

FINAL ORDER
21-12-1987

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

No. OA 566/1986

M. Rajan : Applicant

Versus

Superintendent-in-Charge, Central Telegraph Office, Trivandrum	X X X X	
Senior Superintendent of Telegraph Traffic, Trivandrum Division, Trivandrum.	X X X X	Respondents
Union of India represented by the Secretary, Ministry of Communication, New Delhi	X X X	

Shri N. Nandakumara Menon : Counsel for applicant

Shri P.A. Mohamed : Counsel for respondents

CORAM:

Hon'ble Shri S.P. Mukerji, Administrative Member

Hon'ble Shri G. Sreedharan Nair, Judicial Member

ORDER

(Pronounced by Hon'ble Shri G. Sreedharan Nair)

The applicant, an Assistant Superintendent in the Central Telegraph Office, Trivandrum was proceeded against under Rule 16 of the CCS (CCA) Rules, 1965 for short the Rules, on the basis of a Memorandum of charges issued on 5-3-1985 for violation of clauses (i) to (iii) of sub rule (1) of Rule 3 of the CCS (Conduct) rules, 1964. The allegation against him

was that he obtained an amount of Rs 200/- for purchase of electrical items for official use, from the office funds through the wireman Shri Moheen Kannu in the presence of Shri Gopachandran Nair, Assistant Superintendent who had submitted a requisition for the amount, but did not produce the vouchers or refund the amount. The applicant submitted his reply stating that he did not obtain the amount and that the amount was requisitioned by Shri Gopachandran Nair and was obtained by him, and now it was upto him to produce the vouchers. He had also pointed out that he understood later that since Shri Gopachandran Nair had refunded the amount. He specifically prayed for an opportunity to peruse the documents relied upon for framing the Memorandum of charges and for an oral enquiry so that he may get an opportunity to examine the concerned persons on whose version the charge was levelled against him. The disciplinary authority holding that a further enquiry in the matter is not necessary as the documents have been perused by the applicant and observing that the applicant could not produce any evidence that he had not taken the amount, whereas the written statement of Shri Gopachandran Nair and Shri Moheen Kannu who beyond

doubt claimed that the applicant had obtained the amount, concluded that the applicant is guilty of the charge and imposed the penalty of postponement of next increment by six months without cumulative effect and also ordered recovery of the amount of Rs 200/- from the pay of the applicant. On appeal the Senior Superintendent, the appellate authority held that the disciplinary authority had not fully applied his mind closely to the request of the applicant for an oral enquiry before rejecting the request. Hence he remitted the case to the disciplinary authority for instituting denovo proceedings. The disciplinary authority against issued the same Memorandum of charges to which the applicant submitted a written reply pointing out that the reissuance of the original memo with an altered date with the same set of allegations is not in compliance with the ~~remitting~~ orders of the appellate authority and ~~rejecting~~ his request for an opportunity to cross examine those persons on the basis of whose version the imputation has been made. The disciplinary authority again rejected the request for an oral enquiry on the grounds that the applicant had been given full and sufficient access to verify the records and documents relied upon in the case. The disciplinary authority awarded

the same penalty once again holding the applicant as guilty of the charge. The order was confirmed by the appellate authority. The applicant prays for quashing these orders on the ground that refusal on the part of the disciplinary authority to conduct an oral enquiry has resulted in miscarriage of justice.

2. In the reply filed on behalf of the respondents it is contended that the plea for oral enquiry was rejected on proper grounds and that the impugned orders have been passed after affording the applicant reasonable opportunity to defend himself as envisaged under Rule 16 of the Rules.

3. The proceedings initiated against the applicant were under sub rule (1) of Rule 16 of the Rules. According to the said sub rule before imposing a penalty on the Government servant an enquiry in the manner laid down in sub rules (3) to (23) of Rule 14, ^{is to be had} in every case in which the disciplinary authority is of opinion that such an enquiry is necessary. It is clear from the rule that though the holding of an enquiry in the manner laid down in sub rules (3) to (23) of Rule 14 of the Rules is not mandatory, in every case it is actually necessary ~~such~~ such an enquiry is to be had.

As has been pointed out in the letter dated 26-9-1973 of the Director General of Posts and Telegraphs the implication of the Rule is that on receipt of the representation of the Government servant concerned against the proposal to take action against him on the imputation of misconduct communicated to him, the disciplinary authority should apply his mind closely to all facts and circumstances and arguments raised in the representation and come to the conclusion whether an enquiry is necessary or not. It ~~was~~ ^{is} specifically pointed out in that letter that if a request for an enquiry is rejected summarily without any indication that the disciplinary authority has applied its mind to the request, such action could be construed as denial of natural justice.

4. The applicant had specifically prayed for an oral enquiry so that he may get an opportunity to question the concerned persons based on whose version the charges were levelled against him. This request was rejected by the disciplinary authority in his proceedings dated 27-3-1985 under which the penalty was imposed, on the ground that all the documents connected with the case were shown to him. While the applicant pursued the matter before the

appellate authority the latter held that the denial of the request not having been made indicating the reasons thereof, it has resulted in denial of natural justice. On this ground he remitted the case to the disciplinary authority for instituting denovo proceedings. When the Memorandum of charges ~~was~~ were received afresh, in his written statement of ^{request} defence the applicant reiterated his ~~defence~~ for an oral enquiry so that he may get an opportunity for cross examining the concerned persons based on whose version the charge was framed. Despite the clear directions made by the appellate authority in the order of remit, the disciplinary authority again turned down the request stating the very same reason that the applicant had been given full and sufficient access to verify the records and the documents. It is indeed surprising ~~to know~~ that when the matter reached the appellate authority a second time, despite the earlier directions, the very same Senior Superintendent held that the disciplinary authority had applied his mind carefully ^{the applicant's} before rejecting ~~his~~ request for an oral enquiry, the reason being that the applicant had been given sufficient access to all documents connected with the case.

5. It is clear beyond doubt from the impugned orders that the finding of guilt has been arrived at on the strength of the recorded statement of Shri Gopachandran Nair, Assistant Superintendent and Shri Moheen Kannu, the Wireman. The applicant had requested for an oral enquiry so that he may get an opportunity to cross examine these two persons regarding their statements. Indeed the imputation of misconduct was itself based on those statements. As such despite these ~~things~~ having been brought to the notice of the disciplinary authority, when he rejected the request for holding an oral enquiry without considering the same it cannot be said that the disciplinary authority has properly applied his mind to the request. Merely because the disciplinary authority has stated that as the applicant was afforded the opportunity to inspect the documents no oral enquiry is necessary, it cannot amount to an application of mind as regards the request for examination of the concerned persons. It was on account of this defect in the proceedings, which, it is needless to emphasise, is so vital, that the appellate authority had earlier quashed the order imposing the penalty and remitted the matter to the disciplinary authority for *denovo* proceedings.

The different stand taken by the appellate authority when the matter reached him a second time cannot be supported in law.

6. In the result we quash the order of the first respondent dated 8-10-1985 and the order of the second respondent dated 29-1-1986 confirming the same.
7. The application is allowed as above.

Dr. S. P. Mukerji
21-12-1987

(G. Sreedharan Nair)
Judicial Member
21-12-1987

S. P. Mukerji
21-12-1987

(S.P. Mukerji)
Administrative Member
21-12-1987

Index : ~~YES~~ / NO