

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 714 of 93
TAXNO.

DATE OF DECISION 12.04.2000

Shri Madhusudan Mansukhlal Vyas **Petitioner**

Mr. B. B. Gogia

Advocate for the Petitioner [s]

Versus

Union of India & Ors. **Respondent**

Mr. B. N. Doctor

Advocate for the Respondent [s]

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The Hon'ble Mr. V. Ramakrishnan : Vice Chairman

The Hon'ble Mr. A. S. Sanghavi : 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 Lerdships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓

Shri. Madhusudan Mansukhlal Vyas,
Hindu, Adult, Aged about 46 years,
Occupation : Service,
Add : Sr. Gr. Telephone Operator,
Jubilee Baug Auto Exchange,
Rajkot.

= Applicant =

Advocate : Mr. B. B. Gogia

Versus

1. Union of India
Through : Its Secretary,
Telecom Department,
Government of India,
New Delhi.
2. Asst. Engineer (Trunks) TMX
Jubilee Baug Telephone Exchange,
Rajkot.
3. Divisional Engineer Phones (I/A)
Jubilee Baug Telephone Exchange,
Rajkot.
4. Dy. General Manager,
Office of the General Manager Telecom,
Rajkot District,
Near Girnar Cinema,
Rajkot.

= Respondents =

Advocate : Mr. B. N. Doctor

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ORAL ORDER
O.A 714 of 93

Date : 12.04.2000

Per Hon'ble Shri. V. Ramakrishnan : Vice Chairman.

We have heard Mr. Doctor for the respondents and have gone through the materials on record. We had heard Mr. Gogia earlier who had submitted his written arguments which had been taken on record.

2. The applicant an employee of Telecom Department was served with a charge sheet under Rule-16 of the CCS (CCA) Rules. The statement of imputation reads as follows :-

A meeting was held in the chamber of General Manager of Telecom District, Rajkot on 01.04.92 at 16.00 hours alongwith the L.J.C.R. members and P.N.T.D. members to discuss the matter regarding rotational transfers orders issued during this month.

The following were present :-

1. *Shri. M. V. Jani.*
2. " *C. M. Javia*
3. " *P. B. Vyas*
4. " *S. H. Kantesaria*
5. " *M. M. Vyas, SGTO, TMX, Rajkot.*
6. " *P. K. Thakker, TO. MDX & IM, JB Eige, Rajkot*
7. " *P. B. Chauhan, T.O. TMX, Rajkot.*

On the administration side the following officers were present.

1. General Manager T.D., Rajkot.
2. Shri. O. D. Tyag, Dy. General Manager,
3. Shri. R. Pandey, Asstt. General Manager (Adm.)

It has been reported that during the aforesaid meeting Shri. M. M. Vyas, SGTO, TMX, Rajkot had allegedly used un-parliamentary word thrice for which he was objected and instructed not to repeat. It has also been alleged that inspite of the instructions he continued the use of un-parliamentary language and thus Shri. M. M. Vyas, SGTO, failed to maintain decorum and decency expected from a Government servant and behaved in a manner subversive to discipline.

Thus, Shri. M. M. Vyas, SGTO, TMX, Rajkot contravened Rule 3 (1) (iii) of Central Civil Service Conduct Rules 1964.

The applicant gave a reply dated 23.04.92 as at Annexure A/5 where he had asked for the report which was received in the department regarding his alleged mis-conduct. He had also stated that in the absence of the contents reported against him, he was not able to state as to what has happened during the meeting and what were the words which were regarded as un-parliamentary. After getting this reply the department proceeded to take action under Rule-16 without holding regular inquiry and the disciplinary authority by his order dated 29.09.92 had held the charges as proved. In his order, he had brought out that the contention of the official that he

cannot submit his defence without seeing the report is not acceptable when the imputation of misconduct contains the narration. He also says that merely because the applicant was office bearer of the Union, it does not give him right to indulge in any mis-conduct. However, the disciplinary authority does not explain as to how he concluded that misconduct was proved when the statement of imputation contains no specific details excepting a broad reference to the allegation that un-parliamentary words were used thrice which was objected and he was instructed not to repeat but despite that he continued to use such un-parliamentary words and when no evidence was adduced. The disciplinary authority inflicted penalty of stoppage of two increments without future effect. An appeal was filed where also the same contention that no report was given to him regarding use of un-parliamentary words was raised. The appellate authority had rejected the appeal by its order dated 26.10.93 and confirmed the orders of the disciplinary authority. We may extract the relevant portion of the order which reads as follows :-

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In the instant case, the statement of imputation clearly show that a meeting was held on 01.04.92 at 1600 hrs, in which the official was present in his capacity of F.N.T.O. Area Secretary. It is also indicated there is that other officials and Union office bearers / LJOM members too were present, as also 3 officials from administration side. The imputation further

reveals that un-parliamentary words were used thrice for which he was cautioned, but official continued using such un-parliamentary language. It is thus obvious that all of the participants in the meeting were aware of such use of un-parliamentary words thrice, the official being cautioned (obviously by the highest officer present and conducting the meeting) and that the participants were further witness to continuance of such un-parliamentary language.

Now, if that be so, and the official having liberty to make such representation as he may wish, a question rationally arise as to why he preferred to keep silence about not challenging the allegation solely by calling evidence of those participating in the meeting as this would have formed a primary and pakka evidence for or against the alleged misconduct, when such opportunity too is available in frame work of action to be initiated under Rule 16 of CCS CCA Rules.

3. Mr. Doctor for the respondents states that it is not obligatory to give each and every report to the delinquent and merely because the so called report complaining against his behaviour was not given to him, it would not vitiate the finding. He has relied in this connection on the decision of the Bombay Bench of this Tribunal in the case of Sadashiv Kakde Vs. UOI. In O.A 426 of 91 decided on 25.01.95.

4. We have carefully considered the rival contentions. As brought out earlier, the disciplinary authority has relied upon the statement of imputation which does not bring out specifically or even by implication as

to what was the nature of the un-parliamentary words used as ^{and} _{or} to whether it was defamatory or scandalous etc. It merely states that some un-parliamentary words were allegedly used thrice and he was instructed not to repeat but despite this the applicant continued to do so. Obviously the officers present in the meeting more particularly the officer who gave the complaint considered the words used as un-parliamentary but it is not clear as to what were such words and what is the nature of language used in the absence of specific reference to the same. We also note that the inquiry was held under Rule 16 and no witnesses were examined who could have brought out the exact words used by the applicant and whether it could be reasonably regarded as amounting to misconduct. In the absence of the regular inquiry there is total reliance on the statement of imputation which is very vague in the instant case. It states that un-parliamentary words were allegedly used thrice. This ^{word call} ~~seeks~~ for proving such an allegation. The officials present in the meeting allegedly have regarded the words as un-parliamentary but it is possible that the words used might not be in good taste but may not be such as ¹⁰ ~~words which amounts~~ to misconduct. The exact position in this regard could have been brought out if the statement of imputation had contained specific details or witnesses were examined and the applicant was given an opportunity to cross examine them. This course of action was not taken.

5. Mr. Doctor has brought out that it is not necessary to supply all the documents as asked for and had relied on certain court decisions. In our view, it is not a question of non supply of any particular document. In the absence of any specific or concrete material, this would amount to a situation where the applicant had been found to be guilty on the basis of no evidence. Mr. Gogia had referred to the decision of the Punjab and Haryana High Court in the case of Dhupsingh Kanungo Vs. State of Haryana reported in 1969 SLR 436 where the Court had held that the complaint on which the charge was based was not supplied to the delinquent official which would vitiate the inquiry. He has also referred to the case of UOI Vs. Shri. Kula Chandra Sinha AIR 1963 Tripura P. 20. We may refer to part B ^{of Head Note} which reads as follows :-

(b) Constitution of India, Art. 311 (2) -
'Reasonable opportunity' - What amounts to - Vague and indefinite charges made against public servant - Documents and statements on which those charges were based not supplied though called for - Reasonable opportunity to meet charges held not given.

In our view these decisions will be relevant in the present case and the charges against the applicant are to be held as vague and indefinite and he was not given a reasonable opportunity to rebut the same.

6. In the light of the foregoing discussion, we hold that the order of the disciplinary authority confirmed by the appellate authority that the charge was proved is based on no evidence and cannot be sustained. We accordingly, quash the order of the disciplinary authority dated 29.02.92 as at Annexure A/7 as also the order of the appellate authority dated 26.10.93 as at Annexure A/10. The applicant shall be given consequential benefits flowing out of quashing both the orders within three months from the date of receipt of a copy of this order. The O.A is finally disposed of as above with no order as to cost.

A. S. Sanghavi
(A. S. Sanghavi)
Member (J)

V. Ramakrishnan
(V. Ramakrishnan)
Vice Chairman

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