

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.571/2003.

Thursday this the 22nd day of April, 2004.

CORAM:

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR.H.P.DAS, ADMINISTRATIVE MEMBER

(By Advocate Shri T.C.Govindaswamy)

vs.

1. Union of India represented by the Secretary to the Government of India, Ministry of Communications, (Department of Telecommunications), New Delhi.
2. The Principal General Manager, Telecommunication), Bharat Sanchar Nigam Limited, Ernakulam.
3. Sri.A.K.Saxena, Principal General Manager, Telecommunication), Bharat Sanchar Nigam Limited, Ernakulam.

(By Advocate Shri Sunil Jose, ACGSC)

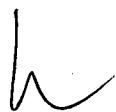
ORDER

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant presently working as Junior Telecom Officer (Koovappadi Group) who was issued with charge memo (A1) by the 2nd/3rd respondent which according to the applicant is issued out of sheer vendetta, bias and prejudice on the part of the 3rd respondent. According to the applicant this was issued at the instance of one Shri P.O.Venugopal who is a politician and a Police complaint was lodged before the Perumbavoor Police under F.I.R. on the charges of assault. The complaint was investigated by the Deputy Superintendent of Police and after

investigation the applicant was deleted from the array of the accused from F.I.R. Mr.Venugopal managed to obtain a copy of the FIR and sent it to the 2nd/3rd respondents and undue political pressure through BJP functionaries was also exerted upon these respondents. A departmental investigation was done by the Divisional Engineer (Vigilance) who reported that there is no substance in the complaint of Shri Venugopal against the applicant. Thereafter, the applicant was transferred from his present place of posting to Kothamangalam Sub division. The representation of the applicant was rejected by order dated 7.11.02 which was under challenge before this Tribunal in O.A.785/2000 and the said O.A. was allowed and set aside the impugned order of transfer. While so, vide letter dated 13.3.2003 the department directed that the assessment of ACR's with the CR dossier to be sent for considering those employees for promotion to the Telecommunication Engineer Services, Group 'B' by annexure A-3. Immediately on receipt of A-3, A-1 charge memo was issued on the very same complaint which was the subject matter of transfer and without any further material. The respondents 2 and 3 chose to initiate action that Shri Venugopal has not chosen to dispute the findings of the Police Authorities by either filing a private complaint or taking up any other legal steps. The applicant was harassed by the respondents just to appease Shri Venugopal and other political functionaries. A-1 is predetermined, sham and an empty formality. Aggrieved by the said charge memo the applicant has filed this O.A. seeking the following reliefs:

- a) call for the records leading to the issue of Annexure A1 and quash the same.
- b) Award costs of and incidental to this application;



c) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

2. The respondents 1 and 2 have filed a reply statement contending that the charged officer is vested with alternative remedies by filing an Appeal and revision. There is no malafides with the 3rd respondent and the allegation otherwise is misleading for undue benefits. The allegation that the Divisional engineer (Vig.) has reported that there is no substance in the complaint is incorrect and therefore, denied. In the report he has stated that the Police deleted the name of the applicant from the list of accused. The transfer order is only incidental to the service and applicant was transferred as a normal administrative measure to prevent occurrences of any further complaint against him, which would ultimately be a cause to damage the reputation of the department. The 2nd respondent is competent to initiate minor penalty proceedings against a Junior Telecom Officer. A-1 is not the final order or finding of the respondents, but a statement of misconduct/misbehaviour on which action as proposed to be taken as per the mandate of the law. A-1 is only a proposal to initiate disciplinary proceedings under Rule 16 of CCS (CCA) Rules 1965. The final decision of the disciplinary authority will be made only after detailed consideration of the representation of the applicant and the report of the Enquiry Officer. The applicant approached this Tribunal by passing all administrative and alternate channels available to him. He completed his arguments ^{by saying} h that the applicant has no case and that the O.A. is to be dismissed.

3. The applicant has filed a rejoinder. There is no need for further deliberation since the issue involved in this case has already been considered by this Tribunal. The unusual

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interest of the 3rd respondent in taking on the alleged complaint of one Venugopal is strong and beyond ordinary prudence.

4. The 3rd respondent has filed a separate reply statement reiterating the same contentions and pleadings as that of respondents 1 & 2. He submitted that the impleadment of 3rd respondent is not necessary since no malafide has been proved against him. The 3rd respondent was functioning in his official capacity to protect the interest of the department.

5. The applicant has filed a rejoinder to the reply of R-3 wherein all the averments and allegations in the reply were denied and stated that the DE(Vigilance) of the department had also exonerated the applicant, was ignored by the 3rd respondent.

6. We have heard Shri T.C.Govindaswamy, learned counsel for applicant and Shri Sunil Jose, ACGSC for respondents. Learned counsel had taken us through various pleadings, evidence and material placed on record. Counsel for the applicant argued that A-1 is actuated by malafide, bias, prejudice and intended only to punish the applicant. A-1 therefore, is totally arbitrary, discriminatory and contrary to law and hence violative of the Constitutional guarantee enshrined under Article 14 and 16. This Tribunal had an occasion to consider the same issue on an earlier proceedings wherein the applicant was transferred and the respondents therein had taken the same contentions which were not accepted by the tribunal. The point to be decided in this O.A. is whether A-1 has been issued in malafide intention, bias and without any legal findings or not. A-1 dated 27th June 2003 is

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a memorandum issued to the applicant to initiate action against him under Rule 16 of CCS(CCA) Rules, 1965. The applicant was given an opportunity to submit his representation, if any, within ten days. A statement of imputations of misconduct or misbehaviour has also mentioned in Annexure A1(2). For better elucidation it is reproduced below:

" Shri P.Krishnamohan, while functioning as JTO Koovappady, severely assaulted Shri P.P.Venugopal, Pothanal House, Iringol, Perumbavoor on 7.7.2002 along with his companions, while they were participating in a meeting of Gramasabha of ward XI of Perumbavoor, Municipality. Shri P.P.Venugopal had lodged a complaint against Shri P.Krishnamohan to PGMT Ernakulam on 12.7.2002 stating the above misconduct. By the above act Shri P.Krishnamohan, JTO Koovappady has acted in a manner quite unbecoming of a government Servant, violating rule 3 (1)(iii) of CCS Conduct Rule 1964.

7. It is pertinent to point out that the applicant has filed earlier O.A.785/2002 challenging his transfer from Koovappadi to Kothamangalam. The reason for transfer and the issuance of the impugned order thereon was taken place for a criminal complaint registered against him. The applicant was told that the Police as well as the Divisional Engineer(Vigilance) held an enquiry and found the applicant not guilty.

8. In the criminal offence alleged against the applicant which came into effect of transfer was investigated by the statutory investigating agency i.e. the local Police and deleted the name of the applicant from the list of the accused. As he was not found involved in the incident, no action is considered necessary against the applicant in the police investigation. The reason for transfer of the applicant in the earlier occasion was basically on his alleged involvement in the criminal case in which he was exonerated. Therefore, when it was challenged before this Tribunal in O.A.785/02 and vide



order dated 7.2.2003 this Court has set aside the impugned transfer order. The operative portion of which is reproduced as under.

"It is evident from what is extracted above that the Police authorities found no reason to implicate the applicant with the allegations made in the FIR. The Divisional Engineer (Vigilance) also found that no action was required in the case. Dissatisfied with the action deleting the name of the applicant from the array of the accused, Shri Venugopal had made a complaint to the 5th respondent. Even after the Police exonerated the applicant and the Divisional Engineer (Vigilance) did not find any need to take any action against the applicant, the applicant has been transferred stating that it was on account of his misconduct towards a customer. The contention of the respondents that the transfer of the applicant was on the basis of the vigilance report of his misconduct to a customer is found to be an untrue statement. Under these circumstances, we are left with no alternative, but to interfere with the impugned order of transfer."

9. A clear finding of this Tribunal that the alleged misconduct towards a customer is found to be an untrue statement.

10. On going through the impugned A-1 memorandum of charges we could find that the same cause has been taken for initiating these proceedings which were found untrue by this Tribunal earlier, which is quoted above. Therefore, it is clear that the attempt on the part of the respondents is to make the same cause as imputation in the memorandum. Once a Court has declared that the alleged misconduct and misbehaviour was not true, in a different circumstance it cannot be used for a different purpose for initiating disciplinary proceedings against an employee. That would amount to total jeopardy to the applicant.

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11. We are fully conscious of the decision of the Apex Court that reported in Union of India Vs. Ashok Kacker (1995 Supp(1) SCC 180) wherein the Hon'ble Supreme Court has held that the Tribunal should not entertain an application quashing the charge sheet till the matter is decided by the disciplinary authority. Here the matter is different. The imputation of charge which is the basis of the memorandum for issuance of show cause notice and it has been declared by this Tribunal in an earlier proceedings as untrue. Therefore, it cannot be caused for a subsequent proceedings under the pretext of disciplinary action. We also rely on the decision reported in P.V.Srinivasa Sastry vs. Comptroller and Auditor General reported in AIR(1993 SC 1321) and B.Mistra Vs. Orissa High Court reported in AIR 1976 SC 1899 wherein the Supreme Court has declared that if the charge sheet itself is vitiated the proceedings becomes void. It is also evident that the finding of this Tribunal in O.A.785/02 has become final and finding an observation in that order has reached finality and is binding on the respondents since no appeal was filed.

12. In the above circumstances, since the reasons stated in the memorandum and the imputation of charges has been declared to be untrue by this Tribunal in O.A.785/02 and thereby the subsequent proceeding based on the same cause, is vitiated by procedural irregularity and therefore, we are of the considered view that, A-1 is not issued in good spirit of law, procedure and therefore to be set aside.

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13. We therefore, set aside and quash A-1 and direct the respondents to give all consequential benefits to the applicant forthwith, if any, flowing out of this order. In the circumstance we direct no order as to costs.

(Dated, the 22nd April, 2004)

H. P. DAS
H.P.DAS
ADMINISTRATIVE MEMBER

K. V. SACHIDANANDAN
K.V.SACHIDANANDAN
JUDICIAL MEMBER

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