

Date of Decision: 01.4.97

OA 335/96

Laxman Singh Parihar, Sr.TOA(G) in the office of G.M.Telecom Distt., Jodhpur.

... Applicant

Versus

1. Union of India through Secretary to Ministry of Communication, Department of Telecommunication, Sanchar Bhawan, New Delhi.
2. Chief General Manager Telecom, Rajasthan Circle, Jaipur.
3. General Manager, Department of Telecommunication, Telecom District, Jodhpur.

... Respondents

CORAM:

HON'BLE MR.GOPAL KRISHNA, VICE CHAIRMAN

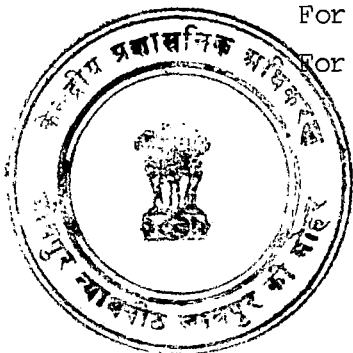
HON'BLE MR.O.P.SHARMA, ADMINISTRATIVE MEMBER

For the Applicant

... Mr.J.K.Kaushik

For the Respondents

... Mr.O.P.Sawhney, brief holder for  
Mr.K.S.Nahar



O R D E R

PER HON'BLE MR.O.P.SHARMA, ADMINISTRATIVE MEMBER

In this application u/s 19 of the Administrative Tribunals Act, 1985, Shri Laxman Singh Parihar has prayed that the memorandum dated 12.9.96 (Ann.A-1), issued by respondent No.3, the General Manager, Department of Telecommunications, Telecom District, Jodhpur, by which proceedings under Rule 14 of the CCS (CCA) Rules have been initiated against the applicant, may be quashed.

2. The case of the applicant is that he is functioning on the post of Senior TOA (G) having been appointed to the said post vide order dated 28.4.95 (Ann.A-2). The applicant was a prosecution witness in a criminal case No.8/85, against one Shri Nahara Ram Chaudhary, in the court of Chief Judicial Magistrate, Jodhpur, under Sections 201, 428-A and 477 IPC, regarding certain bills relating to five telephone numbers. The said Shri Chaudhary was exonerated of the charges framed against him vide judgement dated 17.12.93. Vide Ann.A-3 dated 19.10.95, the suspension period of said Shri Chaudhary was treated as having been spent on duty and he was granted full-pay and allowances for the said period of suspension and no disciplinary proceedings had been initiated against Shri Chaudhary. The applicant was, however, served with a charge-sheet dated 12.9.96 (Ann.A-1), wherein the charge against him was that the applicant while working in TR Section in the year 1984 did not mention the total numbers of trunk call/phonogram tickets.

*[Handwritten signature]*

of a telephone in the office copies of trunk call statements/bills of 25 series of telephones and this facilitated Shri Nahara Ram Chaudhary, Telecom Office Assistant, to falsify the official records relating to 24 subscribers and to adjust a number of trunk call/phonogram tickets in the accounts of 24 subscribers, which actually pertained to 5 subscribers of other 5 telephone numbers, which have also been mentioned in the charge-sheet. Thereby, the applicant was alleged to have committed a misconduct by exhibiting lack of devotion to duty and the applicant was further alleged to have acted in a manner unbecoming of a government servant. The charge-sheet was issued to the applicant after about a period of 12 years and 4 months from the date of the alleged incident. The total amount involved was Rs.6142.60, which has also been recovered from the concerned subscribers. The applicant has denied having been committed any misconduct. The authorities have not explained the delay in issuing the charge-sheet, which is not attributable to the applicant.

3. The respondents in their reply have stated that the case of Shri Nahara Ram Chaudhary has been decided in his individual capacity and it has no application to the case of the applicant. A charge-sheet has been issued to the applicant under Rule 14 of the CCS (CCA) Rules and the applicant has to face it and full opportunity is being given to the applicant to defend himself during the proceedings. It will be wrong on the part of the applicant to say that after a lapse of about 12 years it would be difficult for him to defend himself. Merely because of delay, a plea cannot be taken that necessary action should not be initiated against the applicant. Under Rule 14 of the CCS (CCA) Rules, departmental disciplinary proceedings can be initiated as and when the misconduct comes to the knowledge of the disciplinary authority. According to them, therefore, the applicant is not entitled to any relief from the Tribunal.

4. During the arguments, the learned counsel for the applicant relied upon the judgement of Hon'ble the Supreme Court in the case of State of Madhya Pradesh v. Bani Singh and Another, 1991 SCC (L&S) 638, wherein a charge-sheet issued after a delay of about 12 years from the occurrence of the alleged misconduct was quashed by Hon'ble the Supreme Court when no satisfactory explanation was forthcoming for the delay. He pleaded that the delay in this case is also of a period of more than 12 years and the respondents in their reply have not given any reason why there has been delay of this magnitude in issuing the charge-sheet. He, therefore, prayed that the charge-sheet issued to the applicant should be quashed on the ground that it has been issued after a delay of about 12 years from the date of the alleged misconduct.

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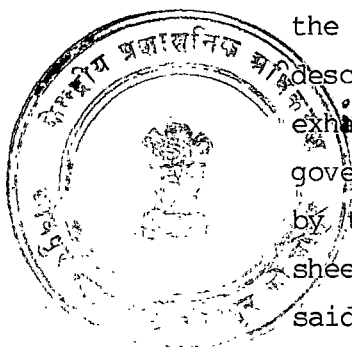


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5. Shri O.P.Sawhney, Advocate, brief holder for Shri K.S.Nahar, counsel for the respondents, relied upon the judgement of Hon'ble the Supreme Court in the case of State of Punjab and Others v. Chaman Lal Goyal, (1995) 29 ATC 546, to urge that it is not that in all cases wherein there has been delay in issuing charge-sheet, the charge-sheet should be quashed on the ground that it has been issued after a considerable delay. According to him, the facts and circumstances of each case have to be seen and the gravity of the charges framed is also kept to be in view while deciding whether the charge-sheet issued has to be quashed on the very threshold on the ground that the issuance thereof has been delayed. He added that a full opportunity of defending himself will be available to the applicant and, therefore, he cannot have any grievance that a delayed charge-sheet has been issued to him.

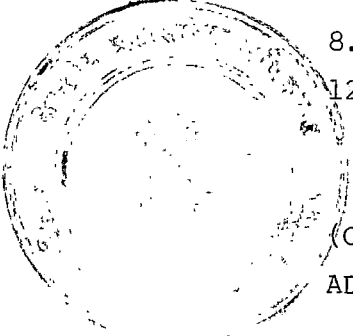
6. We have heard the learned counsel for the applicant and Mr.O.P. Sawhney, brief holder for Mr.K.S.Nahar, counsel for the respondents, and have perused the material on record including the judgements cited before us.

7. In reply to the OA, the respondents have not chosen to give any reason whatsoever why the charge-sheet to the applicant has been issued after a lapse of more than 12 years from the date of the alleged occurrence of the event of misconduct. On the very face of it, the charges framed against the applicant are also not serious so as to bring the matter within the ambit of the judgement of Hon'ble the Supreme Court in Chaman Lal Goyal's case. After description of the charges against the applicant, it has been stated that he exhibited lack of devotion to duty and acted in a manner unbecoming of a government servant. The total amount of loss, which possibly has been caused by the acts of omission etc. of the applicant, as alleged in the charge-sheet, is Rs.6142.60. Therefore, by no stretch of imagination could it be said that the charge against the applicant was so grave as to justify initiation of disciplinary proceedings against him after a lapse of more than 12 years. We have also obtained a copy of the judgement of the learned Chief Judicial Magistrate, Jodhpur, from the learned counsel for the applicant and perused it in the court. It does not appear from the said judgement, relating to the criminal trial of Shri Nahara Ram Chaudhary, that there are any observations therein regarding the conduct of the applicant, who was witness No.1 in the said trial, which would justify disciplinary action against the applicant. Therefore, it would also not perhaps be possible to say that the delay in issuing the charge-sheet is because the department decided to initiate disciplinary proceedings against the applicant after receipt of the judgement of the learned Chief Judicial Magistrate, which is dated 17.12.93. On a consideration of the matter from all angles, there seems to be no justification for issuing the charge-sheet to the applicant after a lapse of over 12 years from the date of the alleged misconduct.



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8. In these circumstances, the charge-sheet issued to the applicant dated 12.9.96 (Ann.A-1) is quashed. The OA is allowed accordingly.

  
(O.P.SHARMA)

ADMINISTRATIVE MEMBER

VK

  
(GOPAL KRISHNA)

VICE CHAIRMAN

1. Alcorn  
encl 4/19/97  
2010/2/1

2. h2-4 3/4

3. Gib

Part II and III destroyed  
in my presence on 4/27/03  
under the supervision of  
section officer ( ) as per  
order dated 4/3/03

Section officer (Record)

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