

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 579/2000

Friday, this the 8th November, 2002.

CORAM:

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

Abdul Salam P.M., Son of Shri Mohammed Maulavi, Ex. Junior Engineer (Civil), Office of the Executive Engineer, Post and Telegraph, Civil Division, Poona, now residing at Puthia Parambathu House, T.K.S. Puram, Kottapuram, P.O. Kodungalloor.

... Applicant.

[By Advocate Mr. M.R. Rajendran Nair (represented by Mr. Anil)]

versus

1. The Advisor, Human Resources Development, Government of India, Ministry of Communications, Dak Bhawan, Sansad Marg, New Delhi.
2. The Superintending Engineer (C), Telecom Civil Circle, Pune.
3. The Superintending Engineer, Telecom Civil Circle, Bombay.
4. Union of India represented by the Secretary to Government of India, Ministry of Communications, New Delhi.

... Respondents.

[By Advocate Mr. P.J. Philip, ACGSC]

O R D E R
HON'BLE MR K.V. SACHIDANANDAN, JUDICIAL MEMBER

In this case, the applicant is aggrieved by the order dated 16.9.98 (Annexure A-1) passed by the 2nd respondent by which he has been removed from service. He is also aggrieved by the order dated 2.2.2000 (Annexure A-2) issued by the 1st respondent by which his appeal stands rejected. He has thus filed this Original Application under Section 19 of the Administrative Tribunals Act of 1985 seeking the following reliefs:



- "i. To quash Annexure A1 and A2.
- ii. To declare that the applicant was kept out of service illegally and to direct the respondents to reinstate the applicant in service with full back wages and continuity of service.
- iii. Grant such other reliefs as may be prayed for and the Court may deem fit to grant, and
- iv. Grant the cost of this Original Application."

2. The brief facts stated in this O.A. is as under. While the applicant was working as Junior Engineer (C), was proceeded against under Rule 14 of the CCS (CCA) Rules, 1965. The main charge framed against as per order dated 3.3.98 (Annexure A-3), was that of unauthorized absence and failure to reply to official communication thereby violating the provisions of Rule 3(i)(iii) of the CSS (Conduct) Rules, 1964. He submitted his statement of defence on 19.8.88 denying the charges. An inquiry was conducted thereafter. One P. Srinivasan, who was holding the charge of the Executive Engineer (C), Pune, from 26.4.85 to 1.5.89 was his Controlling Officer and who framed the charges against him. During the inquiry, the applicant had represented for production of 4 documents which he intended to place as Defence documents and thus he submitted a representation dated 15.10.92 (Annexure A-4) before the Inquiry Officer. Annexure A-4 was replied to by the Inquiry Officer as per letter dated 31.10.92 (Annexure A-5) by which the Accounts Officer, Telecom Revenue Accounts-II, Ernakulam, was informed that one M.K. George has been nominated by him as his Defence Assistant. On completion of the inquiry, the Inquiry Officer found the applicant guilty of charges. Without furnishing the Inquiry Report and hearing the applicant on the same, the Disciplinary Authority imposed the punishment of removing him from service by order No.7(1000)93/SET(B)/AMAS /152-C dated 10.5.93 and the applicant preferred an appeal before the 1st respondent against the order



of removal and the same was rejected by order dated 4.1.95. Thereafter, he submitted a revision petition before the Chairman, Telecom Commission, New Delhi, but is of no avail. Aggrieved by this, the applicant approached this Bench of the Tribunal by filing O.A.806/97 praying for disposal of his revision petition and pursuant to the directions of this Tribunal in this O.A., an order dated 4.1.95 on the revision petition was passed by the Chairman rejecting the same. The applicant again moved this Tribunal in O.A.2002/98 challenging the order of removal from service along with the rejection of his appeal and revision petition. The O.A. was allowed by this Tribunal as per order dated 24.4.98 (Annexure A-6) quashing the impugned orders holding that the order of removal is illegal and unsustainable on the ground that the proceeding is vitiated due to non supply of Inquiry report. It is further said that the Disciplinary Authority was free to revive the proceedings from the stage of supply of copy of the Inquiry report to the applicant. Thereupon, the 2nd respondent revived the Disciplinary proceedings from the stage of supply of copy of Enquiry report to the applicant as per orders dated 20.5.98 (Annexure A-7) issued by the 2nd respondent and the Inquiry report dated nil (Annexure A-8) issued by the Inquiry Officer. The applicant submitted a representation dated 1.6.98 before the 2nd respondent denying the charges who passed the impugned order dated 16.9.98 (Annexure A-1). The appeal dated 26.10.98 (Annexure A-9) preferred by the applicant was also rejected by the 1st respondent as per order dated 2.2.2000 (Annexure A-2).

3. Respondents have filed a reply statement contending that the applicant was proceeded with the charges for unauthorized absence under Rule 14 of CCS (CCA) Rules, 1965. P. Srinivasan, Divisional Officer, Telecom Civil Division No.III, Bombay was appointed as Inquiry Officer as per order



dated 12.2.90 (Annexure R-1) and V.S.V.K. Sarma, Accounts Officer, Telecom Civil Division, Pune, was appointed as the Presenting Officer as per order dated 12.2.90 (Annexure R-2). Annexure R-2 was subsequently cancelled and R.B. Jadhav was appointed as the Presenting Officer as per order dated 26.2.90 (Annexure R-3). The proceedings held by the Inquiry Officer held on 22.8.92 is at Annexure R-4. Notice for preliminary inquiry and for the inquiry held on 17.8.912 is Annexure R-5. By letter dated 14.9.92 (Annexure R-6) the applicant nominated M.K. George as his Defence Assistant. The applicant participated in the inquiry proceedings from 22.8.92. On the strength of the Inquiry report, the Disciplinary Authority acceded the findings and awarded the penalty of removing him from service as per order No.7(100)93/SET(B)/AMAS/152-C dated 10.5.93. The appeal and the revision submitted by the applicant were also rejected. Thereafter, the applicant filed O.A. No. 202/98 before this Bench of the Tribunal and in furtherance of the order of this Tribunal, the authorities revived the disciplinary proceedings from the stage of furnishing a copy of the inquiry report. The copy of O.A. NO.806/97 filed by the applicant before this Bench of the Tribunal is at Annexure R-7 and the order passed thereon is at Annexure R-8. The authorities conducted a de novo proceedings and an opportunity was afforded to the applicant. He submitted a report on 1.6.98 (Annexure A-9). A personal hearing was also granted to him by the Appellate authority on 20.9.99. It is further submitted that the applicant had filed the above O.A. without approaching the prescribed Revisionary authority by filing a revision petition before him under Rule 29 of CCS (CCA) Rules, 1965, against A-2 decision of the Appellate authority. Therefore, this O.A. is premature and not maintainable and violative of Section 20 of the Central Administrative Tribunals Act. The letter of the applicant



dated dated 15.10.92 (Annexure A-4) was forwarded to the Presenting Officer and he explained to him the inability to comply with the request for various reasons. The penalty of removal from service is for sufficient reasons after following the procedures laid down under CCS (CCA) Rules, 1965 and there is no violation of natural justice. The Inquiry Officer had duly sent a reply dated 15.10.92 of the applicant as per his letter dated 31.10.92 (Annexure R-11). Therefore, there is no violation of Articles 14 and 16 of the Constitution of India and the principles of nature justice and thus this O.A. is liable to be dismissed.

4. Applicant had filed a rejoinder contending that he has not participated in the inquiry proceedings on 22.8.92. He had made it clear to the Inquiry Officer that he was not aware of the rules and requested for assistance of a Government servant as Defence Assistant. The next inquiry was held on 23.11.92 (Annexure A-10). The applicant has taken specific contention of bias against the Inquiry Officer as seen from Ground B (Annexure A-7). The applicant preferred an appeal which was rejected and therefore, the O.A. is preferred under Section 20(2)(a) of the Administrative Tribunals Act since all remedies deemed to have been exhausted when the appeal preferred was rejected. There is not compliance of Rule 14 (18) of the CCS (CCA) Rules and thus the O.A. is to be allowed.

5. Respondents have filed an additional reply statement contending that the applicant had not indicated that he had given any intimation to the Inquiry Officer about his fitness for not attending to the inquiry proceedings due to illness. There is no bar on appointment of controlling officer as Inquiry Officer and P. Srinivasan conducted the inquiry on



behalf of the Disciplinary authority and the Disciplinary authority has given his decision after overall assessment of the evidence appearing against the applicant.

6. We have heard the learned counsel for both the parties and gone through the documents/materials placed on record.

7. Learned counsel for the applicant submitted that the objection of the applicant regarding his former controlling officer appointed as Inquiry Officer is not justified and the objection was not properly dealt with by the Disciplinary/Appellate authority. The Inquiry Officer should have been another Arm of the service and the concerned authorities has taken a conscious decision to deviate from the normal procedure. The Inquiry report is not reasoned. The inquiry is vitiated by non-compliance of rule 14 (18) of the CCS (CCA) Rules, 1965. It should have been mandatory on the part of the Inquiry Officer to question him, if the delinquent has not examined him as a witness. That requirement is not complied with.

8. Request for requisition of documents and refusal for the same should be recorded for reasons in writing. This procedure is not followed by the Inquiry Officer. The charges considered and approved by the Disciplinary Authority are entirely new one which do not confine a place in the original Articles of charges. The decision is perverse one which no reasonable person should have arrived. The article of charges framed against the applicant is as follows:

" Shri P.M.Abdul Salam, J.E (C) continued to remain absent from 19.9.87 till today (E.L. for 20 days from 19.9.87 to 8.10.87 was sanctioned vide this office order No.15(8)/87 EET(P)-3203, dtd.13.11.87) without



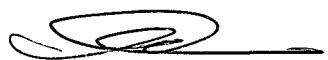
prior permission or sanction of leave. He failed to submit even the proper leave application as detailed below:

S.No. Period applied for Date of application.

1) 9.10.87 to 8.12.87 15.11.1987

He has not applied for leave for the further period. Further, he has also failed to reply to official communications. Therefore, it is imputed that he has violated Rule 162 of the P & T Manual Vol.IV and he has thereby failed to maintain absolute integrity and devotion to duty in contravention of the provision of Rule 3(i)(iii) of C.C.S. Conduct Rules, 1964."

9. As per Annexure A-1, disciplinary proceedings were reviewed and removal order has been passed by the Disciplinary authority and Annexure A-2 is the appellate order confirming the order of penalty. The contention taken in the disciplinary proceedings and the grounds taken by the Appellate authority are many, but some of them are worth mentioned for proper disposal of the O.A. "The Disciplinary authority modified the charges on its own accord. Prosecution Witness were not produced in the inquiry and therefore, he could not cross examine them. The Disciplinary authority passed fresh punishment order in a mechanical manner. He had made several attempts to join duty, but he was not allowed do so. The Inquiry Officer should have been from a different arm of service. Dropping of prosecution witnesses is not in a good taste of procedure. The Presenting Officer had himself disclosed before the Inquiry Officer that there was a Medical Certificate from an Ayurvedic Doctor and also from Cochin Hospital stating that he was under a prolonged treatment for mental depression. Therefore, the statement that the charged officer had not submitted the leave application, is not correct. Rule 162 of the P & T Manual Vol.III is not applicable in this case as he proceeded on sanctioned leave and neither leave was refused nor he was recalled to duty. This is



against the instructions of Department of Personnel & Training and Ministry of Finance. The inquiry did not establish that the absence was wilful. The charge of failure to maintain absolute integrity is in no way connected to his leave case on medical grounds. He had aged parents and other family members who are totally dependent upon him and therefore, the punishment awarded is disproportionate and very harsh. He had served the department very faithfully and there was no occasion for any reprimand. He had to proceed on leave under compelling circumstances of mental illness and therefore, he should be taken back on duty. The appellate authority also rejected the contention of the applicant and the punishment awarded to him was confirmed and entered into a finding that 'his unauthorized absent caused great inconvenience to the administration'. Therefore, it is felt that the punishment of removal from service has been charged to the appellant for good and sufficient reasons which was warranted by the evidence on record."

10. The charge against the applicant is that he continued to remain absent from from 19.9.87 till today (2.2.2000), the date of Annexure A-2. Earned leave for 20 days from 19.9.87 to 8.10.87 was sanctioned by Office Order dated 13.11.87 without prior permission or sanction of leave. He failed to submit even a properly leave application for the period from 9.10.87 to 8.12.87 (the date of application being 15.11.87).

11. On a careful consideration of the whole matter, we do not find any reason to interfere with the above grounds advanced, except the mental illness of the applicant since it will be reappreciation of evidence. The Hon'ble Supreme Court in (1994) 6 SCC 651, Tata Cellular vs. Union of India, declared that it is the decision-making process and not the



merits of the decision itself is reviewable. The Court/Tribunal does not sit as an Appellate Court while exercising power of review. Therefore, we do not propose to interfere with the disciplinary/appellate order reappreciating the evidence. But the specific contention of the applicant is that he could not attend the enquiry proceedings due to mental illness and was undergoing treatment and this was explained in his appeal dated 26.10.98 (Annexure A-9). In furtherance of that, he had requested for calling for documents which was not acceded to by the authorities. In fact, on going through the Appellate authority's decision in Annexure A-2, it could be seen that proper application of mind has not been applied in considering the prolonged treatment of the applicant which is supported by Medical Certificates. This is a case where the applicant was on leave, but requested for extension of the same for continuing the treatment on a belated date and of course, the delay could have condoned. No employees in normal circumstances will avail leave which they have earned for no reason. Especially when the leave sought for being for prolonged treatment of a serious disease, the employer should be a saviour of hope of the employee. this broad aspect had not appealed to the mind of the Disciplinary and Appellate Authorities. Both in Annexures A/1 and A/2, we find failure to look into the aspect of the illness of the applicant and make it appear that his absence was wilful. Humanity and fellowship are the soul and heart of any decisions which is conspicuously absent in the decision process of Annexures A/1 and A/2 and, therefore, they are not in good taste of law and procedure. Had this aspect been given due consideration by the Disciplinary/Appellate Authorities, this would have been favorable to the applicant for taking a lenient view on the quantum of punishment, which has not been done by the Appellate



authority and thus, his decision is not just and proper in compliance with the application of proper mind especially when the authorities are exercising a quasi-judicial power.

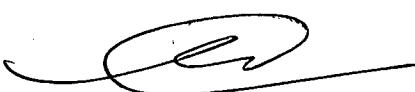
12. The Hon'ble Supreme Court has held in a land mark decision reported in B.C. Chaturvedi vs. Union of India and others [1996 SCC (L&S) 80], that Court/Tribunal has no power to interfere with the findings of disciplinary/appellate authority by reappreciating the evidence, but for, it is disproportionate to the gravity of the offence committed by the applicant. However, the major punishment of dismissal from service in this case in our view, needs reconsideration by the Revisional Authority. For that reasons, Annexures A/1 and A/2 need not be set aside since it is amenable to rectification by revisional jurisdiction.

13. One of the contention taken by the respondents is that the applicant has not exhausted the revisional jurisdiction. Considering the above observation and the norms prescribed by the Hon'ble Supreme Court as discussed above, we direct the Revisional Authority to reconsider the entire matter afresh with special reference to quantum of punishment as enunciated under Rule 29 of the CCS (CCA) Rules, 1965, and take appropriate decision and communicate the same to the applicant. For avoiding further delay, the Appeal Memorandum may be treated as Revision Petition and if any separate Revision Petition is filed by the applicant within one month from the date of the order, the same may also be considered by the Revisional Authority. This exercise shall be done within a period of three months from the date of receipt of a copy of this order.

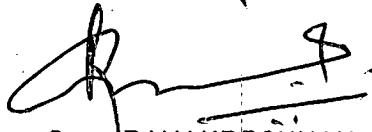


14. The Original Application is disposed of as aforesaid.
No order as to costs.

(Dated, the 8th November, 2002)



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

cvr.