

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.5/03

Friday this the 29th day of October 2004

C O R A M :

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P.DAS, ADMINISTRATIVE MEMBER

1. K.C.Achuthan,
S/o.late K.P.A. Menon,
Junior Telecom Officer
(now dismissed from service),
O/o. the Sub Divisional Officer,
Telecom, Nilambur.
Residing at Menakkath House,
K.K.Road, Ezhavathuruthu,
Ponnani - 679 577,
Malappuram District.
2. K.P.Kamalakshi,
W/o.late K.C.Achuthan,
Menakkath House,
K.K.Road, Ezhavathuruthu,
Ponnani - 679 577,
Malappuram District.
3. A.Harishankar,
S/o.late K.C.Achuthan,
Menakkath House,
K.K.Road, Ezhavathuruthu,
Ponnani - 679 577,
Malappuram District.

Applicants

(By Advocate Mr.M.R.Rajendran Nair)

Versus

1. The Advisor (HRD),
Telecom Commission, West Block,
Wing 2, R.K.Puram, New Delhi-110 066.
2. The Member,
Telecom Commission, Sanchar Bhavan,
New Delhi.
3. Director,
Central Vigilance Commission,
New Delhi.
4. Union of India represented by
the Secretary to Government,
Department of Telecom,
Ministry of Communications,
New Delhi.
5. Bharath Sanchar Nigam Limited represented
by the Chief General Manager,
Kerala Circle, Trivandrum.

6. Geetha Ramadas,
W/o.Ramadas,
Mohan Nivas,
Tripprayar, Nattika P.O.
Thrissur.

Respondents

(By Advocate Mr.C.Rajendran,SCGSC)

This application having been heard on 25.8.2004 the Tribunal on 29.10.2004 delivered the following :

O R D E R

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN

The original applicant, K.C.Achuthan, while working as Junior Telecom Officer (JTO for short), Changarankulam Telephone Exchange, was proceeded under Rule 14 of the CCS(CCA) Rules 1965 for the alleged misconduct of demanding and accepting illegal gratification of Rs.1000/- from one P.T.Kunhimarakkar on 9.5.1997 for giving telephone connection. The inquiry officer submitted Annexure A-5 report holding the applicant guilty of the charge. After consulting the Central Vigilance Commission which as per Annexure A-8 advised imposition of a stiff major penalty, a copy of the enquiry report and advise of the Central Vigilance Commission were furnished to the applicant who submitted his representation against their acceptance. However, the disciplinary authority by order dated 11.12.2001 accepted the finding of the inquiry officer held the applicant guilty of the charge and imposed on him the penalty of dismissal from service. The appeal submitted by the applicant to the 1st respondent was rejected by order dated 7.11.2002 (Annexure A-1). Aggrieved by that the original applicant filed this application seeking to set aside the Memorandum of Charge (Annexure A-3) as also the disciplinary and appellate orders Annexure A-1 and Annexure A-2, for a declaration that the applicant was dismissed from service illegally and for a direction to the respondents to reinstate him with full backwages and continuity of service. Since the

original applicant passed away during the pendency of the application his widow and son got impleaded as additional applicants for the purpose of continuance of the proceedings. The impugned orders are assailed mainly on the grounds that the action on the part of the disciplinary authority in seeking the advise of the Central Vigilance Commission without notifying the applicant and accepting the advise amounted to abdication of powers of the disciplinary authority, which is not permissible, that the finding that the applicant was guilty was arrived at not on the basis of any evidence legally admissible, that the finding is perverse and that the orders of the disciplinary authority as also of the appellate authority are vitiated for non application of mind. It has also been contended inter alia that even assuming the finding of guilt is correct the penalty imposed is grossly disproportionate calling for judicial intervention.

2. Respondents have filed a detailed reply statement.

3. We have with great care perused all the materials which are brought on record and have heard the arguments of Shri.M.R.Hariraj, learned counsel of the applicants as also Shri.C.Rajendran,SCGSC and additional standing counsel who appeared for the respondents. Shri.M.R.Hariraj confined his argument only to one point that the finding that the applicant was guilty is absolutely perverse as it is not based on any evidence at all. Referring to the Memorandum of Charge and specifically to the imputations of misconduct Shri. M.R.Hariraj submitted that the graveness of the charge lied in the allegation that the applicant as Junior Telecom Officer demanded a sum of Rs.1000/- from P.T.Kunhimarakkar as illegal gratification for

providing telephone connection on the application of P.T.Mohammed, repeated his demand on 9.5.1997 and accepted the illegal gratification of Rs.1000/- from P.T.Kunhimarakkar at 3:15 P.M. on that date. Learned counsel submitted that unless it is proved by legally acceptable evidence that the applicant demanded a sum of Rs.1000/- as illegal gratification for providing telephone connection and that he received the said illegal gratification from P.T.Kunhimarakkar no reasonable person can reach to the conclusion that late K.C.Achuthan committed the misconduct. Taking us through the entire evidence on record Shri.M.R.Hariraj argued that no witness has deposed to have witnessed the applicant making the demand for illegal gratification or receiving a sum of Rs.1000/- from P.T.Kunhimarakkar. Learned counsel further argued that the vigilance trap procedure having been allegedly initiated on the basis of the complaint of P.T.Kunhimarakkar unless the genuineness of the complaint and veracity of the imputations therein are established by examination of the complainant affording an opportunity to the defence to cross examine him no reasonable person or Tribunal can act upon the alleged complaint attaching any probative value to it. The counsel referring to the testimony of the individual witnesses reiterated that in the testimony of the witnesses there was nothing to show that the applicant either demanded or accepted the illegal gratification. The learned counsel argued that under the circumstances the case on hand is a classical example of perversity of finding.

4. Shri.C.Rajendran,SCGSC supported by additional standing counsel argued that the learned counsel of the applicant is pressing for a re-appreciation of the evidence by this Tribunal

which is not permissible, that once the enquiry has been held in conformity with the rules affording reasonable opportunity to the charged official to defend himself the Court or Tribunal would not go into the correctness of the finding or the sufficiency of evidences, for, what the Tribunal would see in judicial review is whether the decision making process has been properly gone through and not whether the finding arrived at is correct, argued the learned counsel. The counsel further submitted that the technical rules of evidence are not applicable to the departmental proceedings and the degree of proof required is not as rigid as in the case of a criminal case. He submitted that the applicant's guilt has been established on the preponderance of probabilities and therefore no interference with the decision of the disciplinary and appellate authority would be justified.

5. We have given our anxious consideration to the submissions of the learned counsel in the light of the facts and circumstances emerging from the materials on record. It is a fact which is not disputed that the disciplinary proceedings in this case was initiated on the complaint alleged to have been made by one P.T.Kunhimarakkar, son of P.T.Mohammed, who had applied for telephone connection. P.T.Kunhimarakkar the complainant has been listed as witness No.1 in the Annexure to the Memorandum of Charge and P.T.Mohammed has been shown as witness No.7. As the basis of the proceedings is the complaint alleged to have been made by P.T.Kunhimarakkar, P.T.Kunhimarakkar and P.T.Mohammed were undoubtedly the most material witnesses. However these two witnesses were not examined at the enquiry. The applicant before the inquiry officer raised the contention that non production and examination of P.T.Kunhimarakkar and

P.T.Mohammed has caused prejudice to his defence but this contention was turned down by the inquiry officer on the ground that although summons were issued to P.T.Kunhimarakkar and P.T.Mohammed thrice they did not attend the enquiry and it was reported that Kunhimarakkar was out of India and Mohammed would have evaded the enquiry as he had already got the telephone connection on 11.12.1997. Since Kunhimarakkar has not been examined the genuineness of the complaint alleged to have been made by him and the veracity of the accusation made in the complaint against the applicant could not be tested by subjecting the said Kunhimarakkar to the test of cross examination. Similarly had P.T.Mohammed, the applicant for telephone connection, been examined he would have deposed as to whether the applicant had delayed the telephone connection to get the illegal gratification. The non examination of Kunhimarakkar and Mohammed who are the key witnesses in the case as argued by the learned counsel of the applicant is fatal to the case of the disciplinary authority as the genuineness and truth of the accusation made in the complaint had not been established. Although meticulous and technical rules of evidence are not wholly applicable to the proceedings in a departmental enquiry the cardinal principles of natural justice are of no less importance even in a disciplinary proceedings. In this context it is profitable to quote the observation of P.Jaganmohan Reddy J as he then was in **M/s.Bareilly Electricity Supply Co. Ltd. Vs. the Workmen and others** reported in 1971 (2) Supreme Court Cases 617, which reads as follows :

But the application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used. When a document is produced in a Court or a Tribunal the questions that naturally arise is, is it a genuine document, what are its contents and are the statements contained therein true. When the Appellant produced the balance sheet and profit and loss account of the company, it does not by its mere production amount to a proof of it or of the truth of the entries therein. If these entries are challenged the Appellant must prove each of such entries by producing the books and speaking from the entries made therein. If a letter or other document is produced to establish some fact which is relevant to the enquiry the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. This is both in accord with principles of natural justice as also according to the procedure under Order XIX, Civil Procedure Code and the Evident Act both of which incorporate these general principles. Even if all technicalities of the Evidence Act are not strictly applicable except in so far as Section 11 of the Industrial Disputes Act, 1947 and the rules prescribed therein permit it, it is inconceivable that the Tribunal can act on what is not evidence such as hearsay, nor can it justify the Tribunal in basing its award on copies of documents when the originals which are in existence are not produced and proved by one of the methods either by affidavit or by witness who have executed them, if they are alive and can be produced. Again if a party wants an inspection, if it incumbent on the Tribunal to give inspection it is incumbent on the Tribunal to give inspection in so far as that is relevant to the enquiry. The applicability of these principles are well recognised and admit of no doubt.

6. Since Kunhimarakkar has not been examined and as no witness examined in support of the charge has given evidence that the applicant demanded illegal gratification and none was present at the time when the alleged handing over of money by Kunhimarakkar to the applicant took place there is absolutely no evidence to show that either the applicant demanded illegal gratification or he received it from P.T.Kunhimarakkar. The statement in the enquiry report as also impugned orders that the applicant admitted to have received Rs.1000/- from one Arabi Marakkar, the paucity of evidence regarding handing over of money

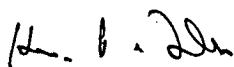
is of no consequences is also untenable because it has not been established by any evidence that money was paid by Kunhimarakkar and the same was received by the applicant. The report of CSFL has not been produced and marked to establish that it was the marked currency that was recovered from the applicant. The argument that the applicant has not adduced satisfactory evidence to explain that the money was received by him in connection within a cooling glass transaction also does not help establishing the charge because the onus of establishing the charge is on the disciplinary authority, and the charged employee has no liability to disprove the charge.

7. In the conspectus of facts and circumstances and in view of the legal position discussed above we find that the impugned orders of the disciplinary authority as also of the appellate authority are perverse and bereft of application of mind and are liable to be set aside.

8. In the result the application is allowed and impugned orders Annexure A-1 and Annexure A-2 are set aside. Since the original applicant died during the pendency of the application before he attained the age of superannuation we direct the respondents to consider that K.C.Achuthan continued in service despite the impugned orders till the date of his superannuation and direct them to pay to the applicants 2-3 the entire backwages for the period K.C.Achuthan was kept out of service on the basis of the impugned orders and proceedings as also to make available to them the terminal benefits in full. The above directions

shall be complied with within a period of two months from the date of receipt of a copy of this order. No costs.

(Dated the 29th day of October 2004)



H.P.DAS
ADMINISTRATIVE MEMBER

asp



A.V. HARIDASAN
VICE CHAIRMAN