

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

Present : Hon'ble Mr. S. Biswas, Member (A)
Hon'ble Mr. Nityananda Prusty, Member(J)

1. O.A. 1517 of 1996

PANKAJ KR. MUKHOPADHYAY

2. O.A. 1518 OF 1996

SUBAL CHANDRA ROY

VS

1. Union of India through the
Secretary, Telecom Commission,
M/o Communication,
20, Ashoka Road, Sanchar Bhavan,
New Delhi-1

2. Chief General Manager,
Telecom Stores,
3A, Chowringhee Place,
Calcutta-13

3. Member (Services),
Telecom Commission,
Sanchar Bhavan,
20, Ashoka Road, New Delhi-1

For the applicants : Mrs. K.Banerjee, Counsel

For the respondents : Mr. M.S.Banerjee, Counsel

Heard on : 10.9.03 : Order on : 29.9.03

O R D E R

Nityananda Prusty, J.M.:

These two original applications are being disposed of by this common order as the facts and points of law involved are more or less similar.

2. In OA 1517 of 1996, the applicant was working as Assistant Engineer in the office of Controller of Telecom Stores, Calcutta. On 12.3.92 he was served with a memorandum of charge-sheet under rule 14 of the CCS(CCA) Rules, 1965. The charge levelled against the applicant was that during 1988 while he was working as Asst. Engineer and was entrusted with the duties of despatch of store materials from Calcutta to Siliguri through a transporter viz. M/s Continental Agencies, Calcutta, he signed delivery challans without proper scrutiny and verification of the rate as well as the cost of materials



and insurance value mentioned on the delivery challans causing pecuniary loss to the tune of Rs. 1,05,000/to the Govt. In annexure-II to the charge memo, details of the imputation of misconduct were narrated. An enquiry was conducted in which the applicant participated. The enquiry officer submitted his report on 18.7.94 holding that the charge levelled against the applicant was not established. However, the disciplinary authority disagreed with the finding of the enquiry officer and issue a show cause notice to the applicant holding him guilty of the charge. The applicant submitted his reply to the said show cause notice. Thereafter the disciplinary authority passed an order on 27.5.96 imposing a penalty of withholding of one increment in the time scale of pay for a period of one year without cumulative effect. Thereupon the applicant preferred an appeal before the appellate authority on 24.6.96 raising various objections. However, the appeal was not disposed of and the applicant sent reminders. Thereafter, he filed the instant OA praying for setting aside the punishment order dt. 27.5.96.

3. It is contended by the applicant that alleged misappropriation of store materials by the transporter company came to light when Shri R.N.Mallick, the then AGM(I) submitted his report and one Shri N.B.Sikdar, the then CTS, Calcutta took four months to lodge a complaint on 20.12.88. A criminal case was also started against the owners of the transporter company, but they were discharged by the Criminal Court. The applicant also contends that in similar case, one Shri R.N.Mallick was exonerated by the UPSC holding that he acted in good faith and therefore the applicant should not be punished as he also acted on good faith and the enquiry officer has exonerated him.

4. The respondents have filed a reply in which it is contended that without availing departmental remedy the applicant has approached this Tribunal, which is not permissible. It is submitted that since the case is pending, the appellate authority could not pass the appellate order.

5. The applicant has filed a rejoinder contesting the averments



made by the respondents in their reply. Along with the rejoinder, a xerox copy of the letter dt. 2.1.96 from the Director, Deptt. of Telecommunication addressed to the Chief General Manager, Telecom Stores has been annexed in which it is stated that the applicant and other accused Shri SC Roy be awarded minor penalty higher than "censure". It is alleged that based on this advice the disciplinary authority awarded the punishment of stoppage of increment. Thus, the disciplinary authority acted not on his own but on extreneous consideration. Hence the punishment order should be set aside.

6. In OA 1518 of 1996, the facts are similar. The applicant therein was also working as Asst. Engineer and he was also issued with a charge-memo dt. 12.3.92 on more or less similar allegation except that the amount involved was Rs. 20 lakhs. He was also exonerated by the inquiry officer but the disciplinary authority disagreed and imposed punishment of stoppage of one increment for a period of one year without cumulative effect vide order dt. 27.5.96. Here also the applicant preferred an appeal which has not been disposed of.

7. We have heard the ld. counsel for the parties and have gone through the documents produced.

8. Ld. counsel for the applicant has contended that even though the enquiry officer exonerated the applicants, the disciplinary authority on the advice of the Vigilance imposed the minor penalty. The appellate authority has also not disposed of the appeal. He has further submitted that in similar circumstances, another officer was exonerated by the UPSC and hence there is no reason why the applicants should be punished as they acted in good faith and with bona fide intention.

9. Ld. counsel for the respondents has, however, disputed the fact that the disciplinary authority acted on the advice of the Vigilance. He has submitted that the disciplinary authority acted as per rules. However, the appeal could not be disposed due to pendency of the present OAs.



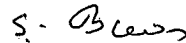
10. After hearing the submissions advanced by both parties, we are of the opinion that when the appeals are pending, we should not express our opinion on merit of the case. The appellate authority should be given opportunity to decide the appeal as per rules. We notice that after six months from the date of filing of the appeal the applicants have approached this Tribunal. Therefore, it cannot be said that the applicants have not exhausted the departmental remedies. The appellate authority ought to have decided the appeal within the aforesaid period.

11. Be that as it may, we think it fit and proper to dispose of the applications by directing the appellate authority to consider and dispose of the pending appeals of the applicants as per rules and pass appropriate orders within 3 months from the date of communication of this order. If the applicants are still aggrieved they will be at liberty to approach appropriate forum for redressal of their grievance. Be it noted that we have not gone into the merits of the cases and all the points raised in these OAs are kept open. No costs.



(Nityananda Prusty)

MEMBER(J)



(S. Biswas)

MEMBER(A)