

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Tuesday, this the 7th day of December, 1993.

OA.No. 541/92

SHRI N.DHARMADAN, JUDICIAL MEMBER

SHRI S.KASIPANDIAN, ADMINISTRATIVE MEMBER

Shri E.Narayana Warriar,
Asstt., Office of the
Sr. Supdt, Telegraph Traffic,
Calicut. ... Applicant

By Advocate Shri M.R.Rajendran Nair

Versus

1. The Chief General Manager Telecom,
Kerala Circle, Trivandrum.
2. The Dy. General Manager (Admn.)
Office of G.M.T. Kerala.
3. Union of India, rep. by
Secretary to Government,
Min. of Communications, N.Delhi. Respondents

By Advocate Shri TPM Ibrahim Khan, ACGSC.

ORDER

S.Kasipandian, AM

*by working as Asst Superintendent (TT) circle
Telecom Training Centre*

The applicant in this case was chargesheeted under Rule 14 of the CCS (CCA) Rules, 1965 on the allegation that on 8.7.89 he unauthorisedly tapped the line of Trivandrum telephone No. 69686 and made S.T.D. calls to CTOs Calicut, Alleppey and Tellicherry and thereby violated Rule 3(a) (i) and 3(1)(iii) of the CCS (Conduct) Rules. After conducting a proper enquiry he was awarded a punishment of reduction of pay from the stage of Rs 1950/- to that of Rs 1850/- in the pay scale of Rs 1400-2600 for a period of 2 years as per Annexure-II dated 8th August, 1991. The applicant appealed against this punishment order and the appellate authority reduced the punishment of reduction of pay from the stage of Rs 1950 to that of Rs 1850/-, in the pay scale of Rs 1400-2600

for a period of one year, instead of 2 years by taking a lenient view, as per orderⁱⁿ Annexure-I dated 30th December, 1991.

2. The present O.A. has been filed with a prayer to quash the orders in Annexure^I I and II on the ground that the impugned orders have been passed relying mainly upon circumstantial evidence and preponderance of probability, when there is no clinching evidence to prove the guilt of the accused.

3. The learned counsel for respondents argued that the enquiry was conducted in a fair and just manner and the charges levelled against the applicant have been established beyond doubt. The subscriber of telephone No. 69686 had made a complaint regarding excess metering of her telephone. Her complaint was supported by the evidence of PWs 1 to 3. The Presenting Officer had also produced documentary evidence of M.L.O.E. to show that the following calls to telephone numbers 64655 of CTO Calicut, 5360 of CTO Alleppey, and 2062 of CTO Tellicherry were made from the telephone No. 69686 and these were disowned by the customer. It has been established that these calls were actually effected from the CTTC Hostel, Tirumala by tapping telephone No. 69686. As indicated in Annexure-II, "on analysing the various evidence adduced during the enquiry it is established that there was a hand-made joint on the dropwire leading to Telephone No. 69686 which was detected during the investigations made by PW2, PW3 and PW4. All these witnesses have clearly stated that the above joint was detected near the landing to the terrace from the stair case of CTTC Hostel, Tirumala of which the applicant was the Warden. Evidence has also been adduced during the enquiry that during the time these calls were made the applicant was present in the Hostel." The learned counsel for the respondents relies heavily upon the statements of PW 7 and PW8 which do not contain any contradiction or ^{inconsistency} ~~impertinence~~. He also emphasised that it is ^a settled principle of law that this Tribunal need not go into the details of the factual evidence

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at the time of enquiry and the impugned orders could be questioned only if there is any legal lacuna or procedural lapse.

3. The learned counsel for applicant however pointed out that there are several relevant factors which have not been examined at the time of enquiry and this failure to appreciate the relevant points has vitiated the enquiry. According to the learned counsel for the applicant, there is absolutely no evidence to come to the conclusion that the applicant was the person who tapped the telephone line. The respondents have totally ignored the fact that there was no reason for the applicant to tap the telephone when he had got the telephone facility at his office as well as at the hostel. There is no eye witness who has seen the applicant tapping the telephone. The respondents were also wrong in ruling out the possibility of the tapping of the telephone by the trainees who hail from the respective places, i.e. Calicut, Alleppey and Tellicherry. The decision of the authority, according to him, is perverse.

4. A careful perusal of the records pertaining to the enquiry goes to show that the applicant has been taking the defence position from the beginning that no ^{evidence} direct could be established for his tapping the telephone of a private customer when he had been given official phones both at the hostel as well as at the residence which he could have legitimately made use of. He has also pointed out that the trainees in the hostel belonging to Calicut, Alleppey and Tellicherry, who could have the motive for tapping the private telephone, had not been examined at all during the enquiry. It is not the case of the respondents that the applicant has to be punished for any vicarious responsibility in his capacity as Warden of the hostel ^{for} the lapses committed by his trainee wards. The omission of the investigating and enquiring authorities in

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establishing the direct connection and involvement of the applicant for the unauthorised tapping of the telephone is a serious lacuna. Any charge against the Government servant has to be supported by evidence establishing the imputation of offence which should also be gone into both at the stages of investigation and enquiry. In the present case, when the applicant had been complaining of bias against the enquiring officer which had not been looked into, the imputation of motive for the charges against the applicant becomes increasingly relevant, particularly when evidence produced and relied on by the enquiring authority and disciplinary authority are insufficient to connect the applicant with the actual offence charged against him. In fact, under these circumstances, the case of the applicant is that it is a case of no-evidence and that the decisions of the authorities are perverse. While it is true that in the disciplinary proceedings, the enquiring authority can arrive at his conclusion on the preponderance of probability thrown up by the evidence, it is invariably necessary and the duty of the authorities to establish the guilt of the delinquent and his direct involvement with admissible evidence in order to substantiate the charges against the delinquent officer. Failure to establish the direct connection of the applicant for the guilt would seriously undermine the preponderance of probability. What has been clearly established through the MLOE report and the other oral and documentary evidence in this case is that there was unauthorised tapping of the telephone of the private customer which was done from the CTTC hostel. But there is no clinching evidence to prove that this tapping was done by the applicant and by none else, or he had any reasonable motive to resort to this risky practice, especially when he had been provided with phone facility at Government cost, both at the hostel and at his residence. The trainees who had no such telephone facilities

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for themselves and who could have indulged in unauthorised tapping of the private telephone had not been examined before ruling out the possibility of their involvement to fix the offence squarely on the applicant alone. This is a serious omission in the investigation and the enquiry conducted by the competent authority.

5. Having regard to the above facts and circumstances of the case, we feel that the ends of justice in this case would be met if the case is remitted back to the respondents to conduct a denovo enquiry, keeping in view the points discussed above. As the impugned orders at Annexures -I & II are unsustainable on above grounds, we quash the same. It is open to the respondents to conduct a thorough investigation into the matter and take whatever action they deem fit on the basis of the denovo enquiry, in accordance with law.

6. The application is allowed to the extent indicated above. No order as to costs.



(S. Kasipandian)
Member (Administrative)



(N. Dharmadan)
Member (Judicial)

7.12.93