

(B)

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 489/90**T.A. NO.****DATE OF DECISION** 27-7-94

Shri Maheshkumar D. Bhatt

Petitioner

Shri C.B. Kale

Advocate for the Petitioner (s)

Versus

Union of India and Others

Respondent

Mr. Akil Kureshi

Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. K. Ramamoorthy

Member (A)

The Hon'ble Dr. R.K. Saxena

Member (J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ? *yes*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgment ? *yes*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *yes*

Maheshkumar D. Bhatt
 Shri C.B. Kale
 Shree Nivas, Kardal Saphale
 Taluka Palghar Dist. Thane.

Applicant.

Advocate Mr. C.B. Kale
 Versus

1. Sub Divisional Officer Telegraphs, Modasa
2. Taluka Modasa District Sabarkantha
3. Chief General Manager, Gujarat Telecom Circle, Ahmedabad.

Respondents

Advocate Mr. Akil Kureshi

JUDGMENT

In

Date : 27-7-94

O.A. 489/1990

Per Hon'ble Dr. R.K. Saxena

Member (J)

The applicant who wanted to tread the path of Harishchandra and to uphold honesty and purity in the department, was damned with penalty of stoppage of increment for two years without future effect vide order dated 12-9-1989, Annexure A-26.

2. The brief facts of the case are that the applicant was one of the 25 Telephone Operators posted at Modasa in the year 1985-1989. Other operators, than the applicant, had adopted practice of collecting money from the Telephone Subscribers in the name of Diwali Bonus. They had collected an amount of Rs. 40,000

The applicant had opposed this idea but no heed was paid. However, the applicant accompanied the Telephone Operators in order to find out as to where from the Diwali Bonus was collected and what amount from each subscriber was collected. It was then that he could ^{know} about the sum which was collected. The telephone Operators who were engaged in this practice were Shri C.R. Patel, Shri D.P. Patel, Shri A.B. Patel Shri P.M. Shah, Shri P.M. Modi, Shri U.N. Prajapati, Shri R.T. Upadhyay and Shri J.A. Wankar. It is contended that on 13-1-1989 Shri J.A. Wankar gave a cover containing Rs. 500/- to the applicant towards the share of Diwali Bonus. Shri Wankar had also written on the cover the name of the applicant in his own hand-writing. The applicant immediately contacted the Chief General Manager and reported the matter. It is stated that on 18-2-1989 the District Engineer Telecom, Himmat-Nagar contacted the applicant who handed over the cover alongwith the money which was given by Shri Wankar. The said amount was, however, deposited in the accounts of the office and the receipt was sent to the applicant, Annexure A-8. It is also stated that the matter was referred to Vigilance Officer, Gujarat Circle, (Telecommunications) who had sent a letter to the applicant to confirm if the letter dated 13-1-1989 was signed by the applicant, and whether he would like to give evidence, if necessary. The applicant gave reply in affirmative on 6-2-1989. The Vigilance officer then again wrote a letter dated 15-2-1989 to the applicant to identify the Telephone Operators who had collected the money from the subscribers and whether the subscribers

(11)

4

would come forward to give evidence in the matter. The applicant thereupon wrote to the respondent no. 3 to take immediate action in the matter because the Telephone Operators had come to know by that time about the complaint and they had started contacting the respondents as well as the subscribers. The applicant further contended that the Vigilance Officer without making ~~any~~^{any} inquiry in the matter, had been writing to the applicant to adduce evidence in support of the allegation of collection of money by the Telephone Operators whereas the applicant had been continuously suggesting that the matter may be referred to C.B.I. What had happened in the inquiry which was entrusted to the Vigilance Officer, the applicant did not know but however he himself was served with charge sheet on 1-8-1989 under Rule 16 of CCS (CCA) Rules. The charges in this charge sheet & Annexure A-24 were as follows:

"while working as Telephone Operator Modasa you have complained to Vigilance Officer, Ahmedabad regarding collection of Diwali Bonus from subscriber of Modasa Exchange by some operators at Modasa.

An inquiry was made by the higher authority with individual subscribers of Modasa exge, and separate statement was taken from concerned T.Os.

While inquiry your complaint found wrong. You were given an opportunity to substantiate the allegation but instead of giving evidence you have alleged the authority having failed to make inquiry properly.

So far this unfounded complaint and indiscipline is proposed to take disciplinary action against you under CCS (CCA) Rules, 1965 for the following charges.

1. Insubordination with higher authority.
2. Breach of discipline.
3. Fails to prove the allegations."

(12)

The applicant submitted explanation on 8-8-1989 denying the charges and also emphasizing that the fact of collection of Diwali bonus ought to have been inquired into properly and in detail but nothing was done and ultimately the onus was shifted on the applicant himself.

3. The Sub-Divisional Officer Telegraphs Modasa who is punishing authority, passed order of punishment on 12-9-1989, Annexure A-26 in which he held that the applicant inspite of opportunity to prove the allegations of the complaint being given, failed to prove. There was no evidence either from the side of the subscribers or from the Telephone Operators. It is, therefore, held that he (applicant) had made a wrong complaint and entered into unnecessary correspondence with the Vigilance Officer and ~~for~~ Divisional Engineer Telecom. The explanation of the applicant was also not satisfactory, therefore punishment of stoppage of increment for two years without future effect was passed. The applicant preferred appeal Annexure A-27 against this order on the grounds that no opportunity was given to the applicant and reliance was placed on the evidence which was recorded ~~at~~ the back of the applicant, and ^{the same is} it was not made known to him. It was also contended that no proper and quick inquiry was made against the Telephone Operators ~~who~~ who had collected Diwali Bonus. It was, therefore, urged that the order of punishment is illegal, void and ineffective and should be quashed. According to the contention of the applicant, appeal was preferred by him on 20-9-1989 but nothing was heard from the Appellate Authority and therefore this application was filed by him in the year 1990.

(3)

6

4. The respondents contested the case and the reply was brought on record through Shri Benimashah B. Devta District Manager Telecommunications, Himmatnagar. It is averred on behalf of the respondents that the applicant had misconducted himself and there were severe charges against him. It is also stated that the applicant had made a complaint on 13-1-1989 about collection of Diwali Bonus but the same could not be established despite the fact that sufficient time and opportunity was given to him by the Vigilance Officer but there was no evidence in support of the same. It was, however, true that the applicant had given a cover containing 10 notes each of Rs. 50/- to Shri S.P. Shrivastava the then District Manager, Telecommunications Himmatnagar who had deposited the ^{aid of} amount in the Civil Deposits on 20-2-1989. It is also the case of the respondents that if the applicant had come to ~~know~~ ^{averred} of the illegal collection of Diwali Bonus from the subscribers by the Telephone Operators, the matter ought to have been brought to the notice of the officers of the department so that immediate actions could have been taken. It is ~~committed~~ that the applicant was found guilty of misconduct and he was, therefore, punished and the appeal was rejected.

5. The question for consideration before us is whether the applicant had misconducted himself and if proper opportunity was given to him. It is also to be seen whether there was any procedural illegality or not.

6. The main point of this case is that the applicant had made a complaint against his colleagues who were involved in the practice of collecting illegal money from the Telephone Subscribers in the name of Diwali Bonus. In support of this contention, the amount of Rs. 500/- which was given to him in a cover having the name of the applicant in the hand writing of Shri J.A. Wankar, was also handed over soon after he was contacted by the District Engineer Telecom. It appears from the facts that the matter was entrusted to the Vigilance Officer of the department to inquire into. We have gone through the file of the Department to find out as to what inquiry and in what form was done by the Vigilance Officer. A perusal of the Departmental file was necessitated because it had been the case of the applicant that no documents or evidence of the Vigilance Officer was given to him. This file is not related to only this case but papers relating to ^{which} other matters ^{with difficulty} are also attached and therefore we traced out [^] some of the papers relating to this case. The Vigilance Officer had been writing to the applicant to produce evidence in support of his case. It is surprising that the Vigilance Officer wanted the allegations to be established by ~~the~~ producing the witnesses by the applicant himself. The complaint which was made on 13-1-1989 is a self speaking because in this complaint the telephone numbers, names and addresses of the

(B)

subscribers and the amount which was collected by the Telephone Operators, were given. It was really not possible for the applicant to bring these subscribers before the Vigilance Officer. As a matter of fact, the Vigilance Officer ought to have taken the trouble to contact these witnesses and to find out the truth. In this connection, the contention of the applicant that immediate action was necessary in the matter and the account books of the subscribers in which the money which was given by them to the Telephone Operators as Diwali Bonus, was written, ~~was~~ required to be gone through but no such action was taken. In this file of the Department, we could lay our hand on some papers in the form of letters to S.D.O. Telephones Modasa written by some subscribers. The language which has been used in these letters is one and the same. It may be reproduced below:

"As per your oral inquiry about Diwali Bonus I would like to say that I do not know nothing in the above matter".

These letters are 8 in numbers. It appears from the manner in which inquiry was conducted and the concerned persons interrogated that the Vigilance Officer was not interested in finding out the truth. It cannot be forgotten that the applicant had handed over the envelope containing Rs. 500/- to District Engineer Telecom, Himatnagar and on that envelope,



the name of the applicant was written by Shri J.A. Wankar in his own handwriting. At least J.A. Wankar must have been interrogated. But there does not appear any such statement in the file. Since the complaint which was inquired into by the Vigilance Officer, was the basis for taking action against the applicant, it was necessary that before serving charge-sheet on him, these facts ought to have been brought to his notice. When we look at the charge-sheet or the procedure adopted for punishing the applicant, we find that it was not done and the principles of natural justice were violated. The language of the charge-sheet which is quoted above itself speaks that the Disciplinary Authority was not prepared to disclose even the name of the authority who conducted the inquiry into the complaint made by the applicant.

7. The charge sheet as pointed out earlier indicates other grounds of insubordination with higher authority, breach of discipline besides the failure to prove the allegations made in the complaint. We could not find any material from the departmental file to substantiate first two grounds of the charge-sheet. If there was any evidence to that effect, it should have been disclosed to the applicant in the charge sheet itself or by making the copies or substance thereof available to the delinquent employee. Undoubtedly, the rules of natural justice would have to be observed in any proceedings even ~~by~~ by a domestic tribunal. The application of the principles of natural justice is not a question of mere formality. In essence, it is meant to assure that the party concerned has an opportunity



(R)

of being heard, the principle of audi alteram partem. Lord Harman J. in Burve Vs. Kinematograph Renters Society Ltd (1958) 2 All E.R. 579 and approved by the Supreme Court in Suresh Vs. Kerala University (1969) 1 SCR 317; AIR 1969 Sc 198, described the requirements of natural justice in the words :

" What then are the requirements of natural justice in a case of this ^{kind} ~~level~~. First, I think that the person accused should know the nature of the accusation made; secondly, that he should be given an opportunity to state his case, and thirdly, of course that the tribunal should act in good faith. I do not think that there really is any thing more".

Testing on this touchstone, we find that the evidence or instances of insubordination with higher authorities and breach of discipline was neither available nor was made known to the applicant. The disciplinary authority too does not appear to have acted in good faith.

8. Another question involved in this case is as to what should be the course in conducting the enquiry when the allegation in charge-sheet are based on such evidence which is categorically ^{denied} ~~devised~~ by the delinquent employee. This point came for decision in the case Malvinderjit Singh Vs. State of Punjab 1970 SLR 660 (F.B) and the view which was subsequently approved by the Supreme Court in Shadi Lal Gup a Vs. State of

Punjab AIR 1973 SC 1124, was :

" It is open to the punishing authority to collect any material either itself or through any specialised agency like the Vigilance Department to acquaint itself with the real facts in order to take a decision whether any action is to be taken against the employee and if so, what action is to be taken. But if such an enquiry is made and material is collected on the basis of which a prejudicial view is taken against the employee and he is charge-sheeted under Rules and with a view to impose one of the three minor punishments then the employee is entitled to an adequate opportunity to make a representation to show that (1) he is not guilty, and (2) that the proposed punishment should not be imposed on him, being excessive. It would be impossible for an employee to make such a representation unless it is made known to him the material on the basis of which it has been decided that he is guilty and that particular punishment be imposed on him. Without being supplied with such a material, he cannot make an effective and real representation."

It is true that in the cases of minor penalties, the evidence is not always required to be written but there ~~are~~ may be exceptions thereto depending on the nature of the case. It can illustratively be said that if any preliminary enquiry is made and those facts are ^{not} made known to the delinquent employee, such a case falls within the exceptions and the option is given to the enquiry officer to act accordingly. This discretion should be exercised judiciously. The present case before us is ~~not~~ a case of exceptional category. Thus we hold that the prejudice is caused to the

(19)

12

applicant for withholding the material if any, from him and thereby denying an opportunity to him to defend himself properly. The factum of his denied has also not been taken into consideration.

9. We had mentioned in the begining to find out the nature of mis-conduct from the charge-sheet. The mis-conduct had been shown in three ways and the first ground was insubordination to the higher authorities. As a matter of fact, from the material which has been put up before us by ~~us~~ way of counter-affidavit and by producing the original departmental file, we could not locate any such thing. If ~~any~~ employees were not working in a manner in which they were required to have discharged their duties; and if those facts are brought to the notice of the higher authority, it can hardly be called insubordination or breach of discipline. The applicant in this case had written letters in reply to the Vigilance officer or other officers because he had been receiving letters from Vigilance Officer to explain one or the other points in respect of complaint made by him or to produce the witnesses. If this correspondence is deemed as an act of insubordination or breach of discipline, we can hardly subscribe the idea. So far as the other point of failure to prove the allegations of the complaint is concerned, we have already discussed the same and concluded in negative.

D
2

..13..

(20)

10. While referring to the so called evidence, we never intended to scrutinise the same as appellate ^{to ascertain} Court, but the purpose was whether it was a case of no evidence and whether the procedure adopted was free from ^{infirmities} ^{that} legal ^{infirmities}. Our conclusion is there is violation of the principles of natural justice in the procedure. The prejudice was caused to the applicant who was not allowed access to the alleged evidence collected by the Vigilance officer or from any other source. The explanation of the applicant was not considered. For all these reasons, the order of punishment and which is maintained is in appeal, is not sustainable in law. Therefore both the orders are quashed and set aside.

The cost is made easy.



(Dr. R.K. Saxena)
Member (J)



(K. Ramamoorthy)
Member (A)

*AS.