

## CENTRAL ADMINISTRATIVE TRIBUNAL

~~XXXXXXXXXXXX~~

Ahmedabad Bench, Ahmedabad.

(u)

O.A No. 142 of 1987  
~~XXXXXX~~

DATE OF DECISION 4.5.1990

Shri Harkishorbhai H. Raval ~~Respondent~~ ApplicantMr. R.R. Tripathy Advocate for the ~~Respondent(s)~~ Applicant

Versus

Union of India & Ors. RespondentMr. J.D. Ajmera Advocate for the Respondent(s)

CORAM .

The Hon'ble Mr. M.M. Singh .. .. Administrative Member

The Hon'ble Mr. N.R. Chandran .. .. Judicial Member

JUDGMENT

2.

Shri Harkishorbhai  
Harikrushnabhai Raval,  
B-4, P & T Colony,  
Jamnagar.

SK  
H  
: Applicant

Versus

1. Union of India,  
General Manager,  
Telecommunication,  
Gujarat Circle.
2. Area Manager,  
Telecommunication,  
Rajkot Area,
3. Telephone District  
Engineer, Telephone  
District, Jamnagar.

: Respondents.

O.A. No.142 of 1987

J U D G M E N T

Per: Hon'ble Mr. M.M.Singh

: Administrative Member

1. The applicant Section Supervisor in the Department of Telecommunications was served with a memorandum for minor penalty dated 1.2.1985 by the Divisional Engineer, Telegraphs, Jamnagar, imputing violation of paras 75 and 77 of P & T Manual, Vol. XIV thereby failing to maintain devotion to duty in contravention of Rule 3 (1) (ii) of C.C.S. (Conduct) Rules, 1964. This memorandum for minor penalty culminated in order No.Q517/II/19, dated 16.9.1985 whereby ex-parte decision, punishment of stoppage of three increments from 1.7.1986 without any cumulative effect was ordered by the Divisional Engineer, Telegraphs, Jamnagar. The applicant preferred appeal against this order which was rejected by the Director, Telecom., Rajkot by Memo No.Staff 14-78/HHR/5, dated 14th July, 1986. The applicant has filed this application under section 19 of the Administrative Tribunals Act, 1985 challenging the final order and the order in appeal seeking that the same should be quashed and set aside and arrears of difference in salary as a result of the final order of punishment confirmed in appeal should

n 3  
: 2 :

SB (6)

be paid to him and he be restored to higher rank of Senior Section Supervisor with benefit of continuity in the rank from 1.6.1986.

M 2. According to the applicant, it is the practice based on precedent in the Telephone Department that the advice notes in three copies are always signed by the Section Supervisor on behalf of the Sub-Divisional Officer, Telephones, and as the applicant followed the said practice and precedent, he cannot be charged with failure to maintain devotion to duty by signing the advice note. It is the case of the applicant that no objection was raised against the same. It is also his case that before him, his predecessors were also following the same practice and his successor K.L.Parmar who was also served with a memorandum similar to the applicant defended himself by producing one order of the Sub-Divisional Officer, Jamnagar showing that the Section Supervisor was authorised to sign for Sub Divisional Officer. K.L.Parmar <sup>M</sup> he was punished with censure by the respondent No.3. But the defence K.L.Parmar raised in his case was not accepted in the case of the applicant upon whom a more stringent <sup>M</sup> punishment was arbitrarily inflicted. According to the applicant, K.L.Parmar preferred appeal against the order of censure and respondent No.2 allowed the appeal quashing the censure order. However, in deciding the applicant's appeal, the same appellate authority, respondent No.2, dismissed the appeal thereby acting arbitrarily as seen from his appellate decision in the case of K.L.Parmar. The applicant has also alleged

4 M  
: 3 :

SK (5)

that  
Although regularly promoted as Senior Section Supervisor on 1.6.1986, he was reverted to the post of Section Supervisor. His allegation is that the reversion came because of the punishment order and his juniors also came to be promoted to the rank of Senior Section Supervisor. He was thus punished twice, once by the order stopping his increment and again by reverting him from the post of Senior Section Supervisor to the post of Section Supervisor which is illegal. He has also questioned ex-parte final order as passed by violating principle of natural justice in that the disciplinary authority did not supply him the documents and information asked by him time and again for his defence and even did not permit their inspection. He questioned the appellate order on the ground that it is not reasoned order and therefore violative of principle of natural justice.

3. The respondents resisted the application on various grounds including that the applicant did not avail of the remedy to the Post and Telegraph Board, New Delhi available to him under existing rules. This contention of the applicant can be rejected at this stage only as the respondents have neither quoted the rule nor clarified whether the remedy is statutory. In any case under sub section (2) of section 20 of the Central Administrative Tribunals Act, discretion in such cases ~~does not~~ <sup>lies</sup> with the Tribunal. The respondents have also challenged the application on the ground of limitation by saying that the Area Manager's order in appeal is dt. 14.7.1986 where as the application is dt. 30.3.1987. This challenge is baseless because the application came to be filed within one year from the date of

5

\$ (8)

of the order in appeal.

4. According to respondents, para 75 of P & T Manual Vol. XIV says that advice notes are issued by Telecom. District Engineer or other officers authorised in his behalf. According to para 77 of the same Manual, the Engineering Officers are enjoined to see that the advice notes are correct and are checked before their submission to the Revenue Branch.

5. Though the respondents in their averments have denied the existence of practice and precedent in the department, <sup>of</sup> the Section Supervisors signing the advice notes, it has to be noticed that para 75 of P & T Manual provides that advice notes are issued by the Divisional Engineer or other officers authorised in this behalf (underscoring provided). It is therefore, clear that the <sup>rule</sup> provides for signing by the authorised. The authorisation may even be by an oral order or instruction and therefore if in an office certain precedent was going on which the applicant claimed to have followed, he cannot reasonably and fairly be hauled up by serving a charge sheet on him even though it may be for a minor penalty. The correct course in such cases will be for the authorities to issue clear office instruction that no body other than Divisional Engineer will sign the advice notes and see that the office order is implemented. It is also to be noticed that the respondents have not, in specific terms, disputed in their reply all that the applicant averred in his application with regard to allegedly similar charge framed against K.L. Parmar. The

6

SC (9)

relevant parts of the respondents' reply in this regard are extracted below.

"It is denied that one other person was punished only with censure as alleged. It is submitted that disciplinary proceedings were initiated separately against the applicant and the said Mr. Parmar. It is submitted that disciplinary cases are decided on merit and demerit. It is within the scope and discretion of the disciplinary authority to impose punishment looking to the facts and circumstances of each case in accordance with law. It is submitted that the applicant and the said Mr. Parmar were issued separate charge sheets. Therefore, it cannot be said that the applicant and Mr. Parmar though similarly situated are meted out different treatment and therefore, the act, action and conduct of the respondent No. 3 is discriminatory, arbitrary, and unreasonable and the same is violative of Articles 14 and 16 of the Constitution of India as alleged."

7

6. We do not find this reply acceptable. A similar charge was framed against K.L. Parmar though separately and though punished <sup>by</sup> awarding censure at the final order, he came to be exonerated in appeal. The main question is whether, as alleged by the applicant in his application, "Shri Parmar produced one order of the Sub-Divisional Officer, Jamnagar, showing that the Section Supervisor was authorised to sign for Sub-Divisional Officer, Telecommunication and on that basis the punishment of censure only was imposed upon Shri Parmar by the respondent No. 3" and that "Shri Parmar has also preferred an appeal against the order imposing penalty of censure passed by the respondent No. 3 to the respondent No. 2. The respondent No. 2 allowed the appeal of the said Mr. Parmar and quashed the order of penalty". The

8X (10)

real issue is whether Parmar produced one order of the Sub-Divisional Officer, Jamnagar showing that the Section Supervisor was authorised for signing for Sub Divisional Officer. We see force in this argument of the applicant which corroborates his allegation of existence of practice and precedent of signing the advice notes on behalf of Sub Divisional Officer. In any case, with the rule (supra) providing for such authorisation, the charge would not survive and would also not survive the final order and order in appeal confirming the final order passed in such a charge. We also notice that the appellate authority has, in appellate order dt. 14.7.1986, taken into consideration <sup>a</sup> extraneous matters in deciding the appeal in the part of the appeal order which says, "the intention behind is not a simple mistake but a clear intention to favour the concerned subscribers". No allegation of favour or lack of integrity was made in the charge served on the applicant and therefore also the appellate order cannot be sustained.

7. In view of the above, the final order and the order in appeal are liable to be quashed and set aside and we hereby quash and set them aside. We also direct that the respondents shall, within three months of this order, give all consequential benefits of this order to the applicant. There are no orders as to costs.

*N R Chandran*  
( N R Chandran )  
Judicial Member

*M M Singh*  
( M M Singh )  
Administrative Member

4/5/80