

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

③

O.A. No. /531/89
T.A. No.

DATE OF DECISION 14/5-93
14/5/1993

Bhupendraprasad S.Gajjar Petitioner

Shri C.S.Upadhaya Advocate for the Petitioner(s)

Versus

Union of India & others Respondent

Mr.Akil Kureshi Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C.Bhatt : Judicial Member

The Hon'ble Mr. M.R.Kolhatkar : Administrative 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 ? ✓

6

Bhupendraprasad Shantilal Gajjar,
Aged 30 years resident of AT & Post, : TRANOL
Taluka : ANAND,
District : Kheda,
Working as Junior Engineer (Phones)
Under A.E.Phones,
Nadiad.

....applicant

Advocate

Mr.C.S.Upadhaya

versus

1. Union of India,
Ministry of Communications,
Department of Telecommunications,,
(Telecom Board)
New Delhi-110 001
2. The Area Manager Telecommunication,
Satyen Chambers, Raopura,
Baroda-390 001
3. The Telecom District Engineer,
60,Patel Society,
Bharuch-392 002

Advocate

Mr.Akil Kureshi

J U D G E M E N T

O.A./531/89

Date : 14/5/93

Per : Hon'ble Shri M.R.Kolhatkar,
Administrative Member.

1. This is an original application under section 19 of the Administrative Tribunal, Act, 1985 .
Minor penalty of withholding of one increment for a period of two years without cumulative effect was imposed on the applicant by the Telecom District Engineer,

②

Bharuch on 08-2-1986 for showing gross negligence of instructions and misguiding superior officers, exhibiting lack of devotion to duty and acting in a manner unbecoming of a Government servant. The Appellate authority viz. Area Manager Telecom, Vadodara upheld the order of penalty on 21-10-87. His revision petition to the Telecom Board has also been rejected by Member (Personⁿel) Telecom Board by his order dated 6-12-88. The applicant has approached the Tribunal for quashing and setting aside the original order imposing penalty, for arrears of pay and allowances on that count~~and~~ any other relief.

2. The facts of the case are as below :

The applicant, while working as Junior Engineer Telex, Ankleshwar dealt with the case of reconnection of telephone of a customer which remained disconnected for a period beyond 6 months. On an application of the concerned customer addressed to D E (T) with copy to J E (phones) requesting for reconnection on the basis that the dues had been paid, the Applicant wrote on 3-7-85 a letter to S D O T, Bharuch for issue of an advice note for reconnection which advice note was issued on 10-7-85. ^{and} ~~separately~~, reconnection was came out on 24-7-85. Separately, a bonafide and feasibility ^{Report} was also sent on 12-7-85 as asked for by Accounts

⑧

Officer, T R. According to applicant, no guidance was received ^{by} him between 12-7-85, the date of issue of feasibility report and 24-7-85, date of reconnection.

3. According to P & T Manual Provisions, as they stood at that time, heads of Telecom Circles/ Telecom Districts alone were empowered to use discretionary powers to restore the telephone connections closed for non-payment of dues and even if the outstanding dues are paid and reconnection applied for after 6 months but within 2 years ~~x~~ of the date of reconnection. Our attention has been ^{invited} to circular No.2-18/82 T R dated 29-1-86 which has ^{literalized} these powers.

4. According to the Respondents, the Applicant should have known that the reconnection ^{was} beyond the powers vested with the Telecom District Engineer. The Applicant should have filled in the proforma pertaining to his section and submitted to S D O for further action. The proforma for reconnection submitted on 12-7-85 was not done by the Applicant but by the other J E phones.

5. In his rejoinder, the applicant has argued that higher officer viz. S D O T Bharuch and D E T Bharuch could have ~~re~~ restrained the Applicant from reconnection of the phone if the sanction was given beyond their powers. Further S D O T Bharuch should not have issued the advice note, if the reconnection of the

9

telephones did not come within the purview. Applicant has alleged that he had also consulted the S D O T on phone. It is argued that it cannot be said that he had misguided the superior~~s~~ because he had clearly mentioned the date of disconnection viz. 30-8-84 for non-payment of dues in his original letter dated 3-7-85.

6. During the oral hearing, Applicant has sought to make out that the charges of gross negligence, lack of devotion to duty and conduct unbecoming of a government servant have not at all been established. He relied on Union of India v/s J. Ahmed (AIR 1979 SC 1022) for the proposition that negligence in discharge of duty would not constitute misconduct unless the consequence directly attributable to negligence would be such as to be irreparable or the resultant damages would be so heavy that the degree of culpability would be very high. He relies on R. Srinivasan v/s Union of India (1982 Lab. I.C. (Madras) 920) to argue that it is only conduct which is indecent, reprehensible or abominable involving moral lapses which is conduct unbecoming of a government servant.

7. On perusal of the record, it is clear that the only lapse of the Applicant was that, he sought issue of advice note for reconnection of telephone

(VP)

without showing awareness of the procedure involved in the case. This by itself, is a mere procedural irregularity.

8. On the other hand, there is lack of application of mind by Disciplinary -Appellate and Revising authority at various stages as indicated below.:-

1. There is no allegation regarding lack of integrity, although the original order of punishment dated 8-2-86. (p-14) talks of "exhibition of lack of absolute integrity" while summarizing the charges. The Applicant in his Appeal memo (Page-17 para-4) has referred to CBI case under investigation. During oral hearing, we asked both the parties about the status of the CBI case, if any, but there was no knowledge about the same.
2. In his Appeal memo, the Applicant stated that (a) he was a novice in his job having performed only 17 months' service in the ^{Dent} Delhi. (b) If at all his innocent error of judgment was considered as amounting to misguidance to S D O T, Bharuch, he ought to have raised an objection as query which he could have replied properly. (c) S D O T Bharuch, being a Gazetted (class II) officer, on receipt



of his report ought to have sought approval of director for reconnection as required by rules instead of issuing a note.

On these points, the Appellate authority in its order (page-20) does not show evidence of having applied its mind.

3. The Applicant repeated his arguments in his memo of Revision (Ann.A/6) The Revisionary authority in its order (page-29) has repeated the points made in the order of Appellate authority. The minor nature of the irregularity, the inexperience of the Applicant, the dubious^{rek} ~~ness~~ of S D O T all appear to have escaped the attention of the Revisionary authority. Regarding quantum of punishment, the only observation made is that the punishment imposed cannot be considered to be excessive.

9 In the light of the discussion and considering the ratio of the well known case of Union of India v/s Parmanand (AIR 1989 SC 1185) while we are ^{loath} to interfere with the quantum of punishment ourselves, we consider this case to be a fit case for reconsideration

(12)

of the quantum of punishment by the Revising Authority Counsel for the respondents has also agreed that he would suggest to the Telecom Board to reconsider the quantum of penalty in the light of observations of the Tribunal. We, therefore, pass the following order.

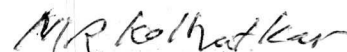
ORDER

10. Application is partly allowed. Revising order of Member (Personnel) Telecom Board, dated 6-12-1988 is quashed and set aside and this matter is remanded to respondent no.1 to reconsider its order in the light of our observations and to dispose it of according to rules within a period of four months from the date of the receipt of the copy of this order. No order as to costs.



(R.C. Bhatt)

Member (J)



(M.R. Kolhatkar)

Member (Admn.)

*SS

CENTRAL ADMINISTRATIVE TRIBUNAL
Ahmedabad Bench

① Application No. 531 of 19 88
Transfer Application No. _____ Old W. Pett No. _____

CERTIFICATE

Certified that no further action is required to be taken and the case is fit for consignment to the Record Room (Decided)

Dated : 7/6/93

Countersigned :

Chhagan
Section Officer/Court officer

IC Shalima
Signature of the Dealing Assistant

INDEX SHEET

NAMES OF THE PARTIES Sh. B. S. Gajjar.

VERSUS
C.C.I. & O.S.

[illegible]

S/C-4 5824
4/12/89

①

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE
TRIBUNAL ACT, 1985

ORIGINAL APPLICATION NO. 531 OF 1989

B.S.GAJJAR Applicant.

Versus

Union of India & others Respondents.

Title of the case : Punishment of stoppage of increment
for two years without future effect.

I N D E X

Sr. No.	Description of documents relied upon.	Page No.
1.	Petition.	1-10
2.	Ann.A-1 A copy of the letter of the subscriber dtd.15.6.85	11
3.	Ann.A-2 Copies of letter dtd.3.7.85 colly. of J.E.(P) G.I.D.C. Ankleshwar and Accounts Officer (TR) letter dtd.18.6.85.	12-13
4.	Ann.A-3 A copy of bonafide of and colly. feasibility report dtd.12.7.85.	14
5.	Ann.A-4 Copies of charge sheet colly. dtd.5.11.85 reply of the applicant dtd.20.11.85 and punishment order dtd.8.2.86.	15-18
6.	Ann.A-5 Copy of appeal dtd.20.3.86 colly. and copy appellate order dtd.21.10.87 issued by the Area Manager Telecom, Baroda.	19-24
7.	Ann.A-6 Copy of revision appeal colly. dtd.23.1.88 and rejection only order dtd.6.12.88 issued by the Telecom Board, New Delhi.	25-35

Date : 4.12.1989.

Place: Ahmedabad.

B. Gajjar
X Signature of the applicant.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AHMEDABAD BENCH
AT AHMEDABAD.

ORIGINAL APPLICATION NO. 53) OF 1989.

Bhupendraprasad Shantilal Gajjar
Aged 30 years resident of
AT & Post : TRANOL
Taluka : ANAND
District : Kheda
Working as Junior Engineer (Phones)
under A.E.Phones, Nadiad. Applicant.

Versus

- 1) The Union of India
Ministry of Communications
Department of Telecommunications
(Telecom Board)
New Delhi-110 001.
- 2) The Area Manager Telecommunication
Satyen Chambers, Raopura
Baroda-390 001.
- 3) The Telecom District Engineer
60, Patel Society,
Bharuch-392 002. Respondents.

Details of application :-

1. Particulars of the order against which the application is made.

No.	2-112/88 Vig.III
Date	6.12.1988
Authority which has passed the order.	Member (Personnel) Telecom Board. Ministry of Communication Department and of Telecommunications, New Delhi.

2. Jurisdiction of the Tribunal :

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.

...2...

3. Limitation :

The applicant further declares that the application is within the limitation period prescribed in Section 21 of the Administrative Tribunal Act, 1985.

4. Facts of the case :

1. The applicant says that he was appointed as Junior Telecom Officer on probation of one year from 16.3.83. He completed his probation period of one year and appointed on long term basis w.e.f. 17.8.84. He was working on the post at Ankleshwar under S.D.O.T., Bharuch.

2. The applicant says that one of the customers of G.I.D.C. Estate, Ankleshwar viz. Shah Metal Industries vide his letter dated 15.6.85 approached the Divisional Engineer (Telephones), Bharuch with a copy to J.E. (Phones), Ankleshwar and S.D.O.T., Bharuch requesting to reconnect their telephone as they had already paid the dues on 9.5.85. They had also referred their earlier letter dtd. 3.6.85 in that letter. A copy of the said letter is annexed

Annex.A.1 herewith and marked as Annexure A.1.

3. The applicant say that since no instructions whatsoever were received from his higher authorities viz. S.D.O.T., Bharuch and Divisional Engineer, Bharuch he wrote a letter dtd. 3.7.85 to the S.D.O.T. for issue of Advice note for reconnection of the Telephone No. 2466, referring the letter dated 18.6.85 received from the Accounts Officer (TR) of the D.E. Telephones,

...3...

3

...3...

Bharuch, which was addressed to him and a copy was sent to J.E.(Phones), Ankleshwar (G.I.D.C.).

A copy of each letter is annexed herewith and

✓ Annex.A-2 colly. marked as Annexture A.2 collectively.

4. The applicant says that the Bonafide and Feasibility report as asked for by the Accounts Officer (TR) vide his letter dtd. 18.6.85 was sent to the D.E.T. Bharuch on 12.7.85. A copy of the report is annexed herewith and marked as

Annex.A-3.

Annexture A.3.

5. The applicant says that the S.D.O.T. Bharuch issued Advice note No.G-5244 dtd. 10.7.85 for reconnection which was carried out on 24.7.85 since all the records in connection with the Telephone No. 2466 was available with the S.D.O.T. Bharuch the advice note might have been issued after taking into account and verifying the records at his level. However, the applicant says that from 3.7.85 the date on which the issue of advice note was requested, till the date of reconnection i.e. on 24.7.85, no instructions were received either from the S.D.O.T., Bharuch or D.E.T. Bharuch to the effect that no reconnection should be made, inspite of the B. & F report sent by the applicant to the higher authorities on 12.7.85. Thus both the higher authorities have acted as a spectator, since the applicant had put in only eleven month service after completion of the probation period of one year, the senior officers should have guided the Junior Officer, if anything contrary to the rules, ofcourse inadvertantly, is going on. The applicant says that he was made scape goat in this case.

...4...

6. The applicant says that D.E. Telecom Bharuch vide his memorandum dtd.5.11.85 issued a charge sheet against him under Rule 16 of C.C.S.(C.C.A.) Rules, 1965 on the following charges.

- (1) Shown gross negligence of instructions and misguiding superior officers.
- (2) exhibited lack of devotion to duty
- (3) acted in the manner of unbecoming of a Government Servant, thereby violating the rules 3(1)(ii) and 3(1)(iii) of C.C.S. Conduct Rules, 1964.

Against this, the applicant made representation dated 20.11.85. Thereafter the D.E.T. Bharuch inflicted punishment of stoppage of one increment for a period of two years without commutative effect vide his letter dtd.8.2.86.

The applicant challenges the punishment order and the enquiry made on the following grounds.

- (1) According to Rule 16(1)(a), the disciplinary authority has to record his findings on each imputation of misconduct or misbehaviour.
- (2) The disciplinary and punishment authority is the same hence the principles of natural justice is violated in this case.
- (3) After issuing of charge sheet, the case was ~~was~~ handed over to the CBI for investigation.
- (4) The charges/imputations made in the charge sheet and the finding arrived at by the discipling authority/punishment authority are on different charges.

....5....

- (5) The reasons for proving the charges and for violation of rules 3(i)(ii) and 3(i)(iii) of C.C.S. (Conduct) Rules, 1964 have not been given in the order of punishment dtd. 8.2.86. Thus the order of punishment can not be said a speaking order.

The copies of the Memorandum dated 5.11.85, reply dated 20.11.85 to the Memorandum and the punishment order dtd. 8.2.86 are annexed herewith

Annex.A-4 colly. and marked as Annexure A.4 collectively.

7. The applicant had approached to the appellate authority vide his appeal dtd. 20.3.88 against the punishment order dtd. 8.2.86, but the punishment was confirmed by the appellate authority viz. the Area Manager Telecommunications Baroda vide his order dtd. 21.10.87. The copies of the appeal and the order on the appeal are annexed

Annex.A-5.Colly. and marks is Annexure-A.5 colly.

8. The applicant had approached to the Supreme authority i.e. Telecom Board, New Delhi vide his appeal dated 23.1.88 but the petition was rejected by that authority vide his order dtd. 6.12.88. The copies of the appeal and the order rejecting the appeal are annexed and marked as

Annex.A-6 Colly. Annexure A.6 Colly.

9. The applicant says that, being aggrieved with the decision of the higher authorities viz. Area Manager Telecom, Baroda and Telecom Board, New Delhi, he preferred this application before the Hon'ble Tribunal for due justice.

5. Grounds for relief with Legal provisions :

- (1) The punishment order dated 8.2.86 passed by the Telecom District Engineer, Bharuch may be quashed and set aside.
- (2) The respondent authorities may be directed to release the increment due and pay the arrears of pay and allowances due on this account.

The Legal provisions in this regard is as under :-

The authority has charge sheeted on the following charges :

- (1) Shown gross negligence of instructions and Misguiding Superior Officers.
- (2) Exhibited lack of devotion to duty.
- (3) Acted in the manner of unbecoming of a Government Servant -
thereby violated the rule 3(i)(ii) and 3(i)(iii) of C.C.S. Conduct Rules, 1964.
- (4) In case of Union of India v J. Ahmed
AIR 1979 SC-1022, the Supreme Court has observed when negligence in performance of duty amounts to misconduct as under :

"There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high."

...7...

Thus the applicant can not be said to have been acted negligently, so far as the charge No.1 is concerned.

- (b) In the above referred case it was further observed that "In the conduct rules, the expression Devotion to duty" appears to have been used as something opposed to indifference to duty or easy going or light hearted approach to duty.

The applicant has obtained the prior approval of his superior on 10.7.85 for reconnection of telephone. However the Bonafide and Feasibility report was sent on 12.7.85 before reconnection since no contrary instructions were received after 12 days of furnishing B.& F. report and as the Advice note was issued by the S.D.O.T. Bharuch, the telephone was reconnected on 24.7.85. The entire record was with S.D.O.T. Bharuch, the advice note must have been issued by him after verifying that record. Hence it can not be said that the applicant has shown the lack of devotion to duty.

- (c) "Conduct unbecoming of a Government Servant" has been explained in case of R.Srinivasan and Union of India, 1982 Lab I.C. (Mad) 920 as under.

"What is conduct unbecoming of a Government Servant has not been defined or explained in the Central Civil Services (Conduct) Rules, 1964. According to Webster's International dictionary the word 'unbecoming' means 'unsuitable', 'indecorous', 'improper'. In the light of the ordinary dictionary meaning of the word a conduct which is indecent, reprehensible or abominable involving moral though not lesser lapses, is conduct unbecoming of

...8...

a Government Servant."

The applicant has not done any of the acts mentioned above while performing his duties it can not be said that he has acted in a manner of unbecoming of a Government Servant.

6. Details of the remedies exhausted.

The applicant declares that he has availed of all the remedies available to him under the relevant service rules, etc.

Against the order of punishment of Telecom District Engineer, Bharuch dtd.8.2.86 he approached to the Area Manager Telecom, Vadodara vide his appeal dtd. 20.3.86. Against the appellate order dtd.21.10.87 issued by that authority he approached the Telecom Board, New Delhi vide his revision appeal dtd.23.1.88, which was rejected by the Ministry of Communication vide their order dated 6.12.88.

7. Matters no previously filed or pending with any other court.

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any court or any other authority or any other bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8. Reliefs sought.

In view of the facts mentioned in para 4 above the applicant prays for the following reliefs :-

- 1) The impugned order dtd.8.2.86 issued by the Telecom District Engineer, Bharuch, imposing the

...9...

...9...

penalty of stoppage of one increment for a period of two ~~xxx~~ years without cumulative effect may be quashed and set aside.

(2) The arrears of pay and allowances on that account be paid to the applicant.

(3) Any other relief as deemed fit by the Hon'ble Tribunal in the interest of justice.

9. Interim Order if any prayed.

No interim relief is prayed as it cover under para 8. above.

10. No intimation regarding the date of hearing is required as the application is being filed through as advocate.

11. Particulars of Postal order filed in respect of the application fee

No. of I.P.O.	DD/6 194263 of Rs.50/-
Date of Issue	21.11.89
Name of the issuing Post Office.	Gujarat High Court- Post Office, Ahmedabad-9.
To which P.O. is Payable.	Ahmedabad.

12. List of enclosures : As per under attached.

V E R I F I C A T I O N

I Bhupendraprasad Gajjar Son of Shantilal Gajjar aged 30 years working as Junior Engineer, Telecom under A.E. Phones, Nadiad resident of Tranol Taluka Anand, District : Kheda, Pin. 388335

.....10.....

...10...

do hereby verify that the contents of paras 1 to 4,
6, 7 and 10 to 12 are true to my personal knowledge
and para 5, 8 and 9 believed to be true on legal
advice and that I have not suppressed any material fact.

Date:- 4.12.1989

Place : Ahmedabad.

B. G. Jain

x Signature of the applicant.

Identified by me

C. S. Upadhyay

(C.S. UPADHYAY)
Advocate for the applicant.

Filed by Mr. *C. S. Upadhyay*
Learned Advocate for Petitioners
with second set & *3* pages
copies copy served/not served to
other side

4/12/89 Dy. Registrar C.A.T (I)
A'bad Bench

SHAH METAL INDUSTRIES

Engineers & Structural Fabricators.

Factory :
C-1/3914, GIDC Estate,
ANKLESHWAR 393 002
(GUJARAT)
Phone : 2466

Ref. No. SMI/W/370 /85

Date : 15.6.1985

The Divisional Engineer(Telephones)
Patel Society,
Bharuch- 392 001

Sub: Connection of our telephone No. 2466

Dear Sir,

This has reference to our earlier letter No. SMI/W/366/85 dated 3.6.1985 regarding reconnection of our above telephone.

In this connection, please note that we have paid Rs. 221-00 on 9.5.1985 vide Receipt No. 4878/iii. We therefore very sincerely request you to kindly reconnect our above telephone immediately.

Your early action in this matter will be highly appreciated.

Thanking you,

Yours faithfully,
for SHAH METAL INDUSTRIES,

K. M. Tibrewal
K. M. TIBREWAL.

CC to:

1. Junion Engineer (Phones)
Ankleshwar- 393 002
2. S. D. O. T.
Behind Polytechnic College,
Bharuch.

ald/

TRT
19/7/85
Reconnected
on 16.7.85
24-7-85

True copy
BZ
A. S. D. S.

To: S.D.O. Telegraph.
BCH.

J. E. Phones (GIDC).
Ankleshwar - 393 002

no TR-1/SS-SE/26/dtd 317185.

Ref: TRA/BCH/AK2/R-C/SS-SE/dtd. 1816185.

Sub: Reconnection case of AKS-2466

AKS-2466 has been disconnected on
60/8184 for nonpayment of outstanding
dues.

As per above referred letter,
addressed to S.D.O.T, BCH and copy
to his office Ankleshwar no 16 to be
reconnected. It is therefore requested to
kindly issue Airtele for reconnection
of same.

Bogajjary

317185

J. E. Phones (GIDC).
Ankleshwar - 393 002

TELETYPE

BZ
Ankleshwar

पत्र-व्यवहार-7/Cor-7

भारतीय डाक-तार विभाग/INDIAN P. & T. DEPARTMENT
कार्यालय/Office of the

Accounts Officer (TR)
O/S D. E. Telegraphs,
Bharuch-392002.

To: S.O. Telegraphs.
Bharuch.

No. TRA BOM/AVS/R-1/85-86/ Dated 18/6/25.

SUB:- Reconnection case of Amuleshwar, 2466.

The Telephone 2466 remain disconnected since 30/9/84. The subscriber having paid the outstanding dues has asked for reconnection.

You are requested to send the preliminary report for considering the case for reconnection.

Copy to.

✓ JEP OISC.
OISC Amuleshwar.

27-P&T-NK 2

Rajal
Accounts Officer (TR)
O/S D. E. Telegraphs,
Bharuch-392002.

TR 5/2/25
(Signature)
Bharuch

The D.E.T. (T.R.A) Bharuch.

No: TR-1/85+86/28 dtd @ AKS 12-7-85

Sub:- Reconnection of AKS ~~22~~ 2466

Annexure-I

- 1 Date of appl. for New Telephone Connection.
- 2 Date of Sanction of NTC. -
- 3 Date of installation :- 05-1-83
- 4 T. No. AKS :- 2466
- 5 Category in which applied :- SPL category.
- 6 Date on which disconnected :- 30-8-84
- 7 Particulars of Bills for non-payments due for which Telephone ~~was~~ disconnected } Can be had from TRA, BCH.
- 8
- 9 Date & time at which remainder was given to whom :-
- 9 Payment particulars:
- 10 Particulars of o/s dues if any:-
- 11 Paying habits of the party. (By TRA section)
- 12 Whether party ready to pay rent } TRA/BCH/AKS/R-C/85-86 dtd 18-6-85 & R/C charges.
- 13 Balance of O/T deposit:
- 14 Date upto which rental stood already paid:-
- 15 Date of appl. for reconnection
- 16 Reasons for delay in payments:
- 17 Bonafide and feasibility of the case. F & B.
- 18 Whether case recommended :- Yes

Ref:- Your No TRA/BCH/AKS/R-C/85-86 dtd: 18.6.85

J. E. Phones (GIDC)
Ankleshwar - 393 002.

True copy
BZ
Adm.

GOVERNMENT OF INDIA
DEPARTMENT OF TELECOMMUNICATIONS.
OFFICE OF THE DISTRICT TELECOM ENGINEER, BHARUCH.

NO. Q-534/BSCG/8

DATED AT BHARUCH THE 5th Nov '85

MEMORANDUM.

3. Sri B.S.GAJJAR, Junior Engineer, Ankaleshwar working in the office of the Telecom District Engineer, Bharuch is hereby informed that it is proposed to take action against him under Rule 16 of C.C.S. (C.C.A.) Rules 1965. A statement of the imputations of misconduct or misbehaviour on which action is proposed to be taken as mentioned above, is enclosed.

2. Shri B.S.Gajjar is hereby given an opportunity to make such representation as he may wish to make against the proposal.

3. If Shri B.S.Gajjar, fails to submit his representation within 10 days of the receipt of this Memorandum, it will be presumed that he has no representation to make and orders will be liable to be passed against Shri ~~XXXXXX~~ B.S.Gajjar ex parte.

4. The receipt of this memorandum should be acknowledged by, *shri* B.S.Gajjar.

Encl: - (Annexure ~~to~~ ^{one of} ~~the~~ ~~III~~)

Shri B.S.GAJJAR,
JUNIOR ENGINEER,
Ankaleshwar,
(Under S.D.O.T. BCH.)

TELECOM DISTRICT ENGINEER,
60 PATEL SOCIETY,
BIRMINGHAM. 392 002.

Three cop
Q2
pouch

Disaster. Telecom
various

~~50071~~ 50071

- 1) Can't is under investigation with the
C.B.G. Am.
- 2) GAO T. has to get it certified.
- 3, 15 months.

16
(12)

STATEMENT OF IMPUTATIONS OF MISCONDUCT OR MISBEHAVIOUR ON WHICH ACTION UNDER RULE 16 OF C.C.S AND (C.C.A) RULES 1965 IS PROPOSED TO BE taken against ~~MR. B.S. GAJJAR~~, SRI B.S. GAJJAR, J.E. G.I.D.C (EX) NOW WORKING AS J.E. TELEX ANKALESWAR, UNDER S.D.O.T. BHARUCH.

During the investigation of irregular reconnection of telephone no. AKS 2466

1. Telephone No. AKS-2466 provided to M/S Shah Metal Industries C-139/4 G.I.D.C. Ankaleswar on 5-1-83 under special category was disconnected on 30-8-84 due to nonpayment of bill dated 11-7-84 for RW.221/-

2. After payment of the o/s bill dtd 11-7-84 by the said subscriber vide receipt No.4878/111 dtd 9-5-85, the subscriber has applied for reconnection vide his letter No.SM-1/W/366/85 dated 3-6-85.

3. Based on the subscribers letter u/r and this office ^{Record} ~~record~~ the SDOT BCH has been asked vide this office letter No, TRA/BCH/AKS/RC/85-86/1 dated 18-6-85 endorsing copy to J.E. G.I.D.C AKS to forward the report of BONAFIDES AND FEASIBILITY for conveying the approval of the competent authority for reconnection of the telephone as the same was under disconnection for more than six months. Sri B.S.Gajjar J.E.GIDC AKS. has written to SDOT BCH vide his letter no. TR1/85-86/26 dtd 3-7-85 citing this office reference that "as per the T.D.E's (TRA) office letter addressed to SDOT and copy endorsed to him, that the AKS 2466 is to be reconnected and requested ~~to~~ the SDOT BCH to issue the necessary Advice Note for reconnection.

4. The SDOT BCH has issued A/N No.G-5244 dtd 10-7-85 for R/C which was carried out by Sri B.S.Gajjar.

Thus Sri B.S.Gajjar J.E. while discharging his duties as J.E.AKS (G.I.D.C. EXGE) is found to have misguided the S.D.O.T. BCH and not acted upto the instructions of this office wherein the bonafides and feasibility report has been called for resulting in unauthorised reconnection of the telephone no. AKS-2466.

Sri B.S.Gajjar, J.E. G.I.D.C.AKS is thus alleged to have (1) shown gross negligence of ~~instructions~~ instructions and misleading superior officers and (2) exhibited lack of devotion to duty and (3) acted in the manner of unbecoming of a Government Servant, thereby violating the rules 3 (1) (ii) and 3 (1) (iii) of C.C.S. Conduct Rules 1964.

True copy
@
H.M.

From: B. S. Gajjar
J. E. Telecom / AK
Dt: 20-11-85

To,

The D.E.T.
Bharuch.

Ref: no. Q-534/BSG/8 dated at BHARUCH THE 5th Nov-85
Subject: Reply of memorandum.

(Through P. c.)

R/Sir,

I am in receipt of your memo no Q-534/BSG/8 dtd at BHARUCH THE 5th Nov-85 very much shocked to see the charges imposed on me, even after my sincere & honest services to the department. I have not misguided my superiors nor I have violated any rules of department.

I had written on 3-9-85 vide my letter no TR-1/85-86/26 to SDOT/BCH that the AIRK 2466 is TO BE RECONNECTED and requested SDOT/BCH to issue necessary AIR for reconnection giving the reference of TDE's (TRD) letter no. TRD/BCH/AKS/RE/85-86/1 dtd 18/6/85.

On seeing the above how SDOT can be misguided? He is having full records of rules in individual subscriber file. It appears that SDOT has issued AIR for reconnection without verifying his own records and given order to me for reconnection vide AIR no. 5244 dtd 10-7-85. On receipt of AIR no. I had reconnected the T.M. after consulting him on phone. He advised to reconnect as per AIR no. issued.

Now on the above fact your goodness can decide I have not violated any rule nor misguided the superiors. In light of the facts cited above you are requested to reconsider the case.

Copy to: one copy direct
Sent to D.E.T./BCH.

Yours faithfully,

B. S. Gajjar
J. E. Telecom / AK

True copy

AK

Adm.

DEPARTMENT OF TELECOMMUNICATIONS.

OFFICE OF THE TELECOM DISTRICT ENGINEER, BHARUCH. 392 002.

No. Q-534/BSG/15 dated at Bharuch the 8-2-'86.

18
29/10/86
(14)

Sri B.S.Gajjar, Junior Engineer O/e the Telecom District Engineer Bharuch has been charged for violation of Rule 3 (i) (ii) and 3 of CCS Conduct Rules 1964 as he misguided his superior Officer and in writing for issue of Advice Note for reconnection of Telephone No. AKS 2466 instead of submitting the Bonafides and Feasibility Report as called for by the Accounts Officer O/e The T.D.E. Bharuch and thus exhibited lack of absolute integrity and devotion to duties.

In his explanation to the Memo No. Q-534/BSG/8 dated 5-11-'85 he has stated that he has neither violated the rules nor misguided his Superior Officer and reconnected the telephone after consulting his S.D.O.T on phone. Thus he did not accept the charge.

I, Sri N.K.Mondal, Telecom District Engineer, Bharuch, having gone through the explanation dated 20-11-85 of Sri B.S.Gajjar do not agree with the contention of the official and so I come to the conclusion that the charges framed against the official are proved as he has failed to give any satisfactory explanation for not furnishing the B and F report.

ORDER:- Therefore, I, Sri N.K.Mondal Telecom District Engineer, Bharuch hereby order that one increment of pay due on the immediate next anniversary day be withheld for a period of TWO YEARS without future cumulative effect.

(N.K.MONDAL)

TELECOM DISTRICT ENGINEER
BHARUCH. 392 002.

A copy of this memo is issued to

- (1) Sri B.S.Gajjar, J.E. Through S.D.O.T. Bch.
- (2) The S.D.O.T. Bharuch. He is requested to deliver the Official's copy (enclosed n/w) under clear receipt and forward the same to this office.
- (3) The Director, Telecom. Baroda for f/f/p information.
- (4) J.A.O. (Pay) O/e The T.D.E. Bch for n/a.
- (5) Q File of the Official.

True copy
@
29/10/86

Recd AD

No. Q-296/85-86 dtd. 14-2-86

Forwarded to Sri B.S.Gajjar, J.E. Bharuch
S.D.O. Telegraphs, Bharuch.

Annexure A 5 with

From:- B.S.Gajjar.
Junior Engineer Telex.
Ankleshwar.
Dt. 20-3-1986.

To,
The Director Telecommunication
Vadodra.

(Through Proper channel)

Sub:- Appeal under Rule 23 of C.C.S. (CCA) Rules 1965
against the order of the T.D.E. Bharuch as communicated
in his memo No. Q 534/BSG/15 dt. 8-2-86 (Copy enclosed)

Ref :- Raising.

May it please your Exalted Honour,

In earnest faith in your gracious Honours well renowned
high sense of justice, equity and impartiality and your Honours
active vigilance to right the wrongs perpetrated at lower level
on the subordinates, I am prompted to submit this humble appeal
against the order of punishment passed by my learned TDE Bharuch
a copy of which is enclosed for ready ref.

Facts in brief:-

That which I was working as JEP GIDC Ankleshwar, the AO(TR)
O/O DET Bharuch enclosed me a copy of his letter No. TRA/Bch/AKS/
R-c/85-86/Dt. 18-6-85 addressed to SDOT Bharuch regarding -
reconnection case of TPH 2466 (copy enclosed)

As a matter of fact I being a quit novice of my job having
performing only 17 months service in the department, I was awaiting
guidance and instruction from my immediate Superior i.e. SDOT
Bharuch as to what had I to do in C/W the letter from AO(TR) Bharuch
as cited above.

In the meanwhile which, I was asked by my worthy SDOT
Shri Bhandari to submit my report and he also dictated the reply
as per his own desire since I was quite new for the job and the
SDOT being my superior authority, I fully relied upon his -
guidance and submitted my report accordingly addressed to SDOT
stating that A/note may be issued. This refers my reply under
No. TR-1/85-86/26/3-7-85 (copy enclosed)

X ADG 7

243

2543

20
(16)

(2)

Thus everything occurred was in camera and I was quite unknown of the prescribed rules and procedure to be adopted in such cases subsequently when I was chargesheeted I only know the correctness of the entire case when I was misled by my worthy SDOT Mr. Bhandari for which I am made a scape goat.

However my representation in reply to the memo of charge-sheet dt. 5-11-85 is not considered judicially and I am put to a heavy monetary loss by awarding a severe punishment for my innocent error of judgement committed under good faith upto my experience and ability.

Merits of charges:-

That the charges are not at all sustainable in view of the following facts:-

(1) That acts, omissions and commission as alleged against is not based on the factual episode. As per universal principal of law, an error if any committed in a good faith relying upon an immediate superior authority can not be termed as misleading to any authority and as such charge levelled against can not be sustained.

(2) If at all for a moment my innocent error of judgement is considered as misleading to the SDOT Bharuch, then the next argument that arises is as to who presented the SDOT to raise objection as quarry when I could not reply him properly.

It is only Mr. Bhandari the then SDOT Bharuch who remained silent and considered my report valid or else he should have raised objection to call for my further report in prescribed form. But for the reason best known to my worthy SDOT remained silent, misled me to extract reply as per his own desire and put me into accused box for no fault only my part.

(3) Further my I take your leave to argue that my worthy SDOT Bharuch being a Gazetted (Class -II) officer on receipt of my report did not sought for approval of the director

25 (17)

(3)

for reconnection as required in the rules and issued A/note Had it been referred to the Director I the poor and junior employee could not have involved in this case. Thus it is the only SDOT who himself made efforts to be misguided and subsequently thrown entire responsibility on poor subordinates

(4) As I know the particular case is still under investigation by the CBI Ahmedabad and as such my learned TDE - Bharuch has no jurisdiction to interfere by issue of a charge-sheet to me unless otherwise. It is finalised & ordered by the CBI thus this case is at this stage subjudice and no departmental action can be initiated.

Thus the action of T DE Bharuch is bad in laws and it is ultravires.

In view of the above, the omissions & Commissions as alleged against does not fall within the persiew of exhibition of lack of devotion to duty and unbecoming of a Government servant. Therefore the charges have no legal validity and does not stand proved.

Punishment order.

Sir,

I crave your leave to submit that the punishment order itself is defective as it does not dealwith the provision of rule 16(5) of CCS (CCA) Rule 1965 nor it gives any clue to the manner in which the decision is based and arrived at.

In cases of the typed where the similar decision was taken the Hon'ble Supreme court has been pleased to observe & to hold that, " It may be noticed that the order did not contained any findings on the charge served on the employee. The order imposing penalty as a ~~dis~~ measured was not sustainable and has therefore, to be quashed." This refers AIR 1971 SC 156.

Thus your excellency may kindly be please to observe that impugned order passed by my learned TDE Bharuch is bad in laws. wholly unjustified and desires to be quashed.

(4)

PRAYER:-

In the end may I pray your kind Honour by quotation of PLATO, that, " It is more disgraceful to do injustice than to suffer it." It is therefore lastly prayed to consider my appeal sympathetically and to save me from further harassment on account of financial stringency.

For this out of kindness I shall ever remain grateful to your kind Honour and to the Administration.

Date :

Yours faithfully,

At :

B. S. Gajjar
(B.S.Gajjar)

Advance copy:-

Copy in advance by post to:-

1. The Director, Telecom Vadedra.
2. D.E.T. Bharuch.
3. S.D.O.T. Bharuch.

True copy
B.S.
Admin

23
(19)

GOVERNMENT OF INDIA
DEPARTMENT OF TELECOMMUNICATIONS
Office of the Area Manager Telecommunications
Satyen Chamber, Raopura, Baroda-1.

Memo No. AMT/Staff-22/37/10 Dated at Vadodara the 21.10.1987.

APPELLATE ORDER.

Shri B.S.Gajjar, JE Telex, Ankleshwar preferred an appeal dated 20/21-3-86 against the punishment of withholding of one increment of pay for the period of 2 years without cumulative effect, imposed upon him vide TDE Bharuch order No. Q-534/BSG/15 dated 8.2.1986.

Shri B.S.Gajjar was served with a charge sheet vide TDE Bharuch Memo No. Q-534/BSG/8 dated 5.11.1985 alleging therein that Shri B.S.Gajjar while functioning as JE GIDC Exchange Ankleshwar had misguided the SDOT Bharuch in the case of reconnection of telephone No. Ankleshwar-2466. The AOFR, o/o TDE Bharuch addressed a letter to the SDOT Bharuch to send the proforma report for considering the case for the reconnection of Ankleshwar 2466 endorsing copy to JE GIDC Ankleshwar to forward the report of bonafide and feasibility for conveying the approval by the competent authority. Shri B.S.Gajjar quoting the reference of the letter of the TDE (TRA) Bharuch requested the SDOT Bharuch to issue the necessary Advice note for reconnection. The SDOT Bharuch thus issued the Advice Note No. G-5244 dt. 10.7.1985 for the reconnection of Telephone No. Ank-2466 which was executed by Shri B.S.Gajjar JE. Shri B.S.Gajjar was thus alleged to have:-

1. shown gross negligence of instructions and misguided the superior officers;
2. exhibited lack of devotion to duty;
3. acted in the manner unbecoming of a Govt. Servant.

..and thereby violated the rules 3 (1) (ii) & (iii) of the C.C.S. (Conduct) Rules 1964. Shri B.S.Gajjar submitted his written statement of defence vide his letter dated 20.11.85. The Official denied the charges and stated in his defence that he had written the letter No. TR-1/85-86/26 dt. 3.7.1985 to SDOT Bharuch requesting therein to issue the necessary A/N for reconnection quoting the reference of the TDE (TRA), Bharuch letter No. TRA-BCH/AKS/RC/85-86/1 dated 18.6.1985, but the SDOT had issued the A/N without verifying his own records. The disciplinary authority having gone through the explanation dt. 20.11.1985 submitted by Shri B.S.Gajjar came to the conclusion that the Official had failed to give any satisfactory explanation for not furnishing the bonafide and feasibility report and thus the charges framed against him were proved. Consequently, the disciplinary authority imposed the punishment of withholding of one increment for a period of two years without cumulative effect upon Shri B.S. Gajjar vide his Memo. No. Q-534/BSG/15 dated 8.2.86.

Contd.....2.

Having carefully gone through the Appeal dated 20/21-3-86 preferred by Shri B.S.Gajjar and the relevant documents on record it is found that:-

1. The Official in his appeal has pleaded that he was novice to the job and had performed only 17 months service in the Department.

This argument is not tenable because the JEs have to undergo an exhaustive training before they are appointed on their regular jobs! In addition, the official had performed 17 months service in the Department, which is enough for on-the-job experience.

2. The Official has further stated in his appeal that he had done everything at the instance of his SDOT.

It is not established by any evidence that the lapses committed by Shri B.S.Gajjar were done at the instance of SDOT Bharuch. Moreover, the Official has not indicated any such incidence in his statement of defence dated 20.11.1985. This argument appears to be an after-thought.

On careful consideration of the material statements and arguments presented by the appellant and the relevant documents on record, I find that the Disciplinary authority has followed the procedures laid down in the CCS (CCA) Rules 1965, his findings are warranted by the evidence on the record and the penalty imposed is adequate in commensurate with the misde-meanour committed by the Official.

O R D E R.

Now, therefore, I, G.S.Chauhan, Area Manager Telecommunications, Vadodara Area, Vadodara, in exercise of powers conferred by Rule 27 of the C.C.S. (C.C.A.) Rules 1965, hereby confirm the penalty of withholding of one increment for TWO years without cumulative effect imposed upon Shri B.S.Gajjar JE, Ankleshwar (now working as JE Telex-Ankleshwar) vide TDE Bharuch Memo No. Q-535/BSG/15 dt. 8.2.86.

G.S. Chauhan
21/10/87
(G.S.Chauhan)

Area Manager Telecommunications
Baroda - 390 001.

Copy of this Memo is issued to:-

1. Shri B.S.Gajjar, JE Ankleshwar Telex through DET Bharuch.
2. TDE Bharuch with one spare copy for obtaining the
3. & acknowledgement under dated signature of the official
4. thereupon and forwarding the same to this office for record.
5. SDOT Bharuch
6. CR file of the Official ☐ Through TDE
7. PF of the Official ☐ Bharuch.
8. Appeal case file of o/o AMT Baroda.
8. Spare with case file.

True copy
AR
amr

From: B.S.Gajjar,
J.E.Telex,
Ankleshwar,

Annexure-A-6 copy

2/21

Dated at Bharuch 23 -1-88.

To: Hon'ble Member,
(Personnel),
Telecom Board,
Govt. of India,
Communications Department,
Parliament Street,
New Delhi

... through proper channel.

Sub: Revision Appeal.

Respected Sir,

The Petition of the Petitioner, above named most humbly and respectfully sheweth as under :-

- 1) That the Petitioner is a Junior Engineer with date of ~~entry~~ entry in the department in the cadre of J.E. with effect from 17-8-84 and is due to be granted Quashi Pmtt. certificate. The Petitioner is working under SDO Bharuch in the Division of TDE Bharuch, under the jurisdiction of Area Manager Telecom Vadodara.
- 2) That the Petitioner was proceeded against under Rule 16 of C.C.S. (C.C.A.) Rules 1965 as per TDE Bharuch Memo. No. 4-534/BSG/8 dated 5-11-85 ~~xxxx~~ alleging that the Petitioner infringed the rule 3(1) (ii) and 3 (1) (iii) of C.C.S. (Conduct) Rules 1964 and is awarded the punishment of withholding of one increment for the period of 2 years without cumulative effect vide its Memo. No. 4.534/BSG/15 dated 8-2-86. The copies of the said Memo. of charges and punishment orders are appended herewith as Annexure-A & B.
- 3) That the Petitioner submitted an appeal to the Area Manager Telecom Vadodara under rule 23 read with rule 25 & 26 of the C.C.S. (C.C.A.) Rules 1965 Copy of the said appeal dated 20-3-86 is appended herewith as Annexure-C.
- 4) That the Appellate authority has rejected the ~~x~~ said appeal under its Memo. No. AMT/Staff-2/37/10 dtd. 21-10-87, a copy of which is appended herewith as Annexure-D.
2. The Petitioner having agrieved with the decision conveyed to the Petitioner submits this revision Appeal under the provision of rule 29 of the C.C.S. (C.C.A.) Rules 1965 within the stipulated period as prescribed in Govt. India's instruction No. 42 4 (2) below said rule and instructions No. 6(2) of Petitioners Instructions.
3. The History of the case, in brief, is as under :-
 - A) The Petitioner was working as JE after completion of departmental training and was hardly put in 17 months service including training period and other period in which, the work was to be performed in the bigger exchanges. It was first time that the Petitioner was posted in a small

small unit of Ankleshwar for the work of Telephones mainly in GIDC Ankleshwar. The Petitioner had taken over the charge only a few days before when the occasion of having received a copy of letter from TDE office Bharuch happened which was an endorsed letter to the Petitioner and was addressed to the SDOJ Bharuch which is immediate authority of the Petitioner. The Petitioner is mainly required to perform outdoor duties in respect of telephones and has not been maintaining office for the performance of any administrative work which is not the main part of the job of the field worker. The Petitioner had received the said copy endorsed to it which was addressed to SDOJ Bharuch by the TDE Bharuch interalia required information and record to report for considering the case for reconnection. The copy of this letter addressed to SDOJ Bharuch and copy endorsed to Petitioner is appended as Annexure-E. The Petitioner, therefore, inquired with SDOJ Bharuch personally on phone in absence of previous record when the Petitioner was had newly joined person at Ankleshwar and dealing with such type of letter for the first time. The Petitioner also inquired that whether this query is with reference to Accounts Officer (TR), Office of the TDE Bharuch, dtd. 18-6-85 addressed to that office and received by that office. The SDOJ personally suggested that the Petitioner should reply to that office that as per above reference, the Petitioner should request for issue of Advice Note for reconnection of telephone. The copy of this letter dtd. 3-7-85 addressed to the SDOJ by the Petitioner is enclosed as Annexure-F. The Petitioner awaited confirmation of instructions given by the SDOJ Bharuch and also requested in the form of reminder on phone for the same. The Petitioner had further contacted on phone when the SDOJ directed the Petitioner to obtain the proforma for the report from the office which I obtained on 11-7-85 and submitted this proforma to the TDE (TR) Bharuch through SDOJ Bharuch on 12-7-85 as per the instruction of the SDOJ. The copy of the said proforma is appended as Annexure-G. The said proforma clearly bears the reference dated 18-6-85 of the TDE Bharuch. The Petitioner on receipt of demand note dt. 10-7-85 issued by SDOJ Bharuch inquired from the SDOJ Bharuch as to whether the reconnection is to be given in light of the fact that proforma information is submitted on 12-7-85. Thus instructions were imparted for giving reconnection on 24-7-85 and accordingly connection was put into effect by reconnecting as per A/M.

4. The Petitioner has submitted the facts of the case in the defence as also in the Appeal, but the said authorities have not taken into consideration any of the fact which the petitioner has submitted with open heart. Even the Petitioner has laid down information by the Petitioner that the investigation was given to the CBI Ahmedabad but the result of the same is not known to the Petitioner. It can be judged from the above facts that there is miscarriage of fault committed by other dignatories on the shoulder of a small man like J- which is discharging the duties honestly and in good faith as per instructions imparted by the immediate superior.

(3).

27

5. The Petitioner begs to submit that the charge under Rule 3 of C.C.S. (Conduct) Rules 1964, is a serious one and has not to be applied in the manner in which it has been applied in the present case of the Petitioner. The Petitioner submits that when the provision of any specific rule of the department attracts for alleged breach of rule, action under rule 3 of C.C.S. (Conduct) Rules 1964 on ground unbecoming conduct does not stand to any justification. In this connection, the Petitioner begs to rely upon C.S. (Department of Personnel) O.M. No. 11013/18/76-2 (ESTI(A) dated 7-2-77 para 2.2. Thus the proceedings initiated against the Petitioner under rule 2 15 of the CCS (CCA) Rules 1965 on the ground of the rule 3 CCS (Conduct) Rules 1964 are unjustified. The Petitioner has sought for the instructions from the immediate superior and has acted in good faith and without negligence according to its instructions which through requested for have not been confirmed in writing and the Petitioner a newly recruited official could not be insisted for that. The perusal of correspondences will convince your Honour that the request made to issue A/N was addressed to SDO Bharuch citing the letter of the Accounts Officer (R) Office of the E Bharuch. If it was ordered that such issue of A/N is not necessary in light of the fact that the report in proforma must be submitted first. This fact was available on the records of the SDO Bharuch and there was not information as regards disconnected phone ~~xxxx~~ easily available at the Petitioner's end. Besides the Petitioner had newly joined office. In fact the Petitioner drew the attention of the SDO Bharuch on the letter dt. 18-6-85 received from the IDE Bharuch and in respect of that talk, the Petitioner was advised to send the letter requesting for A/N. This could not be avoided and records could have been referred to by that office for properly guiding field worker posted at Ankleshwar. When the SDO Bharuch issued A/N dt. 10-7-85, the letter of the DEI Bharuch addressed to SDO Bharuch was in its office record which was posted by DEI on 18-6-85 and copy endorsed to the Petitioner. Similarly the letter of the Petitioner dt. 3-7-85 had reached after the receipt of letter dt. 18-6-86 from the DEI Bharuch addressed to SDO Bharuch ~~was~~ and was definitely on record of that office. Therefore, it was incumbent on that office to immediately cancel its A/N dt. 10-7-86 and direct the Petitioner to submit proforma immediately which meticulously was done by the Petitioner on 12-7-86. The Petitioner also in good faith sought for the advise on receipt of A/N that the Proforma was submitted and whether the Petitioner can proceed further on A/N dated 10-7-85 which was replied in affirmative. However, the Petitioner awaited for a period of 12 days, if any query was raised by the IDE on the proforma submitted through SDO Bharuch to defer work. ~~was~~ Ultimately when the SDO insisted to carry out the work as per A/N the Petitioner had no alternative but to act accordingly in absence of any further instructions on the proforma submitted on 12-7-85 through the SDO Bharuch. The Petitioner submits that the proforma was submitted duly filled in the columns in respect of feasibility of connection which was a technical issue to be decided with the consultation of the Petitioner and this has been bonafidly and correctly answered with the request that the Proforma's other informations are available in the office of SDO Bharuch. Thus the Petitioner has not violated

...violated any rules of the department so far, proforma information was concerned and so far the request was made for issue of A/N as per telephonic instruction sought for from SDO Bharuch. 28
24

6. The Petitioner has not exhibited any lack of devotion to duty so far its field work was concerned in respect of feasibility of reconnection of telephone with reference to, availability of space to reconnect the said telephone. The SDO Bharuch ~~was~~ was the appropriate and concerned authority to verify the other records in respect of eligibility of telephone for reconnection, the payment of arrears etc. The field worker was directed to carry out the instructions in regard to reconnection of telephone on the grounds of feasibility.

7. The Petitioner begs to submit that by executing the said orders of reconnection, no violation or act of misconduct exhibited and there is no hint of action of unbecoming of Govt. servant, for any exhibiting of negligence in discharging of duties as a field worker. The Petitioner has not overlooked rights of any other subscribers in expressing the feasibility of reconnection. Thus imputation of misconduct or allegation of misguiding the SDO Bharuch does not stand to any genuine ground of alleged misconduct on the part of the Petitioner. The Petitioner can not read the mind of the immediate superior if it intends to involve the Petitioner by mischief by imparting the instructions when the A/N should be asked for, even when all the facts of the case regarding date of disconnection, arrears of bills etc. were handy on its office records. Even when the SDO Bharuch was immediate authority to judge the contradictory report of requesting the A/N dt. 3-7-85 and when that office had received the letter dated 18-6-85 in its office and only copy of that letter was endorsed to the Petitioner which was also cited in that reference dated 3-7-85 while requesting for A/N as per oral instructions of the SDO Bharuch. Thus in case of Petitioner's request dated 3-7-85, was contrary to DEI Bharuch letter dated 17-6-85, it was received in office of SDO Bharuch, it was incumbent on that office to raise query and set right the matter as per rule of law. But this was not done apparently for its malice and said malice is malice in law and obviously that office is deemed to be responsible and adjudged at fault for any consequences and this blame at the later stage can not be thrown on the Petitioner to escape its own responsibility as immediate superior in the chair of office of SDO Bharuch when the authority was quite competent to direct and cancel the said A/N dated 10-7-85 on receipt of proforma submitted by the Petitioner on 12-7-85 and forwarded to DEI Bharuch through SDO Bharuch. This was not done for the very reason that, authority was interested to issue instructions to the Petitioner to request for A/N and to execute the work of reconnection. This was done in good faith by the Petitioner without any dream of any mischief if any at the other end. The Petitioner is a novice to the department and has open heart and discharging its duty with good faith and without negligence.

8. The Petitioner as discussed in the preceding paras begs to submit that the statement of imputation of charge is not bearing the concept of justice in regard to applying of rule 3 of C.C.S. (Conduct) Rules 1964 and the details of the alleged imputation of conduct are not cleared. It appears the disciplinary authority has purposely omitted to give details of date of reconnection which was 24-7-85 which period would justify to cause issue of other instructions by the SDO Bharuch or DEI Bharuch if at all to

293

..at all to the Petitioner, a field officer without adequate means of administrative knowledge to stop the work of reconnection. The Petitioner, it is understood is made a target for the serious illegality in respect of not referring the matter to the Area Manager for grant of formal sanction for reconnection as the period for disconnection and reconnection exceeded the period permissible for grant of reconnection within the authority of TDE Bharuch. Thus SDO Bharuch appears to be shielded by the immediate superior i.e. TDE Bharuch which officer also appears to be held responsible for the alleged irregularity.

9. The Petitioner begs to submit that the disciplinary authority has not initiated the proceedings as per rule of law and rules prescribed in rules C.C.S. (C.C.A.) rules 1965. The disciplinary authority has not taken into consideration, the facts given as that authority is prejudiced and biasness existings for the very reason which cause to appear to have been processed for the alleged irregularity noticed by the ~~xxxx~~ higher authority. The Petitioner ~~is~~ ~~is~~ begs to submit that no confronting inquiries are made by the disciplinary authority when the Petitioner has specifically mentioned that the Petitioner has sought for instructions from time to time from immediate superior in view of the fact when there were no right instructions or guidelines or manual on the new issue came before the Petitioner. Thus the principles of natural justice are violated and the disciplinary authority has erred adjudging the Petitioner guilty of the charge.

10. The Petitioner begs to submit that the Appellate authority has not taken into consideration the relevant facts of the documents which are discussed theretobefore arriving at the conclusion with the documents on file of disciplinary proceedings are not taken into consideration which clearly establishes the action and motive of the SDO in getting ~~x~~ executed the work from the subordinate in the manner in which it has been carried out. The Petitioner was not offered for any confronting inquiries with the SDO Bharuch for the issues which were received in the routine representation submitted in reply to the charge-sheet and the issues explained elaborately which are based on genuine grounds. In natural course, it is beyond imagination that the junior officer with meagre service in the department can refuse to carry out telephonic instructions given which are not concluded to have been refuted in the case either by the disciplinary or by the appellate authority. No such authority has mentioned otherwise before while inspecting of file and it is mere suspicion or presumption on the part of the disciplinary authority and the appellate authority resulting in denial of natural justice.

11. The Petitioner begs to submit to ~~mayxxxx~~ say that the Supreme Court has held in a number of cases that the departmental proceedings are not Administrative but quasi judicial in nature. The C.C.S. (C.C.A.) Rules are statutory rules framed under Art 309 of the Constitution of India. It is, therefore, incumbent upon the disciplinary authority to have a judicial approach in the matter. The Petitioner relies upon the case of H.C. Goel SC 1964 and U.P. Ware Housing Corpn. VRS. V.N. Vajpnee SC. 1980. ~~xxxxxx~~ Therefore, any extraneous consideration of matter to allege that petitioner misguided the Superiors will certainly result in violation of Art 311 of the Constitution of India. The Petitioner had submitted letter to SDO Bharuch on 3-7-85 on a letter from SET addressed to SDO Bharuch

(6).

30 26
...SDOI Bharuch and copy endorsed to the Petitioner. Thus question of any allegation of misguiding does not arise. It was that officer who had to take decision after referring the letter of DEI dt. 18-6-85. Besides Proforma as directed by SDOI was obtained from that office and submitted on 12-7-85 when all the previous correspondences was available on the records to decide the matter. The Petitioner even on receipt of A/N dt. 10-7-85 waited till 24-7-85 when finally that office directed to execute A/N dt. 10-7-85. Thus Petitioner had only concern with technical issue of feasibility of reconnection according to availability of line etc. and had no concern with issue of administrative matter such as period of disconnection arrears to be recovered etc. etc. for which disciplinary authority and appellate authority are trying to hold Petitioner responsible on ground of misconception to alleged MISGUIDED. In fact all the issues were to be decided not by the field worker but by Gazetted Officers of department. Thus no preponderance of misguiding can be applied when facts are proved against administration. Mere suspicion can not thus take place of evidence or proof of alleged misguiding by subordinate. In this connection the Petitioner relies upon the case of AR Srinivasan SC 1966. Thus the disciplinary authority has acted on irrelevant material in arriving at the erroneous findings to adjudge the Petitioner giving of alleged misguiding. The Petitioner on this issue relies on case law Dhirajlal SC 1955. Besides Supreme Court has much emphasised on correct assessment of evidence on an objective analysis bases on cast iron logic (Girdharilal's Case SC 70) and finding should be free from personal bias. When the Petitioner has submitted the correspondence to SDOI in response to letter of DEI and also the correspondence received by SDOI from DEI exists on file, the administration must give proper weight and should have no room for irrelevant consideration, conjectures, surmises, suspicious etc. as veridicated by Hon Court in case of Golam Mohiuddi 1964. Thus as Lord Halsbury defines, any discretion taken by appellate authority and disciplinary authority should be that something is to be done according to the rules of reasons and justice, according to law and not to private opinion or arbitrary, vague, but legal and regular and exercised within limit to which an honest man competent to discharge such duty. If the said doctrine is applied in Petitioner's case, it will be established that IPSOFACTO charge of misguiding superiors is baseless and an error of judgement. Thus any administrative act which appears to be arbitrary or capricious, is liable to be set aside (S.M. Bannaja case 1974).

12. The Petitioner, therefore, begs to sum up the issues as under :-

- 1) That the proceedings under rule 16 of the C.C.S. (C.C.A.) Rules 1965 under rule 3 of C.C.S. (Confidential) Rules 1964, are ultravires of the Govt. of India's instructions.
- 2) That the charges alleged do not stand proved in light of the fact that the Petitioner was acting as per the instructions of the immediate superior i.e. SDOI Bharuch.

(7).

2192

- 3) That the Petitioner had corresponded with SDOF. Bharuch in time and contradictory reports, if so considered were in its file for properly guiding the Petitioner which has not been done.
- 4) That the subject matter concerned, Petitioner was in regard to technical matter of feasibility of reconnection or otherwise it was supplied in proforma in time and before executing the order of SDOF dated 10-7-85.
- 5) That the Petitioner was not directed on receipt of proforma dated 12-7-85 by SDOF Bharuch not to execute the processing of reconnection.
- 6) That the instructions were received on phone to carry out execution as per A/N which had been carried out on 24-7-85, i.e. 14 days after issue of A/N and 12 days after submission of proforma of feasibility.
- 7) That the Petitioner was a field worker and no administrative information was available with it. The required proforma was not sent by the SDOF. or DET Bharuch.
- 8) That proforma was obtained from SDOF, when the DET Bharuch letter dated 18-6-85 was received and Petitioner's letter dated 3-7-85 was on the record of the SDOF Bharuch at that time.
- 9) That the proforma was filled in after receipt of A/N dt. 10-7-85 keeping it aside for further instructions in view of the fact that the proforma was submitted on 12-7-85.
- 10) That the instruction to cancel A/N were not received but further instructions on phone were received to execute the reconnection which was done on 24-7-85.
- 11) That the Appellate authority did not consider the consequences arising from relevant ~~references~~ references available in the file of SDOF/DET Bharuch which clearly proved that the Petitioner was not at fault.

13. The Petitioner with the above factual data of case and with the discussions on the issue of appeal, disciplinary proceedings discussed above, begs to pray as under :-

- 1) That the impugned order of the Punishment order imposed by the IDE Bharuch issued under his No. Q-534/BSG/15 dated 8-2-86, may kindly be ordered to be quashed.
- 2) That the decision of Appellate authority informed under No. AMI/Staff-23/37/10 dated 2-21-10-87 may kindly be set-aside.
- 3) That the amount recovered as a punishment may kindly be ordered to be refunded.
- 4) That the adverse records as passed in the remarks in the Confidential records as result of statutory punishment made, may kindly be ordered to be expunged..... and.....

for this act of kindness, the Petitioner and its family members which are suffering very heavily financial stringency on account of awarded punishment on the bread earner, as duty bound shall ever pray.

Thanking you,

Yours faithfully,

Enclosures : Annexures: A, B, C, (B.S.Gajjar),
D, E, F, G. J.E. Ajkleshwar.
(Seven). (under SDO Bharuch,
and IDE Bharuch).

Copies submitted to SDO Bharuch, DEI Bharuch and Area Manager Telecom Vadodara for onward transmission. The advance copy has been sent direct to the Member (Personnel) Telecom Board New Delhi.

It is requested that the documents as required under rule 26 of C.C.S. (C.C.A) and Govt. India's Instruction, may kindly be forwarded to the concerned authority.

o o o o o o

True copy
@J
Advised

23
(99)

No. 2-112/88-Vig.III
Government of India
Ministry of Communications
Department of Telecommunications
(Telecom.Board)

New Delhi-110001,^{Dec}
Dated, the 6/14 Nov., 1988.

O R D E R

Shri B.S.Gajjar, Junior Telecom.Officer, Bharuch, has preferred a petition dated 23.1.1988 against the punishment of withholding of one increment for a period of two years without cumulative effect imposed on him by the Telecom.District Engineer, Bharuch upheld by the Area Manager Telecom.Baroda.

2. Minor penalty proceedings were initiated against the said Shri B.S.Gajjar vide Telecom.District Engineer, Bharuch Memo No. Q-534/BSG/8 dated 5.11.85 on the imputations that he while discharging his duties as J.E.Ankaleshwar, GIDC Exchange misguided the SDOT, Bharuch and not acted upto the instructions issued by the T.D.E.'s office wherein the bonafides and feasibility report was called for resulting in unauthorised reconnection of Telephone No. AKS-2466 and thus exhibited lack of devotion to duty and acted in a manner unbecoming of a Government servant thereby violating Rules 3(1) (ii) and 3(1) (iii) of CCS(Conduct) Rules, 1964. In his reply to the charge-memo the official denied the charge and stated that he reconnected the telephone after consulting the SDOT on phone who advised him to reconnect as per advice note issued. This explanation was not accepted by the disciplinary authority. He held the charge as proved and imposed on the official the abovesaid punishment vide Memo No. Q-534/BSG/15 dated 8.2.86. Against this the official preferred an appeal dated 20.3.86 to the Director Telecom., Vadodra in which he stated that being quite a novice in his job having performed only 17 months of service in the Department, he was awaiting guidance and instruction from his immediate superior i.e. SDOT Bharuch as to what he had to do in connection with the letter from the A.O.(TR), Bharuch. He also stated that the acts, omissions and commissions alleged against him were not based on factual episode. The appellate authority held that there was nothing to indicate that the lapses committed by the official were at the instance of SDOT Bharuch. He held that the findings of the disciplinary authority were warranted by evidence on record and that the penalty was adequate. He accordingly upheld the penalty vide his memo No. AMT/Staff-22/37/10 dated 21.10.87. Aggrieved by this the official has come up with the petition dated 23.1.88 mentioned above.

34
90

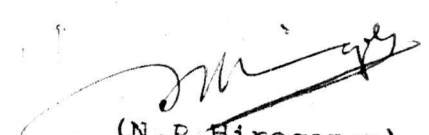
In the petition his contentions in brief seem to be as follows:-

- i) He had taken over charge only few days before the receipt of the letter from the T.D.E.'s office. At that time he had hardly put in 17 months service including training period and it was for the first time that he was posted in a small unit.
- ii) Since he was not sure of the action to be taken on the letter from the Accounts Officer, he consulted the SDOT who told him that he (petitioner) should request for issue of advice note for reconnection of telephone.
- iii) In case the petitioner's request dated 3.7.85 was contrary to DET, Bharuch letter dated 18.6.85 which was received in the office of SDOT Bharuch, it was incumbent on that office to raise query and set right the matter as per rule of law.
- iv) Instructions were received on phone to carry out execution as per advice note which had been carried out on 24.7.85 i.e. 14 days after submission of proforma of feasibility.
- v) The proforma was filled in after receipt of A/N dated 10.7.85 keeping it aside for further instructions in view of the fact that the proforma was submitted on 12.7.85.

3. The case has been considered carefully. The fact remains that the ^{Accounts} ~~Inquiry~~ Officer in his letter dated 18.6.85 had only asked the SDOT, Bharuch to send proforma report for considering the case for reconnection. It was therefore not correct for the official to ask the SDOT to issue advice note for reconnection of the telephone stating that as per the letter of the A.O. dated 18.6.85 the Ankaleshwar Telephone number in question was to be reconnected. Asking for issue of advice note was clearly a mis-interpretation of the letter of the Accounts Officer. There is nothing to support the contention of the official that the telephone was reconnected at the instruction of the SDOT. If the official had not asked for issue of the advice note for reconnection on 3.7.85, the same would not have been issued. As the J.E. in charge it was necessary for him to ensure that sanction of the competent authority had been accorded before he asked for issue of advice note for reconnection of the telephone. He mis-interpreted the A.O.'s letter that as per that the telephone was to be reconnected. This was clearly incorrect. Since as per the A.O.'s letter only the prescribed proforma report was to be sent to the DET's office for considering the case for reconnection the official should not have written a letter dated 3.7.85 to the SDOT asking for issue of advice note for reconnection of the telephone which resulted in the issue of the advice note without proper sanction from the competent authority. If he was not sure of the action to be taken he should not have written such a letter. He is a graduate and he was imparted

the prescribed training for the post and during such training all such fundamentals are also taught. The incident in question occurred in July, 1985 and by that time the official had put in nearly an year of service as J.E. after training. Therefore, his plea that he was a novice and that he was not able to understand the requirement conveyed in the A.O.'s letter cannot be accepted. The punishment imposed cannot be considered excessive, keeping in view the need to ensure that the rules are followed correctly.

4. In the circumstances, I also do not find any justification to interfere with the disciplinary authority's order and accordingly hereby in exercise of the powers conferred under Rule 29 of the CCS(CCA) Rules, 1965, reject the petition of the said Shri B.S.Gajjar, dated 23.1.88.


(N.R.Hiregange)
Member(Personnel) Telecom.Board

Shri B.S. Gajjar,
Junior Telecom.Officer,
Bharuch.

(Through the Area Manager Telecommunications, Baroda-390001.)

True copy
@
Adm -

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT

AMERAD AD.

O.A. No. 531 of 1989.

L.S. Gajjar ... Applicant

Versus

Union of India & Ors. .. Respondents

REPLY ON BEHALF OF THE

RESPONDENTS :

I, A. K. MEHRA working
as TDM / Nadied in the office of TDM / Nadied
do state as under :

I have read copy of the application and am
conversant with the facts and circumstances of the
case and am authorised to file this reply on behalf
of the respondents. I say that I am filing this
reply for the purpose of opposing admission of
this application and do reserve my rights of filing
further reply/s if any need there be.

1. At the outset, I say that I deny the all
averments made by the applicant in this application
except which are specifically admitted by me herein
after. I further say that the contentions of this
application are misconceived and the same is not
maintenable and deserves to be dismissed.

Sub objection

Read copy
Nadied R.H.

Ch C.S. Gajjar
Ad

2216

JOA

2. With regard to para 2 and 3, I say that the application is grossly barred by period of limitation as prescribed by the Administrative Tribunals Act, 1985. I further say that the action of the respondents is in accordance with principles of natural justice and provisions of law. Therefore, the application being devoid of any merits deserves to be dismissed.

3. With regard to para 4:1, I deny the averment and I say that the applicant was appointed as Junior Engineer with effect from 17th August, 1984 after the prescribed training for appointment as Junior Engineer in the department and was initially posted under the Telecom. District Engineer, Bharuch District. The applicant was placed in the higher scale of Junior Telecom. Officer with effect from 31.7.1987.

4. With regard to para 4:2 and 4:3, I say that I deny the contents thereof. However, I say that the applicant (Junior Engineer) was aware that the telephone was disconnected on 30.4.84 as mentioned in his letter dt. 3.7.85 and the ~~xxx~~ telephone connection remained disconnected for a period beyond 6 months. The reconnection was beyond the powers vested with the Telecom.

(27)

--3--

District Engineer.

5. With regard to para 4:4 and 4:5, I say that I deny the contents thereof. However, I say that the proforma report was asked for by Accounts Officer (TR) from SDOT Bharuch vide his letter dt. 18.6.85 for proceeding of the case. The applicant had joined service on 17.8.1984 as Junior Engineer after the prescribed period of training of one year. The contents of the applicant that he had put in 17 months of service including the training and lack of experience of working in smaller exchange will not be sustainable. These fundamentals^{are} imparted in the training institution. He should have kept himself~~for~~ conversant of the rules and procedure on joining service in a very responsible post in the department. This goes to show that the applicant had not taken the training imparted to him seriously and had not taken pains to know the fundamental and important functions of the Junior Engineer. The rules which are to be observed by him in the performance of his duties should have been by him. Thus, the ~~plax~~ contention of the applicant is quite untenable and cannot be accepted.

6. With regard to para 4:6, I deny the contents thereof and I say that the applicant had requested the SDOT Bharuch to issue Advice Note for reconnection

which was not within the power of Telecom.

Dist. Engineer. Thus, the applicant had

exhibited lack of devotion in the discharge of

his duties as Junior Engineer. The action of

seeking approval for reconnection of the telephone

when he was called upon. He had submitted the

reconnection proforma duly completed which was

not acted upon by the applicant, as reconnection

of this telephone was contrary to the provisions

of rules and was not expected of a Junior Engineer

and this action was unbecoming of a Government

Servant. The applicant in the statement of defence

to the Memo of charges had mentioned that he had

consulted the SDOT on phone. With regard to this

avermant, I say that there is nothing on the record

to this effect and that the telephonic talk with the

SDOT is nothing but an escape route when his actions

were found to be contrary to the provisions of rules

and disciplinary proceedings were initiated against

him for lapses on his part.

7. With regard to para 4:7, I say that the

defence statement submitted by the applicant was

examined by the Telecom. District Engineer, Bharuch

and for the lapses on the part of the applicant which

was found justified by the TDE to impose penalty.

The appeal submitted by the applicant was fully

(34)

--5--

considered by the Appellate Authority and the Appellate ~~an~~ order was ~~fully~~ issued considering all aspect of the case. Therefore there is no miscarriage of justice as alleged by the applicant. The action against other officers/officials for irregularities/lapses on their part are not concerned with the case of the applicant.

8, With regard to para 4:8 and 4:9, I say that the applicant has merely enumerated the facts of the case and therefore I don't comment upon it.

9. With regard to para 5, I say that the proforma of reconnection of the telephone No. Ankleshwar-2466 which was disconnected on 30.8.84 was called for by the A.O.(TR) for consideration of the telephone when the party had paid the outstanding dues and written to the office. The applicant Junior Engineer concerned with the case in the exchange should have filled in the proforma pertaining to his section and submitted to SDO for further action. Instead the applicant in his letter dt. 3.7.85 had requested the SDOT for issue of Advice Note for reconnection of the telephone which was uncalled for as no mention was made in the letter of the A.O.(TR) ordering reconnection of the phone. The telephone No. Ankleshwar-2466 disconnected on 30.8.84 was reconnected on 24.7.85

based on Advice Note dt. 10.7.85. The applicant should have verified as to whether orders from the competent authority was cited on the Advice note for reconnection of the telephone when the phone remained under disconnection from 30.8.84. The proforma for reconnection submitted on 12.7.85 was not done by the applicant but by the other J.E. Phones after issue of the reconnection Advice Note. The applicant, thus, exhibited lack of devotion to his duties and also his action of reconnecting the phone without verification whether the authority from the competent authority was issued - was unbecoming of a Government servant. The memorandum of charges issued by the TDE and the imputation were in order.

It is submitted that in view of the action of the respondents which is in accordance with the provisions of law, the applicant not made out any valid ground for interference by this Hon'ble Tribunal and therefore the orders passed are just and proper.

It is submitted that the applicant has not exhausted all the remedies available to him under the rules and therefore the application

35

--7--

being not maintainable deserves to be dismissed.

In view of the above paragraphs the application being devoid of any merits deserves to be dismissed.

Place : Nadiad

Date : 18.6.90

H. J. Jethani
Telecom. District Manager,
NADIAD-387001

VERIFICATION

I, A. K. MEHRA working
as TDM/Nadiad aged about 36 years in the office
of TDM/Nadiad.
do
verify and state that what has been stated by
me hereinabove is true to my knowledge and belief
and I believe the same to be true.

Place : Nadiad

Date : 18.6.90.

H. J. Jethani
Telecom. District Manager,
NADIAD-387001

(Deponent)

Reply/Rejoinder/written submissions
filed by Mr. J. V. Jethani
dated 22/6/90 for perusal
of the court with copies
of the same forwarded to the court.

22/6/90 Dy. Registrar (1)
A'bad Bench

28

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AHMEDABAD BENCH
AHMEDABAD.

O. A. NO. 531 OF 1989.

B.S. Gajjar.

.. Applicant.

Versus.

Union of India & ors.

.. Respondents

Copy Served
Mr. P.M. Rohal
25/3/91

Date not shown
in the register
for the
25/3/91

REJOINDER OF THE APPLICANT TO
THE REPLY FILED BY THE RESPONDENT:

1. The applicant says that he has read the reply filed by the respondents. The deponent is not a party to the application and hence he can not file the reply. The reply should have been filed by either of the parties indicated in the application. Since the deponent is not a party in the application he can not say that the contentions of the application are misconceived and the same are not maintainable and deserves to be dismissed.

2. The applicant deny that the application is grossly barred by the period of limitation as prescribed by the Administrative Tribunals Act, 1985.

....

According to the Section 21 of the Administrative Tribunals Act, 1985, the aggrieved person can make an application to the Tribunal after availing of the remedies available to him under the relevant service rules as to redressal of grievances within one year from the date on which a final order rejecting any such appeal or representation has been made. The applicant says that the application is filed against the order dated 6-12-1988 issued by the highest authorities of the department i.e. Telecom Board New Delhi (Annexure -A-6 colly. to the application) . Hence it cannot be said that the application is barred by the limitation. Further it is stated that the action of the respondents is not in accordance with principles of natural justice and provisions of law as indicated in the application as such it cannot be said that the application is devoid of any merits and deserves to be dismissed, as stated by the respondents.

3. The applicant says that the averment made by the respondents authorities is contradictory. They accepts that the applicant was appointed in the department on 17-8-84, whereas the incident of disconnection of telephone tookplace on 30-8-84 i.e. after 13 days of the applicants' appointment, Thus it transpires that the applicant was quite new to the department. The contention of the

respondents that the applicant was placed in the higher scale of Junior Telecom Officer w.e.f. 31.7.87 is not relevant. It is stated that the averments made by the applicant vide para 4.1. are correct.

4. The applicant says that one of the customers of G.I.D.C. Estate, Ankleshwar viz. Shah Metal Industries vide his letter dated 15.6.85 approached the Dvl. Engineer (Telephones) Bharuch with a copy of J.E. (Phones) Ankleshwar and S.D.O.T. Bharuch requesting to reconnect their telephone as they had paid the dues on 9.5.85. Since nothing was heard from the officers at Bharuch the applicant approached vide his letter dated 3-7-85 for issue of Advice note for reconnection of the Telephone No.2466, referring the letter dated 18.6.85 received from the Accounts officer (TR) of the D.E. Phones Bharuch, whereupon, the S.D.O.T. issued advice note No. 65244 dated 10-7-85 for reconnection. As such the averment made by the respondents that the reconnection was beyond the powers vested with the Telecom District Engineer does not hold good. Had it be so, they would not have issued advice note.

5. The applicant says that the averments made by the respondents with reference to para 4.4. and 4.5. are contrary. The fact is that the advice note was asked for by the applicant on 3-7-1985

bonafide and feasibility resport was sent on 12.7.85 , advice note issued on 10-7-85 and reconnection of telephone was carried out on 24.7.85. Thus it will be seen from the above correspondence that the higher officer viz. S.D.O.T. Bharuch and D.E.T. Bharuch could have restrained the applicant from reconnection of the phone, if the sanction was given beyond their powers. But instead of that, they allowed the reconnection of the telephone and held responsible the applicant for the acts for which he is not responsible. On the contrary the higher officers should have asked for the explanation of the S.D.O.T. Bharuch and D.E.T. Bharuch who have over exercised the powers, inspite of that the applicant is made scapegoat in this case.

6. The applicant says that the averments made by the respondents are not acceptable in view of the facts that the S.D.O.T. Bharuch has over exercised his powers .He should not have issued advice note if the reconnection of the telephone did not come within his perview. Even, if the advice note was issued inadvertantly, he could have restrained the applicant to reconnect the phone as the reconnection took place after 14 days from the issue of the advice note. The advice note was issued on 10-7-85 and the reconnection took place on 24-7-85. If the applicant had not acted after the receipt of the advice note even then

he had to face the explanation from the higher authorities. It is a fact that he sought permission from the S.D.O.T. Bharuch before reconnection . The applicant had furnished, the B & F reports, sought permission for advice note and after having received the advice note, reconnected the Telephone, after consulting the S.D.O.T. on phone, it cannot be said that he had acted contrary to the provisions of rules.

7. The applicant says that the letter dated 3-7-85 in which the proposal to issue of advice note was made may kindly be seen . In the said letter it was categorically stated that the telephone No. 2466 has been disconnected on 30-8-84 for non-payment of outstanding dues, but it seems that S.D.O.T. Bharuch has over exercised his powers and issued advice note after verifying the records which was available with him; so it cannot be said that the applicant has misguided his superiors. Hence the penalty imposed is not justified.

8. The applicant does not want to comment as no remarks have been made by the respondents on para 4.8 and 4.9 of the application.

9. The applicant says that, inspite of the clear mention regarding the date of disconnection in the letter dated 3- 7-85 by the applicant the

...

advice note dated 10-7-85 was issued . It will be seen from the letter dated 18-6-85 issued by the Accounts office (TR) Bharuch, that the proforma report for reconnection was called for from S.D.O.T. Bharuch with a copy to J.E. Phones, Ankleshwar. Thus it is clear that while issuing the advice note, the S.D.O.T. did considered this fact. Instead of issuing the advice note he should have called for the proforma reports from the J.E. phones i.e. the applicant, but it seems S.D.O.T. has not issued any letter to the applicant. On receipt of the proforma report ^{dated} ~~dated~~ on 12-7-85 the advice note issued could have been either cancelled ^{or} ~~on~~ the applicant could have been restrained from reconnection of the phone in question. In view of this the penalty imposed is arbitrary, illegal, malafid and bad in law and as such the order is required to be quash and set aside.

It is denied that the applicant has not exhausted all the remedies available, to him under the ~~xxxxxx~~ rules.

10. In view of the facts mentioned above, the applicant prays that the Hon'ble Tribunal may grant the reliefs as prayed vide para 8 of the application in the interest of justice.

- 7 -

VERIFICATION

I, Bhupendraprasad Gajjar son of ~~the~~
Shantilal Gajjar aged 30 years working as Junior
Engineer The com under A.E. Phones, Nadiad resident
of Tranol, Taluka Anand Dist. Kheda pin 388235
do hereby verify that the contents hereinabove
are true to my personal knowledge and believed to
be true.

Dated: 25.3.1991
-12-1990.
Place: Ahmedabad.

B. Gajjar
Signature of the applicant.

Identified by me ;

C. S. Upadhyay

(C. S. UPADHYAY)

Advocate for the Applicant

Reply/Rejoinder/written submissions
filed by M. *C. S. Upadhyay*
learned advocate for petitioner /
Respondent with second set
Copy served/not served & other use

Di. 25/3/91 Dy. Registrar C.A.T. (I)
Ahmad Bench