

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

O.A. No. 773 OF 1988.

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DATE OF DECISION 27-9-1991.

Shri U.G. Molke, Petitioner

Mr. Shailesh Brahmhatt, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr.E.A.Samuel for Mr.P.M.Raval, Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. S.Santhana Krishnan, 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?

Yes

Yes

No

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Shri U.G. Molke,  
Telephone Supervisor, St.No.325,  
residing at Bharat Sevashram,  
Naroda Road, Behind Kalyan Mill,  
Ahmedabad.

.... Applicant.

(Advocate: Mr. Shailesh Brahmbhatt)

Versus.

1. Union of India,  
(Notice to be served through  
the Secretary, Ministry of  
Communications, Department of  
Telecommunications, New Delhi)
2. Shri K.K. Mathur,  
and/or his successor-in-office,  
General Manager,  
Ahmedabad Telecom District,  
Office of the General Manager,  
Telecom, District Ahmedabad.
3. Shri S.P. Khullar,  
and/or his successor-in-office,  
Deputy General Manager (Admn)  
Ahmedabad District Telecom,  
Ahmedabad.
4. Shri H.S. Dalia,  
and/or his successor-in-office,  
Assistant General Manager (Admn)  
Ahmedabad Telephones, Ahmedabad. .... Respondents.

(Advocate: Mr. E.A. Samuel for  
Mr. P.M. Raval)

J U D G M E N T

O.A.No. 773 OF 1988

Date: 27-9-1991.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

This original application filed under section 19 of the Administrative Tribunals Act, 1985, challenges the order dated 31.8.1987 imposing on applicant the penalty of compulsory retirement and the order dated 8.12.87 rejecting the appeal dated 3.10.87 & 5.10.87.

2. The applicant was chargesheeted on 16.2.83 for contravention of Rule 3(1)(i)(iii) of CCS (Conduct) Rules, 1964, (hereinafter Conduct Rules). The substance of the allegation against him was though he did not

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perform the journey to Gulmarg and back, he preferred leave travel consession bill by allegedly producing fabricated documents with ulterior motive to gain money from the public funds. On these allegations, failure to maintain absolute integrity and unbecoming conduct in terms of Conduct Rules is alleged. The applicant has given an exhaustive letter by letter and reply by reply account of exchange of correspondence between the applicant and the respondents and the Inquiry Officer with regard to furnishing of copies of certain documents, change of Inquiry Officer and Presenting Officer and such connected matters. After the enquiry albeit with repeated objections of the applicant came to be concluded, the Dy.General Manager (Admn.) issued to the applicant letter dated 18.6.87 furnishing copy of the inquiry report and asking him to furnish further defence. The applicant replied by letter dated 29.6.87 that the enquiry report was based upon prejudicial mind and that the enquiry officer has erred in not allowing to call Smt. H.M. Raval, C.B.I. Inspector and R.T.O. as witness and that the enquiry was vitiated because of irregularities. Penalty of compulsory retirement was inflicted. He preferred appeal dated 3.10.87. It was rejected.

3. The grounds taken in the application are that findings of the enquiry officer are perverse, baseless and such as no reasonable man could have arrived at. He performed journey through Aasha Travels whereas the name of Aasha Travels does not figure in the name of the persons supplied by the R.T.O. office and instead the name of Amar Travels figures. The covering letter from the R.T.O. office though unsigned and unattested was taken into consideration despite his objection after Presenting Officer got it signed during the

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course of the enquiry. Papers submitted by one Presenting Officer did not tally with the papers submitted by another Presenting Officer with regard to the name of the proprietor of the travel agency and the enquiry officer despite this weakness in the evidence came to conclusions which are untenable and perverse and vitiated by unreasonableness. Other ground is that Inquiry Officer should not have relied on the statement of G.K. Pancholi given before the C.B.I. as the witness had not been produced by the Inquiry Officer but was produced in defence by the applicant and he deposed against the contents of his statement before the C.B.I. R.T.O permit was also not produced in original during the enquiry as the same was not traceable and the Inquiry Officer ought not have arrived at the findings in the absence of evidence which made his findings perverse and unreasonable. The defence was not allowed to inspect the original file containing correspondence with RTO and CBI which allegedly gravely jeopardised his opportunity of effective defence. Number of further objections are taken in the grounds against the appreciation of the evidence and appointment of the first Inquiry Officer and against the second Inquiry Officer and it is alleged that the applicant being from Class III category, Inquiry Officer from Class II was not sufficiently senior.

4. The three Articles of Charges framed against the applicant, are reproduced below:

" ARTICLE - I

That the said Shri U.G. Molke, T.S. St.No.325 while functioning as T.S. during the period from 4-9-82 to 8-1-82 in Ahmedabad Telephone District took an advance of Rs.2765/- (Rupees Two thousand seven hundred sixty five only) as L.T.C. Advance with an intention to travel to Gulmarg and back,

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also took the leave from 19.10.81 to 9.11.81. He preferred a claim vide his L.T.C. bill for a block year of 1978-81 in form No.T.R.25(Outer) claiming Rs.2141-00 after deducting an advance of Rs.2765/- making a total claim of Rs.4906/-. The said Shri U.G.Molke has not performed the journey as can be ascertained from list of passengers as per Regional Transport Authority and the statements made by Shri G.K.Pancholi and Shri Vinodbhai Nathalal Modi.

That the action of said Shri U.G. Molke, T.S. St.No.325 for preferring a wrong claim by producing fabricated documents with an ulterior motive to gain money from the Public Fund amounts to the failure to maintain absolute integrity in terms of Rule 3(1)(i) of CCS(Conduct) Rules, 1964.

#### ARTICLE - II

That during the aforesaid period and while functioning in the aforesaid manner the said Shri U.G. Molke, T.S.St.No.325 preferred a claim vide his L.T.C. bill without performing the journey from Ahmedabad to Gulmarg and back after adjusting Rs.2765/- taken as advance and claiming Rs.2141/-. His above action amounts to an act in contravention of Rule No.3(1)(iii) of CCS (Conduct) Rules, 1964.

#### ARTICLE - III

That during the aforesaid period and while functioning in the aforesaid manner the said Shri U.G.Molke, T.S.St.No.325 preferred a claim vide his L.T.C. bill for Rs. 2141/- after deducting an advance of Rs.2765/- taken as advance by him for the purpose of travelling from Ahmedabad to Gulmarg and back without performing the journey. His aforesaid action amounts to willful attempt of misappropriation of Government money."

List of documents by which the articles of charges were proposed to be sustained was also annexed to the memorandum proposing to hold enquiry against the applicant. The list of witnesses is Nil.

giving a history of the case, dates of regular hearings, list of documents etc. came to the conclusion that the applicant and his family did not travel in the bus bearing No. GRS 4915 from Ahmedabad to Gulmarg and back and therefore charges levelled against the applicant proved. The enquiry report fairly mentions that the defence side wanted to inspect the original file having correspondence between RTO and CBI authorities which the Inquiry Officer did not permit since the required information was available in other documents mentioned in the Inquiry Officer's findings of enquiry proceedings.

6. The Dy. General Manager (Admn.) Ahmedabad, Telecom District in memorandum dated 31.8.87 observed that the Inquiry report was forwarded to the applicant to enable him to put forward his defence against the charges proved and receipt of the report was acknowledged by the applicant. The Dy. General Manager after carefully taking into consideration the reply of the applicant issued the final order of compulsory retirement.

7. The applicant's appeal application dated 3.10.87 addressed to General Manager, Telecom District, Ahmedabad was disposed of by appellate order dated 8.12.87 of the General Manager rejecting the appeal application and confirming the punishment awarded by the disciplinary authority.

8. The respondents filed a written statement. Their objection is that the application is barred by limitation prescribed under section 21 of the Administrative Tribunals Act, 1985. It is asserted that the applicant was given ample opportunity to defend himself and violation of natural justice non-application

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of mind or by any provision of law did not take place. With regard to inspection of documents, reliance is placed on para 23 of rule 14 of CCS(CCA) Rules which we reproduce below:

"(23) Stage at which inspection of documents to be allowed.

In case where major penalty proceedings are advised on the investigation reports, the delinquent officer is asked to submit his written statement of defence within ten days from the receipt of the memorandum of articles of charges. Generally delinquent officers make a request for inspection of listed documents for preparing their written statement of defence. According to the scheme of CCS(CCA) Rules, 1965, the delinquent officer need not be shown documents at this stage to enable him to prepare his defence statement in reply to chargesheet. In this connection, extracts from the advice of the Ministry of Law are reproduced below.

"The scheme of Rule 14 of the CCS(CCA) Rules, is somewhat different from the scheme contained in Rule 15 of 1957 Rules. The scheme contemplated that the statement of defence submitted under sub-rule(5)(a) may be limited to admitting or denying the charges communicated to the officer. For such admission or denial, inspection of documents is not necessary."

We should observe here that no such para figures in the Rules. The above para appears on page 64 of Swamy's Compilation of CCS CCA Rules (Seventeenth edition, corrected upto 1st November 1987).

9. It is also asserted that Inquiry Officer and Presenting Officer were nominated in accordance with the rules prescribed by department of Telecoms in DRP & T letter dated 20.5.76 and that both the Inquiry Officer and Presenting Officer were senior in rank to the applicant as they belonged to Group 'B' Officers

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in the department and they cannot be suspected of any prejudice or bias against the applicant. It is also asserted that the Inquiry Officer was not associated with the inquiry at the earlier stage and the applicant's L.T.C. claim was forwarded to Accounts Officer (EA & EA) with which Inquiry Officer had no connection and the allegation made by the applicant in this regard is denied. While the applicant continuously insisted for supply of documents, the Inquiry Officer replied by several letters that applicant was free to inspect the original documents and as he did not carry out the inspection, ultimately the Inquiry Officer gave ultimatum to the applicant. With regard to certain witnesses not allowed to be called para-11 of the reply says as follows :

"11. With regard to para 6(11), I deny the contents thereof. I deny that the inquiry officer had erred in not allowing him to call Smt.H.M.Raval, CBI Inspector and R.T.O. Secretary as witness. I say that the contents of this paragraph are false and denied. On the contrary, during the inquiry proceedings on 8.1.87 the applicant, after discussion with the inquiry officer had agreed to call Shri G.K.Pancholi and V.N.Modi as witness and the others. A copy of daily order sheet dt. 8.1.87 is annexed hereto on page 116 of the application. It is submitted that the applicant did not propose during the course of inquiry to call C.B.I. Inspector and R.T.O. Secretary as witness. Regarding Smt. H.M.Raval the Inquiry Officer had intimated to the applicant that Smt.Raval's deposition was not material at that time in view of the deposition already made by Shri Pancholi. This was also agreed to by the applicant during the inquiry proceedings held on 20.3.1987. The copy of daily order sheet dt. 20.3.87 is annexed herewith and marked Ann.R-5".

It is also stated that the Inquiry Officer simultaneously conducted two enquiries of the same nature and through oversight the list of passengers pertaining to the case of another enquiry was furnished to the applicant. It is

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stated that witness G.K.Pancholi clearly stated that since the applicant was known to him he had issued a certificate and when he came to know that the applicant is put into trouble, he had changed the statement before the preliminary inquiry officer to favour the applicant. With regard to R.T.O. not having signed the passenger list it is averred that as a result of discussion during the enquiry held on 27.1.87, the defence side agreed to the inquiry officer's proposal that the R.T.O. authority should countersign on the list of passengers and the counter signature may be obtained by the Presenting Officer personally. It is submitted that the objection was satisfied. It is averred in the reply that the Inquiry Officer has correctly concluded that the list of passengers as submitted by the applicant is not the list of passengers who actually travelled by the bus and the list of passengers as submitted by the RTD authority of passengers who actually travelled by the bus does not contain the name of the applicant and his family members. It was not necessary to furnish the RTD permit of the bus to come to this conclusion. With regard to not permitting inspections of the file of correspondence between CBI & RTD, it is averred that as required information was available in other documents shown to the applicant, not permitting the inspection was proper and involved no violation of principles of natural justice. It is also stated that the applicant submitted no authentic documents or evidence in support of his claim of availing L.T.C. for travel to Gulmarg. He did not produce any person who travelled with him as a witness. The reply ends by saying

"h) With regard to ground i, I say that I have already stated in the earlier paragraphs that the applicant has not exhausted the remedies available to him under the rules."

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10. The application is noticed to contain upto ground 'h' only. However, it is a fact that revision lies to Member (Personnel) Telecom Communication Board in accordance with provision of rule 29(i)(iii) of the CCS (CCA) Rules. There is no averment in the application that such a revision was preferred. Therefore it is clear to us that the application was filed without exhausting the remedy of revision.

11. We heard learned counsel for the applicant Mr. Shailesh Brahmhatt and Mr. E.A.Samuel for Mr.P.M.Raval, learned counsel for the respondents and perused the record.

12. The applicant's learned counsel took us through the exhaustive record in the application and documents produced with it. The burden of his arguments is that departmental enquiry is vitiated because inquiry officer selected was from a same arm of service as of the applicant and was not sufficiently senior in rank as directed in D.G's circular dated 10.9.91 on the subject of appointment of inquiry officer and that the request of applicant for copy of record was turned down but only inspection of record was permitted which caused prejudice in his defence which was also caused because the applicant was not given copies of all investigation papers of CBI though requested. The change of inquiry officer requested by the applicant was rejected which also caused prejudice to the applicant. He highlighted the happening of supply of documents of another enquiry to the applicant. He also referred to the contents of the rejoinder in this regard where it is also said that copy of the special permit of motor vehicle No. 3855 furnished to him is absolutely irrelevant as he had claimed that he had travelled by motor vehicle No. GRS 4915.

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13. The learned counsel for the respondents denied the allegations of denial of opportunity to defend.

14. It is to be noticed that to the applicant, the enquiry is vitiated on the grounds of letters he addressed to the inquiry and/or disciplinary officers and replies to the same. Annexure A-2 to A-25 produced with the application consist of copies of correspondence of the above kind addressed by the applicant and replies received. We have carefully gone through this correspondence. The general character of the contents of the letters of the applicant is that he kept making one request or the other wanting the enquiry to be conducted, including the appointment of inquiry and Presenting Officers, according to his say, of course by referring to instructions on the subject of appointment of inquiry officers and presenting officers. These instructions are no statutory rules but have the character of guidance issued from higher officers. At a departmental enquiry delinquent may adopt various strategies of defence, including addressing a number of letters one after the other to the authorities and reply received made the basis for addressing further letters. But the statutory rules lay down the procedure for imposing major penalties, in this case

Rule 14 of the CCS(CCA) Rules. There is no allegation in the whole of the application that the respondents violated any provision of the statutory rules. For example, an instruction saying that a person sufficiently senior should be appointed as inquiry officer or as presenting officer and the applicant alleging that the persons appointed were not sufficiently senior and only one group senior to the applicant. The statutory rules do not stand violated thereby. Copies of evidence asked but inspection given

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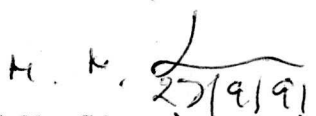
instead and if the statutory rules say that inspection be allowed to press the defence that copies are not given would not help the applicant as principles of natural justice will not stand violated thereby as inspection enables an educated delinquent to get acquainted with the contents of the papers inspected and to prepare his defence accordingly. Casting wider net like asking for inspection of correspondence between the preliminary inquiry office and another office is too wide a request to be allowed. The delinquent has to show in such cases what specific paper he needs and how it is indispensable for his defence. The disciplinary or inquiry authority have not to become parties to delinquent's strategy to fish for defence, if any. To say that the inquiry officer should belong to another arm and the inquiry officer actually appointed is from the Accounts Branch but had no occasion to deal with the applicant's case in the past, is no reason why the appointment of the inquiry officer should be treated as vitiated. Mistakes committed during enquiry like documents of one enquiry being furnished to the delinquent of the other enquiry but the mistake corrected do not cause any prejudice to the defence. Absence of signature on a paper even if it ought to have been signed and signature obtained during the enquiry also does not result in any breach of principles of natural justice for what is incriminating are the contents of papers and not the signatures unless the contention is that the document is fabricated which is not the contention. In the pleadings, the applicant has exhaustively referred to the correspondence of the above kind to allege that the findings are perverse, baseless and that no reasonable man could have arrived at the findings. When the applicant has claimed the leave travel concession amounts saying that he

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travelled by Aasha Travels and the enquiry does not show the existence of Aasha Travels, obviously respondents cannot produce evidence with regard to existence of Aashaa Travels and such evidence produced is admissible in a disciplinary inquiry. The disciplinary authority thereby properly discharged its burden of proving the allegation in the charge in disciplinary inquiry. Again, when witness Pancholi clearly says that he did not support his statement given before the CBI inquiry officer so that the applicant does not come to trouble, for purposes of departmental inquiry such a statement will be liable to be appreciated as furnishing grounds to the inquiry officer to take the view that the statement given to the CBI inquiry officer was correct. In a challenge to disciplinary inquiry, it is not for the Court to undertake appreciation of evidence as long as it is found that the appreciation of evidence by the inquiry officer is reasonable. We above see no ground for holding that the appreciation of evidence by the enquiry officer was unreasonable and not based on the record.

15. In view of the above, the application is liable to be dismissed. We hereby do so but without any order as to costs.

  
(S. Santhana Krishnan)  
Judicial Member

  
(M. M. Singh)  
Administrative Member