

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 468/94

Thursday, this the 28th day of July, 1994

CORAM:

HON'BLE MR. JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
HON'BLE MR. P.V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

K.K. Balakrishnan Nair S/o S. Krishnan Nair
Telephone Operator, Kanhangad (On deputation
at the office of the S.D.O.T., Kanhangad)

Applicant

By Advocate Mr. M.R. Rajendran Nair

vs.

1. The Divisional Engineer, Telegraphs,
Kasargod
2. The Deputy General Manager, Telecom,
Kannur
3. The Member(personnel), Board of
Communications, Office of the Director
General, Telecommunications, New Delhi
4. Union of India, represented by Secretary
to Government, Ministry of Communications,
New Delhi

Respondents

By Advocate Mr. K. Lakshminarayan, ACGSC

O R D E R

CHETTUR SANKARAN NAIR (J), VICE CHAIRMAN

Applicant challenges Annexure A-1 order, by which the appellate authority found applicant guilty of a charge, of which he was exonerated by the disciplinary authority. By an earlier order Annexure A-7, we quashed the appellate order and directed appellate authority to consider the matter afresh. We proceeded as if it was a case of enhancement of punishment, while it was not a case of enhancement of the punishment. It is a case where the appellate authority found applicant guilty of a charge found against by the disciplinary authority. This view came to be taken due to misleading pleadings in that original application. The same position is repeated in the present original application also. For example, in para 10 page 5, applicant has quoted

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Rule 15(2), to support his case of failure on the part of the appellate authority to issue notice. This is misleading because, 15(2) relates to disciplinary authority and not the appellate authority. Rule 27 deals with appellate authorities.

2. Be that as it may, we find that powers of appellate authority are not wide as that of the Revisional authority under Rule 29. The appellate authority considering an appeal, against a punishment imposed under Rule 11 can pass orders:

"Rule 27(2)(c)(i) : Confirming, enhancing, reducing, or setting aside the penalty; or

: Remitting the case to the authority
.....
with such direction as it may deem
fit in the circumstances of these
cases;"

(emphasis added)

3. The appellate authority may also examine whether the procedure laid down in the rules have been followed; whether non-compliance has resulted in violation of the provisions of the Constitution or whether it has led to failure of justice; whether the finding of the disciplinary authority is warranted on the evidence on record and whether the penalty imposed is proper. There is also a power (Rule 27(3)) to make such orders as it may deem just and equitable. This power governs only the category of appeals, other than appeals against penalties imposed under Rule 11. The case on hand is a case of an appeal against a penalty under Rule 11, and Rule 27(3) does not extend to it.

4. The power is of, confirmation, reduction, setting aside and enhancement of penalty. We find no power under Rule 27 (in the case of an appeal referable to Rule 11) to modify a finding of fact.

5. On the contrary, power of modification is one of the powers vested in the revisional authority. Rule 29 states that the revisional authority may:

"(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or

(c) remit the case to the authority

(d) pass such other orders as it may deem fit.

Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government servant concerned has been given a reasonable opportunity of making a representation...." (emphasis added)

6. Provisions relating to modification of the order, found in Rule 29, are absent in Rule 27, relating to appeals against punishments under Rule 11.

7. In this case, the appellate authority has not enhanced the punishment, but has imposed the punishment imposed by the disciplinary authority for one charge (found against by the appellate authority), for another charge found by the appellate authority (and found against by the disciplinary authority). There is a modification of the order to that extent. There is no such power under Rule 27. The exercise is without jurisdiction. Unlike a criminal appellate Court (which can modify a finding maintaining the sentence), the appellate authority cannot maintain a sentence by modifying a finding. In the absence of clear power in this behalf which is available only to the revisional authority, we hold that Annexure A-2 is unsustainable. We express no opinion, as to whether recourse should be taken to Rule 29.

8. Application is allowed in the manner aforesaid.
No costs.

Dated 28th July, 1994.


P.V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN

LIST OF ANNEXURES

1. Annexure A-1 - True copy of the Order No. OA-1304/91/29 dated 23.11.1993 issued by 2nd respondent to the applicant.
2. Annexure A2 - True copy of the Order No. Q-1602/III dated 9.9.1986 issued by 1st respondent to the applicant.
3. Annexure A-7 - True copy of the judgement in OA-1304 of 1991 dated 22.6.1993 by the Hon'ble Tribunal.

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