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**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

Date of Decision: 13 .8 .99

OA .No. 238/91

SHRI Natwarlal Vashrambhai Mithapara : **Petitioner (s)**

Mr B.B.Gogia : **Advocate for the petitioner(s)**

Versus

Union of India & Ors. : **Respondent(s)**

Mr B.N. Doctor : **Advocate for the respondent(s)**

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Hon'ble Mr. V. Radhakrishnan : **Member(A)**

Hon'ble Mr P.C.Kannan : **Member(J)**

JUDGMENT

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

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Natwarlal Vashrambhai Mithapara,
Near 7 Umania Park Society,
Behind Shahibaugh Society,
Surendranagar.

: Applicant

Advocate: Mr.B.B.Gogia,

Versus

1. Union of India,
Through: Its Chief Secretary,
Ministry of Communications,
(P & T Department,
Sanchar Bhavan,
New Delhi.

2. Telecom District Engineer,
Surendranagar Division,
Surendranagar.

3. Area Manager Telecom.,
Ahmedabad.

: Respondents.

Advocate: Mr.B.N.Doctor

JUDGMENT
OA/238/91

Date: 13/8/99

Per : Hon'ble Mr.V.Radhakrishnan

: Member(A)

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The applicant when he was working as Telephone Operator was charge-sheeted vide order dated 21.3.79 as at Annexure A-1, about certain alleged irregularities in his work. An

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inquiry was later on held. The disciplinary authority imposed the penalty of reduction of pay of the applicant by three stages for a period of two years with cumulative effect. It is alleged that appeal made by the applicant remained undecided for about five years. It is also alleged that both the disciplinary and appellate authority did not apply their mind on the point of quantum of punishment. It is alleged that certain documents were not given to the applicant. It is also alleged that no witnesses were examined during the inquiry offered which is based on no evidence. The fellow employees who were also charge-sheeted were left off without any punishment and only the applicant has been punished. The applicant had earlier filed OA No.127/97 which was disposed of with the direction to the respondents to dispose of the appeal according to the law within three months. The appellate authority rejected the appeal after some delay and it is alleged that he did not deal with the points raised by the applicant and had passed the order mechanically without application of mind. The inquiry officer's report was also not delivered to him. Accordingly, he has prayed for the following reliefs:

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" (a) It may be declared that the punishment order No.Q.364/76 dated 14/20-11-80 by D.E.Telegraphs Surendranagar District, Surendranagar and the appellate Order No.DT/Staff-14/Tribunal/Folder dated at AM 15.11.90 issued by Arca Manager Telcom, Ahmedabad respectively are all illegal, ineffective, null and void and may be set aside, by further directions to the Respondents to restore all the benefits to the applicant, which have been withheld from him on account of the said punishment order."

:4:

2. The respondents have filed a reply. They have stated that the allegation against the applicant was that he was involved in conspiracy with the other officials regarding false lightening calls being booked which had put financial loss to the Govt. Accordingly, he was charge-sheeted. An inquiry officer was also appointed. The applicant had submitted written brief. The Inquiry Officer came to the conclusion that the applicant was guilty. The disciplinary authority took a view that the guilt of the applicant was proved and imposed the punishment of reduction of pay of the applicant. They have denied that the inquiry was held without giving opportunity to the applicant to defend his case. They have stated that the inquiry was conducted properly, and on the basis of inquiry report, punishment was imposed. They have stated that the inquiry report was given to the applicant. They have stated that the applicant was given hearing. Regarding delay in disposing of the appeal, they state that it was due to administrative exigencies. They have stated that the punishment given is as per rules after due consideration.

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3. Mr.Gogia learned counsel for the applicant pointed out that some of the Telephone Operators were on duty along with the applicant were suspended for similar charges. But the applicant was not suspended. But the other seven employees who were issued similar charge-sheets have not been punished. The applicant alone has been punished. It is discriminatory and arbitrary. Mr.Gogia supported his case with the judgment in Senior Regional Manager, Food Corporation of India and others

vs. K.Chamy 1999 LAB I.C.731 wherein it was held that the action of the management in condoning and dropped proceedings only against some of the delinquents amounted to discrimination.

4. The applicant has approached this Tribunal in OA/127/87. The Tribunal remanded the matter back to the appellate authority to decide according to law within three months. The appellate authority passed the order after the time-limit given by the Tribunal and he did not deal with the points raised by the applicant in the original as well as supplementary representation. The appellate authority has passed the order mechanically without application of mind. He pointed out that the inquiry was not held in a legal manner and no witnesses were examined. No documents were proved in the inquiry and the entire proceedings were contrary to the principles of natural justice. In short the punishment imposed was based upon "no evidence". In this connection Mr.Gogia supported his case with the judgment in Kuldeep Singh v. Commissioner of Police AIR 1999 SC 677 wherein it was held that the complainants have not been produced at the domestic inquiry and as no witness were examined the statement made by the accused earlier could not be relied upon for imposing the punishment. It was also pointed out the charge framed against the appellant and the entire findings recorded by the inquiry officer are vitiated by reason of the fact that they were not supported by any evidence on record and are wholly perverse. Non-examination of witnesses in the presence of the accused who should also be given an opportunity to cross examine them vitiates

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the inquiry. Where a statement previously made by a witness, either during the course of preliminary inquiry or investigation is proposed to brought on record in the departmental proceedings, the law as laid down by the Hon'ble Supreme Court is that a copy of that statement should first be supplied to the delinquent, who should thereafter be given an opportunity to cross examine the witness. He also pointed out that none of the documents were proved during the inquiry which is a serious deficiency. He also pointed out that the Hon'ble Supreme Court in Ministry of Finance vs S.B.Ramesh 1998 LAB I.C.623 has mentioned that documents received in evidence which were not proved in accordance with law should not have been received an evidence and that any inference drawn from those documents is misplaced and opposed to law. Hence, he prayed that the applicants be allowed and punishment imposed be set aside.

5. Mr.B.N.Doctor, learned counsel for the respondents stated that the inquiry was conducted as per procedure prescribed and called for examining written brief of the applicant was obtained as per the inquiry report. The applicant had a hand in the commission of threat given to the subscriber for extortion of money. After examining the inquiry report there was no charges proved beyond doubt and the disciplinary authority taken a view and imposed the minimum major penalty of reduction of pay of the applicant in three stages. Hence, he prayed for rejection of the O.A.

6. We have heard both the learned counsels and gone through the documents on record.

7. Mr.Gogia during the arguments mentioned that there is no evidence established at the inquiry and charges have been proved. The alleged complainant subscriber was not called for examination. It has been laid down in the judgment of Hon'ble Supreme Court in Kuldeep Singh v. Commissioner of Police AIR 1999 SC 677 that it is necessary to bring the complainant or witnesses for examination in the presence of the accused who should also be given an opportunity to cross examine them. The non- production of the complainants for examination vitiates the inquiry. In this enquiry no witnesses were examined. The applicant was not aware of the fact that the calls were not genuine. He received the calls and booked them. He had reported to his Superior i.e. Junior Supervisor the facts. But the Junior Supervisor was not called for in the inquiry. No witnesses were examined and no documents were proved. No evidence was discussed. The respondent's contention is that as the applicant had admitted the guilt , there is no need to prove the documents. It is not correct first of all the applicant denies that he admitted the guilt. Even if he had admitted the guilt it is the responsibility of the department to prove the charges. It also seen that the other colleagues of the applicant who were also charge-sheeted but were let off without any punishment and the applicant only punished with a major penalty.

Manager, Food Corporation of India v. K.Chamy 1999 LAB I.C.731 has observed that when the management had condoned and dropped the proceedings against some of the employees who were involved in the same offence, there was no justification to punish certain other persons similarly placed. Such a treatment meted to the petitioner suffered from the vice of arbitrariness which is prohibited under Article 14 of the Constitution of India. It is also seen that the documents used against the applicant in the inquiry were not proved. Those documents were not proved in accordance with law should not have received any evidence and that any inference drawn from those documents is misplaced and opposed to law. Accordingly, placing reliance on the documents which were not proved goes against law. This law is laid down by the Hon'ble Supreme Court in the case of Ministry of Finance v. S.B.Ramesh 1998 L.A.B. I.C. 623.

8. In the facts and circumstances of the case, we come to the conclusion that the departmental inquiry conducted against the applicant was wholly unsatisfactory inasmuch as the minimum required procedure were not followed for proving the charges. Accordingly, we have no hesitation in setting aside the penalty imposed on the applicant, namely ;order dated 14/20-11-1980 and appellate order dated 15-11-1990. The applicant shall be entitled for consequential benefits. However, there is no bar to the department authorities to conduct an inquiry as per procedure

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established by law ,if so desired. Application is disposed of accordingly. No costs.

P.C.Kannan
(P.C.Kannan)
Member(J)

V.Radhakrishnan
(V.Radhakrishnan)
Member(A)