

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 437 1990
T. A. No.

DATE OF DECISION 14.8.91

K. Rajan _____ Applicant (s)

Mr. G. Sasidharan Chempazhanatty advocate for the Applicant (s)

Versus

Principal, Regional Telecom Respondent (s)
Training Centre, Trivandrum and others

Mr. George Joseph, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S. P. MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

The applicant is challenging the disciplinary proceedings and the punishment imposed on him mainly on two grounds:

- i) though the enquiry authority found the first charge as not proved, the disciplinary authority imposed the punishment without giving any notice or opportunity of being heard, disagreed with the findings and conclusions referred to by the enquiry authority in respect of the said charge;
- ii) the order passed by the Appellate Authority on Annexure-III appeal under Rule 27(2) of the CCS (CCA) Rules was not communicated to the applicant so as to enable the applicant to effectively contest the charges in the de novo enquiry directed by the Appellate Authority.

2. The facts are admitted. The applicant was issued memo with a charge/under Rule 14 of the CCS (CCA) Rules

containing the following two charges:

" Charge-I : That the said Shri K. Rajan while functioning as Section Supervisor in the office of the Sub Divisional Officer, Telegraphs, Trivandrum during the period from 6.8.83 to 25.1.84 forged an experience certificate under the forged signature of Shri Syed Mohammed, JAO Office of the DET Trivandrum and managed to get a PMR Card in the name of his son, Shri R. Premkumar, fraudulently. Thereby Shri K. Rajan has committed grave misconduct violating Rule 3 (1) of the CCS (Conduct) Rules 1964."

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Charge-II: That the said Shri K. Rajan, while functioning as Section Supervisor, office of the Sub Divisional Officer, Telegraphs, Trivandrum forged an experience certificate with No. WA/15/MR/82-83/42 dated 9.12.83 in the name of his son, Shri R. Premkumar, Udaya Nivas, T.C.No. 44/544, Thottam, Manacaud P.O., Trivandrum under the forged signature of Shri S. Syed Mohammed JAO office of the DET, Trivandrum. Shri K. Rajan has managed to take into the office file a representation dated 12.12.83 of his son Shri R. Premkumar addressed to SDOT, Trivandrum based on the aforesaid forged experience certificate and managed to get the PMR Card No. T-322/13/12/83 issued in the name of his son Shri R. Premkumar, fraudulently."

3. The applicant sent Annexure-IV reply regretting his lapse. Misjudging Annexure-II as admission, the Director of Telephones, Trivandrum imposed on 30.6.84 the penalty of reduction of his pay to the lowest stage of the scale without any formal enquiry. The applicant filed appeal Annexure-III dated 27.7.84. According to the applicant this was not disposed of. He received Annexure-IV intimation on 5.1.85 stating that the punishment order was set aside ordering de novo enquiry. In spite of xxxxxxx, Annexure-V and Annexure-VI requests the appellate order was not served on him. The enquiry proceedings continued. Some of the documents required

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by him were not given to the applicant. The third respondent, the enquiry officer concluded the enquiry and submitted Annexure-VII enquiry report finding the applicant guilty of only one of the charges. But the Disciplinary Authority, the first respondent disagreed with the Enquiry Authority and held that the applicant is guilty of both the charges and passed Annexure-VIII order imposing the punishment of barring one increment of the applicant in the post of SSC(O), CTTC, Trivandrum falling due after the date of issue of the order. The applicant filed Annexure-IX appeal before the second respondent which was rejected as per Annexure-X order dated 12.3.90. The applicant is challenging Annexure-VII, the enquiry report, and the xxxxx orders Annexure-VIII and X.

4. We have heard the arguments and perused the records. The Disciplinary Authority originally penalised the applicant without conducting the enquiry relying on Annexure-II statement treating it as an admission. This was objected to by the applicant by filing appeal. The Appellate Authority set aside the order and directed a de novo enquiry. But the order of the Appellate Authority has not been communicated to the applicant even in spite of repeated requests made by the applicant. Respondents also admitted that the only order given to the applicant after the disposal of the appeal is Annexure-IV.

It reads as follows:

"The appeal submitted by Sri K. Rajan, SS, against the punishment order No. Ams/54/88/84 dated 30.6.84 of Director (S) has been examined by General Manager, Telecom, Kerala Circle, Trivandrum. He has ordered to set aside the punishment and institute de novo proceedings."

5. The respondents brought to our notice Annexure R-2 communication sent to Shri C. B. Nair, Director Telecom (S) Trivandrum and contended that the order by the Appellate Authority has been given to the applicant. Annexure R-2 is not a letter sent to the applicant. It is a letter to Sri C. B. Nair written by the Assistant General Manager (Administration). It refers to the disposal of the appeal in the following manner:

"In view of the above the G.M.T. Trivandrum has ordered to set aside the punishment and institute de novo proceedings. The appellant may be informed accordingly and necessary action taken and compliance reported."

A copy of this letter was also not marked to the applicant. However, from the facts and circumstances, it is clear that a copy of the appellate order was never communicated to the applicant in spite of his request. Without getting the appellate order it is not easy for the applicant to contest the matter and present his case in the enquiry proceedings. It is obligatory on the part of the Appellate Authority to consider the appeal filed by the delinquent employee and pass a 'reasoned' order and communicate the same to the concerned person particularly when there is a direction to / ^{conduct h} a de novo enquiry. The nature of the enquiry and the reasons for setting aside the order and the manner in which a further enquiry

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should be conducted are matters generally dealt with in the said order. Without understanding all these matters contained in the order it would be rather difficult for the delinquent employee to shape up his defence and proceed with the enquiry for safeguarding his interest. Because of the failure on the part of the Appellate Authority in this case the applicant is handicapped and this can be one of the reasons in interfering ^{with} ~~with~~ subsequent punishment order. So the applicant has made out a strong *prima facie* case on the first ground urged by him before us.

6. Equally forceful is the next point urged by the applicant in this case. The Enquiry Authority found that the first charge pertaining to forgery has not been proved. The relevant portion containing the finding in the enquiry report reads as follows:

"Considering the material and circumstantial evidences, as discussed in the foregoing Paras 7, 8, 9, 10, 11 & 12, I find that the charge of forgery of the experience certificate (PD4), against the SPS stands unproved; but he is guilty of the charge that he managed to get a PMR Card in the name of his son Sri R. Premkumar fraudulently."

The Disciplinary Authority imposed the punishment order dated 24.8.89 after disagreeing with the findings and conclusions of the Enquiry Authority, in respect of the first charge. The relevant portion reads as follows:

"I totally disagree with the deposition of SPS that the statement given by him (PD5) to Shri George Thomas SDOT, Trivandrum on 12.1.84 was given under duress as it is not supported by any documentary or circumstantial evidence. Under these circumstances I am constrained to disagree with the findings of the inquiry officer in acquitting the official of the charge of forgery and hold that the charge of forgery of the experience certificate is also proved based on the circumstantial evidences as detailed above."

7. Admittedly no notice was given to the delinquent employee nor was he heard before passing the impugned order. He has raised this question before the Appellate Authority also. This is an illegality which would vitiate the punishment order.

8. We have (the same bench) considered the issue in O.A. 550/90 and held as follows:

"Recently we have decided similar case in which there is disagreement by the disciplinary authority with the findings and conclusions of the enquiry authority and held as follows (Anagur Bhaskar Vs. General Manager, Southern Railway, Madras and others, O.A. 482/89 unreported case):

"...We have recently considered this issue in detail in T.K. Gopinathan Vs. Union of India and 4 others, O.A. 259/88, the same Bench held as follows:

"... By taking a unilateral decision behind the back of the applicant who was found to be not guilty on the first and third elements of the charge, the disciplinary authority has violated the elementary principles of natural justice and the principle of reasonable opportunity enshrined under Article 311(2) of the Constitution of India. It was held by the Supreme Court in Narayan Misra Vs. State of Orissa, 1969 SLR 567 that if the enquiry officer exonerates the charged officer but the disciplinary authority disagrees, the charged officer must be given a notice before the disciplinary authority comes to a conclusion against him. The following observations made by the Supreme Court in that case will be pertinent to be quoted:

"Now if the conservator of Forests intended taking the charges on which he was acquitted into account, it was necessary that the attention of the appellant ought to have been drawn to this fact and his explanation, if any, called for. This does not appear to have been done. In other words, the Conservator of Forests used against him the charges of which he was acquitted without warning him that he was going to use them. This is against all principles of fair play and natural justice. If

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the Conservator of Forests wanted to use them, he should have appraised him of his own attitude and given him adequate opportunity. Since that opportunity was not given, the order of the Conservator of Forests modified by the State Government cannot be upheld. We accordingly set aside the order and remit the case to the Conservator of Forests for dealing with it in accordance with law. If the Conservator of Forests wants to take into account the other two charges, he shall give proper notice to the appellant intimating to him that these charges would also be considered and afford him an opportunity of explaining them" (in the above quotation the term acquittal was with reference to the acquittal by the enquiry officer and not by any court).

Similarly, in M.D. Mathew V. Union of India and two others, O.A. 478/89, this Bench in which one of us (Shri N. Dharmadan) was a party considered an identical question and held as follows:

"...Legal position on this subject is well settled that when there is disagreement between the enquiry authority and the disciplinary authority with regard to the findings and conclusions to the disadvantage of the delinquent, before the imposition of punishment on the delinquent he should be given an opportunity of being heard. Fairness requires such an opportunity to be given by the Disciplinary Authority. This Tribunal is consistently taking the view that such an opportunity has to be given to the delinquent Government employee in the interest of justice before the imposition of the punishment of passing adverse orders in that behalf..."

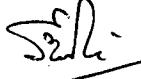
Hence, we are of the view that the applicant is entitled to succeed on this point also.

9. In the result we allow the application and set aside the impugned orders. However, we make it clear that this will not stand in the way of the respondents if they so decides to proceed against the applicant afresh in accordance with law.

10. The application is allowed. There will be no order as to costs.


(N. DHARMADAN)
JUDICIAL MEMBER

14.8.91


(S. P. MUKERJI)
VICE CHAIRMAN

14.8.91