

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 529
T. A. No.

1990

DATE OF DECISION 18.1.91

H. Ganapathi Iyer Applicant (s)

Mr. M R Rajendran Nair Advocate for the Applicant (s)

Versus

U.O.I. rep. by Secretary, Respondent (s)
Communications, New Delhi & others

Mrs. Subhagamani, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N. V. KRISHNAN, ADMINISTRATIVE MEMBER

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? *No*
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

SHRI N. DHARMADAN, JUDICIAL MEMBER

The applicant is challenging Annexure-I penalty order passed by the Divisional Engineer (T), Cochin dated 31.1.1989 and the appellate order Annexure-II dated 27.6.1989 passed by the General Manager, Telecom, Ernakulam.

2. The disciplinary proceedings against the applicant commenced while he was working as Telephone Operator under the Divisional Engineer (Admn). A memo dated 18.10.1985 was issued to the applicant containing the following allegations:

"3. On 24th Sept. '85 Shri H. Ganapathi Iyer, T.O. contacted the PRO, O/f DMT Ernakulam to enquire whether the fault cards of Cochin and Ernakulam are printed differently. He also asked for some samples of the fault card, tell-tale sheets etc. On 25th Sept. '85 the Indian Express and Desabhimani papers carried photostats of tel-tale sheets/part of tell-tale sheets with arguments indicating that the Linemen may have moved out before their normal duty hours. On verification, it was found that the photostat which appeared in the Indian Express has been taken from -"

the tell-tale sheet of 17.9.85 and that in Desabhimani is taken from the tell-tale sheet of 21.9.85. From the statements recorded from all the officials handling the tell-tale sheets including Smt. C. J. Aleyamma, T.O. it has been established that these tell-tale sheets were in the house of Smt. C. J. Aleyamma from 23rd to 25.9.85. Thus, Shri Ganapathi Iyer, husband of Smt. Aleyamma had access to it."

3. The applicant submitted explanation to the aforesaid memo and after considering the explanation the Disciplinary authority issued the following ~~articles~~ of charges:

"Shri H. Ganapathy Iyer, while functioning as Telephone Operator, MIS Section was visiting Test Desk, Ernakulam where he does not have any official duty to perform. He instigated Shri V. G. Padmakshan, T.O., TD to take out the fault card of telephone No. 31670. He was instrumental in the card reaching the possession of Illustrated Weekly of India. This resulted in the publication of an article along with its photostat in the Illustrated Weekly of India Edition of 22.9.85. Later, while suspicions were raised in the Press about the bonafides of the entries made in the Fault Card. Shri Ganapathy Iyer was instrumental in causing the publication of the photostats of the Tell-Tale sheets of 17.9.85 and 21.9.85 of Ernakulam Exchange to provide arguments from countering such suspicions. All these have caused considerable embarrassment to the Department, particularly the act on the part of providing access to the documents of the Department to publisher/publishers. By these acts Shri H. H. Ganapathy Iyer has behaved in a manner grossly unbecoming of a government servant and has violated Rule 3(1)(iii) and Rule 11 of CCS(Conduct) Rules, 1964."

4. Thereafter an enquiry was conducted under the provisions of Rule 14 of the CCS(CC&A) Rules. After conducting an enquiry, the Enquiry Officer submitted an enquiry report. Agreeing with the findings therein, the Disciplinary authority as per Annexure-I imposed the following penalty of compulsory retirement:

"Now, therefore, in exercise of the powers conferred by CCS(CCA) Rules 1965, I, C. S. V. Nair, Divisional Engineer Telecom (Cochin) hereby order that the said Shri H. Ganapathy Aiyer, Telephone Operator be compulsorily retired from service w.e.f. the A/N of 31st January, 1989."

5. The applicant filed appeal against Annexure-I penalty order, which was also considered and rejected by the Appellate authority as per Annexure-II order dated 27.6.1989.

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6. The applicant filed this application under Section 19 of the Administrative Tribunals Act 1985 challenging both the orders Annexure-I and Annexure-II. He raised various contentions. He submitted that there is absolutely no evidence and the entire proceedings are vitiated because the applicant was not given opportunity to examine the prosecution witness and hence he could not follow it up by the examination of defence witness. He further contended that the failure to serve a copy of the enquiry report on the applicant before imposing the punishment as indicated in Annexure-I made the order null and void. On the basis of these allegations the applicant submitted that the impugned orders are unsustainable and liable to be quashed by this Tribunal.

7. We have heard arguments of learned counsel on both sides. We are not going to the merits of the case because it is unnecessary in the view that we take in this case in the light of the latest judgment of the Supreme Court in Union of India and others Vs. Mohammed Ramzan Khan, JT 1990 (4) SC 454.

8. We asked the learned ACGSC who is appearing on behalf of the respondents whether a copy of the enquiry report had been given to the applicant before imposing the punishment on the applicant. The learned counsel answered in the negative and submitted no such copy of the report need be given to the applicant because the rules do not provide for furnishing such a copy before imposing the punishment. But the counsel admits that the above decision of the Supreme Court applies on the facts of this case. The orders are to be set aside on the sole ground ^{of failure to serve copy of report} However, since it is submitted that a copy of the report has been given along with the punishment order at Annexure-I, it is not necessary

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to give a further direction to give a copy of the report to the applicant in this case in terms of the judgment pronounced by the Supreme Court.

9. In the light of the foregoing and the law settled by the Supreme Court with regard to the service of a copy of the enquiry report on the delinquent employee, it would be fair and proper to dispose of this application with a direction to the respondents to continue the enquiry, if they so desire, from the stage of serving the copy of the enquiry report to the delinquent employee and finalise the same after giving the applicant an opportunity to place his case by submitting proper representation against the findings of the enquiry officer. The Disciplinary authority should consider the contentions of the applicant before taking a final decision in this behalf. Accordingly we set aside the impugned orders at Annexure-I and II and dispose of the application with the aforesaid directions. But we make it clear that the applicant shall be placed in the ^{same or} position ^{which is} as he was occupying immediately before the service of Annexure-I punishment order. With these directions and observations this application is allowed. There will be no orders as to costs.



(N. Dharmadan)
Member (Judicial)

18.1.91



(N. V. Krishnan)
Administrative Member

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