

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

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Date of decision ... 6-3-91

Present

Hon'ble Shri N.V.Krishnan, Administrative Member
And

Hon'ble Shri N.Dharmadan, Judicial Member

O.A. 560/89

C. Krishnamma ... Applicant

Vs.

Union of India, rep. by
Secretary, Ministry of
Telecommunications,
New Delhi and 4 others ... Respondents

Mr. P.Jacob Varghese ... Counsel for applicant

Mr. C.Kochunni Nair, ACGSC .. Counsel for respondents

JUDGEMENT

(N.V.Krishnan, Admve. Member)

While working as Telegraph Assistant in the STD Public Telephone Call Booth in the Central Telegraph Office, Trivandrum, disciplinary proceedings were initiated against the applicant and by the Annexure-IV penalty order dated 30.9.88 of the Senior Superintendent (Telegraph Traffic) (Respondent 2), she was reduced to the lower post of Telegraphman for a period of 3 years. The appeal filed by her to the Director, Telecommunications (Respondent-4) has been rejected by the Annexure-VI order. Hence, this application has been filed by her seeking to quash the Annexure-I order, Ann.IV Enquiry Report and Ann.VI appellate order and to

grant her all consequential benefits.

2. The charges framed against the applicant are as under:

ARTICLE-I

"That on 29.9.1986, Smt. C.Krishnamma, Telegraph Assistant, Central Telegraph Office, Trivandrum, while performing 0800-1600 hours duty on the STD PCO II counter of Central Telegraph Office, Trivandrum, failed to credit an amount of Rs. 19.30 which was due to the department for an STD call she had connected to Alleppey 4772. She put bogus remarks "unget and cancelled" against the said call in STD register and "cancelled" on temporary receipt No.24 for pecuniary monetary gain thereby violating sub rule (i) and (ii) of Rule 3(1) of CCS (Conduct) Rules 1964."

ARTICLE-II

"That on 29.9.1986 the said Smt.C.Krishnamma, while performing 0800-1600 hours duty on STD PCO II connected an STD call to Feroke No.8314 which had gone through for a duration of 20 chargeable units. She has failed to credit an amount of Rs. 8.50 which was due to the department. She also unauthorisedly call collected a larger amount of Rs. 12.50 for the above / of 20 units from the customer Shri V.K.Narayanan, Ramanattukara and put bogus remarks "unget/cancelled" against the said call in STD register and "cancelled" on temporary receipt No.29 for pecuniary monetary gain, thereby violating sub rules (i) and (ii) of Rule 3(1) of CCS (Conduct) Rules 1964."

ARTICLE-III

"That the said Smt. C.Krishnamma, while performing 0800-1600 hours duty on 29.9.1986 at the STD PCO II counter in CTO, Trivandrum failed to maintain STD temporary receipts properly with the required information thereby violating sub rule (ii) of Rule 3(1) of CCS (Conduct) Rules 1964."

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3. Charges I and II are the most serious, among them. The statement of imputations in regard to them make it clear that the essence of the articles of charges is that though the STD calls to Alleppey and Feroke materialised and the customers paid her Rs. 19.30 and 12.50 respectively as STD charges, yet the applicant did not issue any receipt for these amounts and committed a fraud, i.e. defalcation. It is also clear that in respect of the first charge, the Department did not apparently contact the caller, Mr. Rajan to ascertain whether he paid the amount of Rs. 19.30, being the charges of the STD call to Phone No.4772, Alleppey. The allegations merely state "the party might have paid the charges which was not accounted by Smt. C. Krishnamma." In regard to the second charge, it is alleged that the STD call to phone No.8314-Feroke materialised and the charge recoverable was Rs. 8.50. As against this, it is alleged that the applicant recovered Rs. 12.50 from the customer but did not account for it in her books. The third charge is really incidental to charges I and II and would not otherwise have been made the proximal cause for initiation of any disciplinary proceedings. It is, thus, clear that the important charges I and II relate to the defalcation of government revenues.

4. When the case came up for hearing, the learned counsel for the applicant submitted that the Department has not brought home the charge of defalcation and no evidence, whatsoever, has been produced to show that there was any defalcation of government revenues. He

submitted that as Telegraph Assistant, the applicant's job is to help the general public in securing STD calls. As far as accounting is concerned, he submitted that a meter has been installed which records the duration of each matured call in terms of standard pulses. The applicant is liable to make detailed entries about the calls which have been booked, the calls which have matured, their duration, the amount payable and the calls which have been cancelled. The meter converts the time taken by each recorded and matured calls into "standard pulses" and it is on the basis of the difference between the opening reading and the closing reading of the meter in respect of each call that charges are collected from the customers. The total amount credited to government is also on this basis. The learned counsel contends that as full payment has been made in accordance with the meter reading, the department cannot allege that there has been any misappropriation of government revenue.

5. It is submitted that the applicant took charge on 29.9.86 at 8.00 AM when the meter reading was 65272 and when her work was over, the meter showed a reading of 67557 representing the duration in pulses of 67 calls for which Rs. 951.10 had been collected from the customers and also remitted to Government. The particulars are shown in the extract of the statement of revenue collection at Annexure-II.

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6. As regards the disputed calls to Alleppey and Feroke, the applicant's books show that these calls did not mature and were cancelled. She does not admit that these calls matured at all, but concedes that this could either be due to a genuine mistake, because on busy and crowded days the telegraph assistant has to concentrate on the meter reading and collect the amounts or that there has been some fault in the system as was pointed out in the enquiry proceedings.

7. The learned counsel appearing for the respondents was fair enough to concede that the applicant had paid the Department all the amounts due from her in accordance with the readings on the meter installed by the Department for this purpose. No doubt, there can be no charge of misappropriation on this basis. But his submission is slightly different. He states that this public call telephone booth where the applicant was working was secretly kept under total surveillance by connecting it into the Single Link Observations Equipment, SLOE, for short. He explained that SLOE produced a correct and faithful record of all the transactions of the public call telephone on a tape indicating all particulars to the last detail. It is by comparing the entries in the SLOE tape and the entries made by the applicant in the statement of revenue (Annexure-II) that the respondents found that two calls, one to Alleppey and another to Feroke, had materialised and the calls lasted for durations of 47 and 20 standard pulses for which the amount of

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Rs. 19.30 and Rs. 8.50 should have been recovered by the applicant. Admittedly, such recovery is not shown to have been made by the applicant on the plea that these two calls did not really mature and that they had to be cancelled. The learned counsel for the respondents contends that this cannot be believed and he explained the modus operandi by which the applicant could collect these two amounts and fail to credit them to government and yet is able to show that there has been no misappropriation.

8. As stated by him, the modus operandi of the applicant was somewhat as follows:

(i) The first step which facilitates this kind of a fraud is when the customer pays the charges not have the he does/ patience to collect the money receipt which the applicant was bound to issue. Therefore, the amounts of Rs. 19.30 and Rs. 12.50 (total Rs. 31.80) were really received by the applicant but there was no record to show or prove these receipts.

(ii) As these two calls for which payments were made would have been registered in the meter, the Telegraph Assistant, i.e. the applicant, cannot avoid payment. Therefore, what she did was to recover Rs. 31.80 from various other customers, by inflating the charges payable by them, i.e. they were asked to pay more than was really due from them. This was possible because the customers were either not aware of the basis on which the charges are collected or even if they were aware of the existence

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of the meter system, they did not bother to check whether the meter reading has been correctly recorded in the bill.

(iii) Thus, without inviting any suspicion on her conduct and by making full payment to the Department according to the meter, the applicant could misappropriate Rs. 31.80.

9. Though we closed this case for orders earlier, we felt it necessary to re-hear the parties, particularly the respondents, to find out whether they are able to substantiate what has been stated as the modus operandi in para 8 supra. Accordingly, we directed the respondents to have the entire SLOE print out deciphered properly and prepare a statement, indicating as to what is recorded by the applicant and what is recorded in the SLOE. Such a statement has been prepared by the respondents and the applicant has also given her interpretation of this statement. Their statements are kept on record.

10. We have heard the parties again and we also perused the statements.

11. According to the respondents' analysis the total units as shown by the SLOE print out is the same as the total units for which the receipts have been issued by the applicant i.e. 1078 units. However, there are internal differences as follows:

(a) 26 calls accounting for 194 units have been shown in the SLOE tape as having matured but these are not shown as matured by the applicant.

(b) 4 calls accounting for 68 units have been shown by the applicant as having matured, whereas these calls are not printed on the SLOE tape.

(c) In respect of 12 calls, for which the SLOE tape shows only 412 units, the applicant has charged for 549 units.

(d) However, in respect of 3 other calls for which the SLOE tape shows 329 units the applicant has charged for only 318 units.

12. One can understand the respondents' argument that the applicant has made good the money she has retained from payments made by some customers, by charging more from other customers than what was really due. What is surprising is that under item (b) above, 4 calls which have not been matured have been charged for and paid according to the applicant's register. If the calls did not mature at all there is no question of charging any customer in excess, because there will be no customer at all. In other words, for these 68 units, the payment must have been made by the applicant herself from her own pocket. This does not either stand to reason or make any sense.

13. That apart, there is one other major deficiency to which our attention has been drawn by the applicant. There is a jumping of the meter kept in the applicant's room by 2 units and this has been certified to be so by the officer in charge. However, the SLOE shows this as a call to Calicut for a duration of 6 seconds.

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14. All these discrepancies cast a serious doubt whether the SLOE or the meter of the telephone booth or both were working properly. In fact this can be the subject matter of a case study from which the Department can learn some lessons. One thing is, however, certain. The applicant having credited all revenues in accordance with the meter, a charge of misappropriation does not lie against her. If the respondents felt that the applicant had manipulated the entries and had, in fact, recovered a larger amount than the sum of Rs. 951.10 shown by her in Annexure-21 and that she had misappropriated the balance of the money, the charges should have been totally different and more specific and they should have been proved by unimpeachable evidence. There is no evidence available in this case to prove the above allegation.

15. We are, therefore, of the view that no reliable evidence has been produced to prove charges 1 and 2, especially when the applicant has paid to the Department whatever amount is due from her on the basis of the meter reading.

16. As already pointed out, the charge No.3 is incidental to charges 1 and 2. It is very doubtful if any proceeding to impose a major penalty would have been initiated on the basis of this charge alone. That apart, we are satisfied that even this charge has not been proved. It is seen from the Enquiry Officer's Report (Annexure-IV) that no earnest attempt

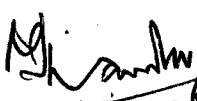
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was made by the prosecution to prove this charge. The Enquiry Officer has relied on the delinquent's statement in her final brief that "it is true that there was lapse in maintaining STD temporary receipt in perfect order." A finding of guilt should not have been recorded in this circumstance and the charge should have been held to be not proved. Further, even the admission does not necessarily amount to stating that she was guilty of lack of devotion to duty. The proforma of the STD temporary receipt is at Annexure-R1. A perusal thereof shows that the middle part has to be filled up by the office (i.e. the Telegraph Assistant), as indicated therein. The receipt for advance (i.e. the lowest portion of Ex. R-1) has also necessarily to be given by the Telegraph Assistant. The topmost portion of Ex.R-1 does not indicate that it is to be filled by the office. It is invariably filled by the customer as it has to bear his signature. If there is any shortcoming in this portion, the customer has to be blamed. We have seen the STD temporary Receipt Book produced before us. We notice that the middle portion which is required to be filled by the office, has generally been filled up properly. In this view of the matter, we are of the view that no evidence exists to prove the third charge.

17. For the foregoing reasons, we are of the view that none of the charges has been proved. We,

therefore, allow this application and quash the impugned Annexure-I, Annexure-IV and Annexure-VI orders.

18. There will be no order as to costs.


(N. Dharmadan)
Judicial Member


(N.V. Krishnan)
Administrative Member

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