behaviour, alleged misuse of STD connection and mis-handling of equipment which resulted in loss of revenue and undue loading of the equipment. The basis for such a charge was as follows.

"On 11-10-1985 Shri M. M. Miyatra T. O. Morvi was on duty at No.19 position at about 17-30 hrs. on duty Technician working in autho exchange and meter rack had observed Spare No:2790 Meter was operating on STD Pulses. Spare No: is also checked by on Duty Technician at MDF then checked that No:2790 was taken in testing selector and his corresponding meter was operating on S.T.D. Pulses and conversation was going on is proved that any No. can be taken on testing selector only by Number 19 position Operator No.19 T.O. had connected any STD station with the help of testing position and testing telephone instrument and extended to any subscriber of Morvi via. No.19 position only.

J. E. Auto had also observed on the same day at 21-30 hrs. personally that Shri M. M. Miyatra was trying to get Nos. by tapping the telephone and he had taken No.3753 on testing selector .

Meter reading of spare No: 2790 is also found as under:

ON 3-10-85 6386

On 12-10-85 6979

From the above it is found that Shri M. M. Miyatra T. O. Morvi has misused the STD Circuit."

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4. The petitioner explained that on that date he was not in position at No.19 but he was on testing position where he received the complaint passed on by position No.19, that No.2790 is a spare number not allotted to any one and it is dialed in the case of a complaint and that the technician who noticed the pulses can give the numbers of the persons who talked on it and have the support of log entries to justify the observations. That No.3753 was dialed on Testing position for testing and No.226 Telephone No.3753 and has given details of the numbers he has tested. The order of punishment analyses the grounds taken in reply as follows.

"The evidences laid before the undersigned reveals that No.2790 was held up in testing selector and Sh.M.M.Mayatra according to his saying was manning testing position, it is true that testing selector was engaged with the spare No. i.e. 2790. The arguments that the STD selector remain in Auto Switch room and the Technician who detects the pulses of spare number is an engineering genuies. The technician is a highly skilled having received a thorough knowledge training in the operation of equipments and detection of the misdeed by a Techniciah is a fundamental job and, therefore, is nothing wrong."

5. Learned advocate for the respondents strenuously urged that the Telephone Department is faced with numerous complaints in which there are charges of misuse of equipment in which the technicians of the department are involved and accordingly checks are made from which in this case the petitioner was found guilty after his explanation to the charges framed was examined. After all the punishment is of a minor category and the explanation of the petitioner of not having been found to be satisfactory, there can be no ground for regarding the order impugned as unjust. The adverse remarks communicated to the petitioner are only factual as they merely note that the charge sheet was framed and the petitioner was found guilty.

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6. On perusal of the record and after hearing the learned advocates we find that there can be no two opinions on the need by the telephone authorities to exercise supervision over their workers regarding mis-handling of equipment and misuse thereof and loss of public revenue. However, this should not be done by hastily jumping to conclusions without proving the charges. On perusal of the charges and of the reply thereto and of the order of punishment we are unable to state that the plea of the petitioner in his reply has been examined to any satisfactory or adequate stand. It is possible that the technical supervisors by virtue of their day today experience and familiarity of the subject might have a legitimate basis for their conclusion but we cannot regard any summary order which does not satisfactorily explain why the grounds taken in reply had not been found convincing or satisfactory to be a proper order. The order of punishment does not make out that there has been proper application of mind to a consideration of the plea taken by the petitioner with reference to the charges made. We are also not satisfied by the reply of the respondents whether appellate authority considered the grounds or whether the appeal has been disposed of by the proper forum.

7. There is also no doubt that adverse remarks allowed to be retained on the record without disposal of the representation against them constitutes an adverse circumstance so far as the petitioner is concerned.

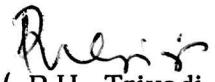
8. Following from the above analyses we find that the petition has merit and the following directions will be appropriate in the circumstance of the case.

9. The impugned order of punishment dated 14-2-1986 is held to be invalid and is quashed and set aside. The respondents are free to pass fresh orders after considering the reply of the petitioner to the charges giving reasons why the plea taken by him in it is not acceptable. So far as the representation of the petitioner against

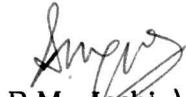


the adverse remarks is concerned, we direct that the representation be disposed of by the competent authority in the light of the order passed on the charges against the petitioner as stated above. We further direct that the adverse remarks be not taken into account for affecting adversely the petitioner in any manner until the representation against them is disposed of as stated above.

There shall be no order as to costs.



(P.H. Trivedi)
Vice Chairman.



(P.M. Joshi)
Judicial Member.