

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 536/91
XXXXXX

X99X

DATE OF DECISION 19.3.1992

Shri C. Thankappan Nair _____ Applicant (S)

Shri P. Jacob Varghese _____ Advocate for the Applicant (X)

Versus

The Sr. Superintendent, Telegraph Traffic, Trivandrum Division _____ Respondent (s)
and 3 others.

Shri T.P.M. Ibrahim Khap, ACGSC _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P. Mukerji - Vice Chairman
and

The Hon'ble Mr. A.V. Haridasan - Judicial Member

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

JUDGEMENT

(Hon'ble Shri A.V. Haridasan, Judicial Member)

The challenge in this application is against the order of the first respondent at Annexure I imposing upon the applicant a penalty of reduction in rank from the post of Telegraph Assistant to Telegraphman for a period of 3 years pursuant to a disciplinary proceedings and the appellate order of the 3rd respondent dismissing the appeal.

2. The applicant, while working as Telegraph Assistant, Central Telegraph Office, Trivandrum, was served with a memorandum of charges dated 22.4.1987 which contained three articles of charge. The gist of article 1 in the charge sheet

was that on 21.9.86 while the applicant was performing duty on the STD PCO counter of the Central Telegraph Office, Trivandrum, between 20.00 hours and 02.00 hours, he unauthorisedly collected a sum of Rs.8.70 from a customer, Shri Sam T. Mathew for a call to telephone No.75806, Quilon, instead of the actual charges of Rs.3.70 cheating the above said customer and that by not crediting this amount and remitting the same to the Department, misappropriated the money by falsely writing in the STD register and the temporary receipt No.40 that the call was cancelled and that he had thereby violated sub-rule(i)&(iii)of rule 3(1) of the CCS (Conduct) Rules, 1964. The allegation forming the second article of charge was that on 21.9.1986 while performing duties during 20.00 hours to 02.00 hours at STD PCO, the applicant connected STD call to Quilon No.75264 and falsely entered in the STD register and the temporary receipt No.43 that the call was cancelled thereby violating sub-rule(i)&(iii)of rule 3 (1) of CCS (Conduct) Rules. Article No.3 of the charge sheet was on the allegation that on 21.9.86 while working at the STD PCO counter, the applicant failed to maintain the STD temporary receipts properly and that thereby violated sub-rule (ii) of rule 3(1) of the CCS (Conduct) rules. The applicant denied the charge and requested for an opportunity to be heard in person. An enquiry was held in which the applicant participated. Three witnesses were examined and documents were also marked. The enquiry authority submitted a report holding that the charge No.2 was not proved and that the articles 1 and 3 of the charge sheet were proved. The first respondent, the disciplinary authority, after giving

a copy of the enquiry report and after receiving the representation of the applicant on consideration of the report and the representation of the applicant, accepted the report and the holding findings of the enquiry authority and held that the applicant was guilty of the charges 1 & 3, and by the impugned order at Annexure I imposed upon the applicant a punishment of reduction to the post of Telegraphman in the time scale of pay of Rs.750-12-870-EB-14-940 for a period of 3 years with effect from 1.2.1990 fixing the pay of the applicant on reduction at the maximum of the time scale. i.e. Rs.940/-. Aggrieved by the above order, the applicant submitted an appeal to the 3rd respondent. The 3rd respondent dismissed the appeal by the impugned order dated 30.8.1990 at Annexure III. It is aggrieved by the impugned orders at Annexure I & III that the applicant has filed this application under Section 19 of the Administrative Tribunals Act.

3. The important grounds on which the impugned orders are attacked are that the enquiry has been held in violation of the principles of natural justice inasmuch as the enquiry authority has disallowed certain important questions put to witness No.2, the JTO, Telegraph Exchange, Trivandrum, and that the finding of the enquiry officer accepted by the disciplinary authority that the applicant was guilty of charges 1 & 3 was not warranted from the evidence on record. The applicant has also contended that the punishment of reduction in rank is disproportionate to the alleged misconduct.

4. The respondents in the reply statement have denied the allegation that the enquiry was held in violation of the principles of natural justice, that the questions disallowed did not have any relevance and that the findings of the disciplinary authority were warranted by the evidence on record. They have also stated that the punishment of reduction in rank was awarded by the first respondent taking a very lenient view and that therefore, no interference is called for with the impugned orders.

5. We have carefully gone through the pleadings and documents and have also heard the arguments of the counsel for the parties. The file relating to the enquiry proceedings were also perused by us.

6. As the applicant has been exonerated of the charge No.2, we are concerned with charges 1 & 3 alone. The applicant has not denied the allegation in the charge sheet that between 20.00 hours and 02.00 hours on 21.9.86, he was incharge of the STD PCO counter at the Central Telegraph Office, Trivandrum. The gist of article No.1 of the charge is that the applicant had in temporary receipt No.40 pertaining to STD call to Quilon No.75806 booked by Shri Sam T. Mathew written a remark 'bunget cancelled', while in fact, the call had been matured at 20.06 hours, lasted for 168 seconds with 8 units as per the SODE print out and he had collected a sum of Rs.8.70 from the customer Shri Sam T. Mathew. Shri K. Gopinathan Nair, Telegraph Assistant, CTO, Trivandrum has sworn, after referring to the supervisor's

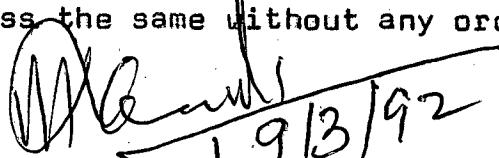
diary Exhibit P6 that the applicant Shri Thankappan Nair was on duty in STD PCO during 20.00 hours to 02.00 hours on 21.9.86. The applicant has also not disputed the fact that he was on duty during that time. Smt. Rughmini Sankaranarayanan, JTO has sworn that as per SLDE print out, on 21.9.1986 a call to telephone No.0474 75806 ^{had} materialised at 20.06 hours, that the duration of the call was 168 seconds and that the SLDE print out showed the exact metering to her knowledge as long as she had occasion to work on it. A question was put to this witness by the ~~assisting~~ government servant as "have you ever noticed that the meter jumping thereby getting print on the SLDE tape while not getting the call". The enquiry officer disallowed this question. Another question as to whether the witness could explain the merits and demerits of the SLDE machine was also disallowed by the enquiry authority. The learned counsel for the applicant argued that ^{the} letter on the cross-examination of the witness has prejudiced the applicant in the proper conduct of his defence. Though we are of the view that the enquiry officer need not have restricted the cross-examination, going through the evidence of the three witnesses examined before the enquiry officer, we are convinced that no injustice had ^{really} been caused. Smt. Rughmini Sankaranarayanan was not an expert on SLDE machine. So regarding the efficiency or otherwise of the machine, her evidence may not be of much importance. But she has sworn that during the period while she was on duty, she had found that the print outs in the SLDE were accurate. The fact that a STD call made by Shri Sam T. Mathew on 21.9.86 to Quilon No.75806 matured and that

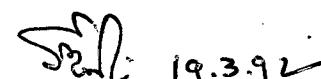
Shri Sam T Mathew utilised the facility is amply proved by the examination of Shri Sam T Mathew as witness No.3. Shri Sam T Mathew as also proved his letter marked as Exhibit P1 at the enquiry wherein he has stated that there was over-charging in respect of the STD call made by him from STD PCO, CTO, Trivandrum on 21.9.86. Hence there is no doubt regarding the fact that while the applicant was on duty at the STD PCO counter on 21.9.86 at 20.06 hours an STD call to Quilon No.75806 materialised and it took 168 seconds for completion. The action of the applicant in writing in the temporary receipt No.40 that the call was cancelled and the corresponding entry in the STD register to that effect are found to be false. Shri Sam T Mathew examined as PW 3 has sworn before the enquiry officer that a sum of Rs.8.70 was collected from him while the actual charge for the call was only Rs.3.70. Though before seeing the Exhibit P7 letters he has stated that the amount was Rs.9/-, he stated that it was a mistake due to lack of memory. It is on the basis of this evidence that the enquiry authority held that charge No.1 has been established. This finding of the enquiry authority has been rightly upheld by the disciplinary authority. Therefore, we find that we may have no reason to interfere with the finding of the disciplinary authority. The appellate authority in his order has considered these aspects and has rightly confirmed the finding of the disciplinary authority. Similarly, the charge No.3 has been held to be proved by the disciplinary authority on the basis of clear, cogent and convincing evidence. The appellate authority has, therefore, rightly upheld this finding. We are of the view that the findings of the disciplinary authority confirmed by the appellate authority, on the articles

of charges 1 & 3 being based on legally acceptable evidence, do not call for any interference at all.

7. The learned counsel for the applicant argued that the punishment of reduction in rank is grossly disproportionate to the misconduct alleged. The misconduct found to have been committed by the applicant is of a very serious nature. We, therefore, do not find that the punishment of reduction in rank is not disproportionate to the misconduct committed by the applicant.

8. In the result, finding no merit in the application, we dismiss the same without any order as to costs.


19/3/92
(A.V. HARIDASAN)
JUDICIAL MEMBER


19.3.92
(S.P. MUKERJI)
VICE CHAIRMAN

19.3.1992

*ps