

Central Administrative Tribunal
Ernakulam Bench

Date of decision: 29-3-1990

Present

Hon'ble Shri S.P.Mukerji, Vice Chairman
&
Hon'ble Shri A.V.Haridasan, Judicial Member

Original Application No.443/89

S.Louis - Applicant

V.

1. The Telecom District Engineer, Quilon.
2. The Director Telecommunications (South), Trivandrum.
3. The Union of India, represented by its Secretary to Government, Ministry of Communication, Department of Posts, New Delhi. - Respondents

Mr MR Rajendran Nair - Counsel for the applicant

Mr K Karthikeya Panicker, ACGSC - Counsel for the respondents

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(Shri A.V.Haridasan, Judicial Member)

While the applicant was working as Telephone Operator, Auto Exchange, Quilon, the first respondent, the Telecom District Engineer, Quilon initiated an enquiry against him under Rule 14 of the CCS(CCA) Rules from two heads of charges: (I) that he on 7.12.1985 unauthorisedly entered the office room of J.E.(Indoor), Quilon at 9.00 A.M. and abused her in vulgar words in violation of Rules 3(1) (iii) of CCS(Conduct) Rules, 1964, and (II) that he on 8.12.1985 unauthorisedly entered the T.D.Room of Quilon Auto Exchange at 8.30 P.M. and by manhandling the duty

Telephone Operator Shri J.Rama Reghunathan, violated Rule 3(1)(iii) of CCS(Conduct) Rules, 1964. The Enquiry Officer found the applicant guilty of charge No.II while charge No.I was held ^{as} not proved. Accepting the findings of the Enquiry Officer, the first respondent by order dated 21.5.1988(Annexure-III) inflicted upon the applicant ^{the} punishment of reduction to the lower post of Group 'D' for a period of 5 years. Later on 23.5.1988, the first respondent revised the punishment order and altered it to that of reduction of the pay of the applicant by 5 stages from Rs.1100/^{Rs.} to 975/- for a period of 5 years with effect from 1.6.1988(Annexure-IV). The applicant aggrieved by the Annexure-III order of punishment, filed an appeal to the second respondent on 3.7.1988. While the appeal was pending, by memo dated 31.1.1989(Annexure-VI), the second respondent proposed to enhance the punishment to that of compulsory retirement. It was stated in this memo that the revision of the punishment order Annexure-III by the first respondent by order dated 23.5.1988(Annexure-IV) was null and void as it was ^{made under} duress. The applicant was directed to submit his representation within a period of 10 days from the date of receipt of the memo. The applicant submitted his representation against the proposal to enhance the punishment. He met the second respondent, the appellate authority and requested for an early disposal of the appeal on 20.3.1989 and he also filed an appeal against the

Annexure-III order, since the revised punishment was held to be null and void by the second respondent. The second respondent disposed of the appeal by the impugned order dated 18.5.1989, Annexure-IX reducing the punishment of reduction to Group 'D' post to that of reduction of pay by 5 stages from Rs.1100/- to Rs.975/- in the time scale of Rs.975-25-1150-EB-30-1660 for a period of seven years with effect from 1.6.1988 and further directing that the applicant would not earn increment of pay and that the reduction would have the effect of postponing his future increments of pay. Aggrieved by the Annexure-III, IV and IX orders the applicant has filed this application under Section 19 of the Administrative Tribunals Act. He has averred that the inquiry held was not valid and proper since he had not been supplied with material documents required by him for conducting his defence properly, that the disciplinary authority as well as the appellate authority have acted without jurisdiction in passing the orders, that the evidence adduced did not warrant the finding entered by the authorities and that the punishment orders being illegal have to be set aside. He has prayed that the impugned orders may be set aside.

2. In the reply affidavit filed on behalf of the respondents, the respondents have contended that the inquiry have been properly held, that the applicant has been given fair and reasonable opportunity to defend

himself, that Annexure-III punishment order was proper and valid, that the first respondent was competent and right in passing the revised punishment order Annexure-IV and that the second respondent has properly disposed of the appeal and that the appellate order at Annexure-IX is valid and proper.

3. We have heard the learned counsel appearing for the parties and have also carefully gone through the documents produced.

4. The first respondent, the disciplinary authority accepting the inquiry report and the findings of the Enquiry Officer passed the punishment order Annexure-III on 21.5.1988 reducing the applicant from the post of Telephone Operator Group 'C' to which he was directly recruited to the lower post of Group 'D' in the scale of pay Rs.750-12-870-EB-14-940 for a period of 5 years. This order was within two days i.e. on 23.5.1988 revised by the first respondent by the Annexure-IV order varying the punishment to reduction of pay by 5 stages from Rs.975-25-1150-EB-30-1660 with effect from 1.6.1988.

In Annexure-IV order, it has been stated that the Distt. Secretary, AITEEU Class III represented to him that the penalty order issued by him in the case of the applicant

on 23.5.1988 was irregular and inoperative since the applicant was sought to be reverted to a lower post not having similar duties which he had held in the higher post and since the District Secretary of the Union alongwith his followers went to his cabin and insisted ^{on his} ~~for~~ revising the order, he after considering the case, [✓] revised the order. According to the learned counsel for the applicant, it is not permissible for the disciplinary authority to revise the punishment order under the circumstances mentioned in the Annexure-IV order.

The second respondent has in the appellate order Annexure-IXX stated that as per Government of India Decision (3) below Rule 29 of CCS (CCA) Rules 1965 and as per Rule 130 of P&T Manual Volume III, the original punishing authority is competent to revise his own order of punishment, where it is inapplicable and ineffective. Government of India Decision No.(3) below Rule 29 of CCS (CCA) Rules reads as follows:

"Original punishing authority not competent to revise its own order of punishment except where such order proves to be inapplicable and ineffective - A case has been brought to the notice of the Director General in which a Government servant who had reached the maximum of his scale of pay was awarded the statutory penalty of stoppage of his increments for three months. It has been held by the Ministry of Law that the order of punishment, being inapplicable and ineffective,

should be treated as irregular and in-operative and the competent authority, i.e. the original punishing authority, is competent, on the defect being brought to his notice, to cancel the original punishment orders and pass fresh orders imposing an effective penalty, where possible, without further enquiry. As such, when such a case come to the notice of the original punishing authority for rectification of the incorrect orders.

6. It should be noted that except in cases where the punishment orders passed on an official as a result of his conviction in a Court of Law are cancelled on the official's acquittal on appeal by the Appellate Court and in the cases of the type referred to above, the punishing authority is not competent to revise its own orders."

(D.G.P&T's Memo No.S.E.A.9-2/53, dated the 27th July, 1953)

In Rule 130 of P&T Manual, Vol. III, it has been laid down as follows:

"In case the orders require any revision or cancellation, the matter should be reported to the appellate authority or the competent reviewing authority. It cannot, however, itself set aside its own orders even when it discovers any procedural irregularities."

It is evident from Annexure-VI, the order of the second respondent dated 21.1.1989 that in the letter No.XI/SL/34 dated 23.5.1988, the first respondent had stated that on 23.5.1988, the District Secretary, All India Telegraph Engineering Employees Union, Class III, Quilon along with his followers came into his cabin and insisted for revision of the orders for reasons given in a letter and that considering the above, he revised the order dated 21.5.1988. According to the Government instructions No.3 referred above in cases where the punishment imposed

is inapplicable or inoperative, the original punishing

authority is competent to revise the punishment order

and impose an effective punishment. In Nyadar Singh

Vs. Union of India and others and M.J.Ninama Vs. Post

Master General, Gujarat at Ahmedabad reported in 1988

(8) ATC, 226, the Supreme Court has held that punishment

of reduction in rank to a post lower than the post to

which an employee was recruited is not permissible under

Rule 11(vi) of the CCS (CCA) Rules 1965. So there is

no doubt to the fact that the punishment imposed on the

applicant by the original punishment order, Annexure-III

was inapplicable. Therefore, it was within the competence

of the first respondent to revise the punishment order

and to pass the Annexure-IV punishment order dated 23.5.1988.

6. Against the Annexure-IV punishment order, the

applicant filed an appeal before the second respondent

on 3.7.1988. He had canvassed various grounds in the

appeal memorandum, a copy of which is at Annexure-V.

During the pendency of this appeal, the second respondent,

the appellate authority has issued Annexure-VI order on

31.1.1989. In this order the second respondent has stated

that the first respondent had intimated him that the

Annexure-IV order dated 23.5.1988 reducing the punishment was

issued under duress and that the same was therefore invalid.

Further, by this order dated 31.1.1989, the second respondent

proposed to enhance the punishment of reduction to the lower grade post by the first respondent on 21.5.1988 finding that it was inadequate and to award a punishment of compulsory retirement from service. The applicant was directed to submit his representation, if any, against the proposal within 10 days. In response to this order, the applicant submitted a representation, copy of which is at Annexure-VII contending inter alia that the appellate authority who is expected to consider the appeal under Rule 27 of the CCS (CCA) Rules has no jurisdiction to issue notice enhancing the punishment after six months from the date of expiry of the period of appeal. However, as the appellate authority has held that the order appealed against did not survive for the reasons mentioned in the Annexure-VI order and that the punishment order Annexure-III had revived the applicant, submitted a representation (Annexure-VIII) on 28.4.1989 stating that the grounds raised in his original appeal against the revived on punishment order. Considering this and condoning the delay, the appellate authority has passed the Annexure-IX order by which he upheld the finding of the disciplinary authority and awarded to the applicant a penalty of reduction of the pay of the applicant by 5 stages from Rs.1100/- to Rs.975/- in the time scale of pay of Rs.975-25-1150-EB-30-1660 for a period of seven years with effect from 1.6.1988. It was further directed that the applicant would not earn increment of pay during the period of reduction and that on expiry of this period, the reduction would have the effect of postponing his future increments of pay. The punishment

awarded by the appellate authority is greater than the revised punishment awarded by the first respondent which was reduction of pay by 5 stages for a period of 5 years. In the appellate order Annexure-IX it has been stated as follows:

" Sri Louis has prayed in his representation dated 3.3.89 to drop the proceedings for enhancement of the penalty on the ground among other things that the notice is time barred. His contentions is found to be correct."

So by the appellate order, the second respondent has dropped the proposal to enhance the punishment as made in Annexure-VI because as per, rules, six months after the date of the order sought to be revised, the appellate authority has no powers to revise the order and enhance the punishment. In appeal, it is permissible to do so only after deciding the appeal on merits and then if the appellate authority deems it necessary to enhance the punishment. Here it is not the case. Hence the appellate authority has rightly accepted the contention of the applicant and dropped the proposal for enhancing the punishment. But it is seen that the punishment awarded under Annexure-IX is greater than the punishment awarded under Annexure-IV. But the justification of the appellate authority is that he was disposing of an appeal against the punishment order Annexure-III by which the applicant was reduced to the lower post of Group 'D' and not against the Annexure-IV punishment order. The argument cannot stand. The appellate authority has no right to say that the revision of the punishment under Annexure-IV order, is null and void basing on the

If the appellate authority proposes to enhance the punishment

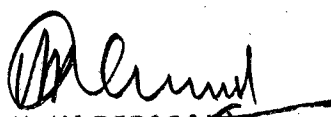
a letter from the disciplinary authority. Further, the mere statement of the appellate authority that the revision is null and void, the original punishment order would revive. Further, it is evident that the Annexure-III punishment order was inapplicable since the applicant could not have been legitimately reduced to a lower post while he was directly recruited to a higher post. Therefore, the procedure adopted by the appellate authority in treating the Annexure-IV order as null and void and disposing of the appeal as if the Annexure-III punishment order revived is highly irregular. The appellate order is vitiated for other reasons also. In the last page of the appellate order, the second respondent stated as follows;

"The appellant when met me on 20.3.89 has orally admitted that he manhandled Sri Ramareghunathan. He expressed regret for the same and assured better behaviour in future."

This shows that the appeal was not disposed of solely on the basis of the records of the disciplinary proceedings and the appeal memorandum but also on the basis of information gathered by the appellate authority directly. In all probabilities in such a case an unbiased and objective decision cannot be expected. A careful scrutiny of the appellate order, Annexure-IX shows that the various grounds urged by the applicant in his appeal have not been properly considered and decided. For the reasons we are of the view that the appellate order Annexure-IX is unsustainable and is liable to be set aside.

7. For the reasons mentioned in the foregoing paragraphs, we are of the view that the appellate authority, the second

respondent has committed grave error of law in holding that the Annexure-IV order of revised punishment was null and void in considering that the Annexure-III punishment order had revived and in disposing of the appeal on the basis of information received by him also and in awarding a punishment greater than what was awarded by the disciplinary authority under Annexure-IV punishment order without following the procedure for enhancing the punishment in appeal. We therefore set aside the appellate order, Annexure-IX and direct the respondents to dispose of the appeal submitted by the applicant against the punishment order at Annexure-IV, in accordance with law considering the various grounds canvassed therein. Since the second respondent who has disposed of the appeal under Annexure-IX ^{had} has personal knowledge about the facts of the case as he has himself stated in the appellate order that the applicant admitted that he assaulted Mr. Ramareghunathan which actually is the principal allegation against the applicant in the disciplinary proceedings, we direct that the appeal should be disposed of by ~~the~~ ^{other} some competent person ^{than} Shri S. Krishnan who has passed Annexure-IX order. We further direct that the appeal should be disposed of within a period of three months from the date of communication of this order. *There is no order as the case.*


(A.V. HARIDASAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

29-3-1990