

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 581/90 199
T. A. No.

DATE OF DECISION 28.8.91

V.M.Narayanan _____ Applicant (s)

M/s. P.V.Narayanan Nambiar, M.P.Ashok Kumar Advocate for the Applicant (s)

Versus

The Telecom District Engineer, _____ Respondent (s)
Cannanore and 2 others

Mr.N.N.Sugunapalan, SCGSC _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? N
4. To be circulated to all Benches of the Tribunal? N

JUDGEMENT
(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 2nd July 1990 the applicant who has been working as a Telephone Operator has challenged the punishment order dated 6.1.88 (Annexure-III) by which his pay was reduced by seven stages from Rs.1150/- to Rs.975/- in the pay scale of Rs.975-1660 for a period of five years with the condition that he will not earn increments of pay during the period of reduction and the reduction will have the effect of postponing his future increments of pay. He has also challenged the appellate order dated 4.4.90 upholding the order of punishment. The brief facts of the case are as follows.

2. While the applicant was working as Telephone Operator in the Tellicherry Telephone Exchange, the applicant was chargesheeted vide the memorandum dated 24th March, 1981(Annexure-1). There were two articles of charge as quoted below:-

" Article -I.

That the said Shri V.M.Narayanan while functioning as Telephone Operator, Trunks, Tellicherry on 1.10.80 unauthorisedly entered the Tellicherry Trunk Exchange when off duty and handled the trunk call tickets during 22-30-00 hours, prepared trunk call tickets as if booked by telephone No.TL.1212 on 1.10.80 and then charged such calls there by violated Rule 3(1)(2) and 3(1)(iii) of CCS Conduct Rules 1964.

Article-II.

That during the aforesaid period and while functioning in the aforesaid office, the said Shri V.M.Narayanan, Telephone Operator, Trunks, Tellicherry, while on duty on 24.9.80 and 27.9.80 has prepared trunk call tickets as if booked by Telephone No.1212 on 24.9.80 and 27.9.80 and then charged such calls as if they have been put through with a view to wreak vengeance against the subscriber who had complained wherein he was the involved official. By such action Shri V.M.Narayanan failed to maintain absolute integrity and devotion to duty and also contravened Rule 3(1)(i), 3(i)(ii) and 3(I)(iii) of CCS(Conduct Rules, 1964."

The Enquiry Officer in his report (appended with Annexure-III gave the following findings:-

"Therefore, though it is found that the SPS had handled calls during 22.30 to 24.00 hours on 1.10.80, it is not proved that he did no unauthorisedly. On the other hand the benefit of backing by a prevailing practice has to be extended to the SPS. "

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" The charge regarding forgery as per Art.II is also mainly supported by the argument of continuous use of serially numbered tickets. Due to reasons discussed above this also does not hold good."

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" Regarding the charge that the SPS did all these to "wreck vengeance against subscriber TL 1212" no evidence was put up before the Inquiring Authority and therefore these allegations do not stand substantiated."

" Altogether I find that the SPS forged atleast 4 tickets as if booked by suscriber No.TL-1212 and thus failed to maintain absolute integrity and acted in a way unbecoming of a Government servant violating Rule 3.1(i) and 3.1(iii) of CCS(Conduct Rules, 1964".

The disciplinary authority, however, agreeing with the enquiry authority on some findings but disagreeing with him on other findings where the latter had found the elements of charges to have not been proved, gave the finding that all the charges had been proved and issued the impugned punishment

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order at Annexure-III. The appellate authority in spite of the different findings between the Enquiry Officer and disciplinary authority upheld the order ~~the order~~ of the disciplinary authority. The applicant has challenged the disciplinary proceedings on a number of major grounds. His first point is that the Presenting Officer through the back door as it were, got the opinion of the Examiner of ~~question~~^{ed} documents along with a letter dated 6.6.1980 said to have been written by the petitioner and 15 trunk call tickets brought on record after the prosecution evidence was over before the Enquiry Officer. The objection^{was} raised by the applicant that those documents could not be produced in evidence for filling up the gap in the prosecution evidence. But his objection was overruled and these documents were brought on record. His further contention is that the handwriting expert was not produced before the Enquiry Officer for cross-examination nor did the expert ~~had~~^{have} with him either the admitted handwriting or the signature of the applicant. Accordingly the opinion of the handwriting expert on the basis of which the charge of forgery was found to have been proved, cannot be admitted. His further point is that before differing with the report of the Enquiry Officer and giving a finding against the applicant, the disciplinary authority should have given him an opportunity or notice. He has also challenged the appellate order as he was not given an opportunity of being heard by the appellate authority.

3. The respondents have argued that the trunk call tickets and the opinion of the Government Examiner of questioned documents ~~was~~^{were} only

corroboratory evidence and could be admitted. The applicant did not participate in the enquiry, otherwise he was given the opportunity to examine the report of the Government Examiner. Even ^{though} ~~then~~ the prosecution brief had been given to him to submit his written defence but in spite of two extensions given, he did not submit any written defence brief.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. It is clear ^{from} ~~that~~

the punishment order at Annexure-III that the copy of the enquiry report was given along with the punishment order. It is also clear that the disciplinary authority differed on substantive elements of the articles of charge from the Enquiry Officer. While the Enquiry Officer had found ^{had not been proved,} certain elements of the charge, the disciplinary authority differing with him ^{had} found that all the elements of the charge ^{had} been proved.

Before coming to a finding adverse to the applicant on the basis of the enquiry report, the rules of natural justice demanded that the disciplinary authority should have given a copy of the enquiry report to the applicant with an opportunity to advance his arguments in support of the favourable findings of the Enquiry Officer with which the disciplinary authority proposed to differ. This Tribunal relying upon the ruling of the Supreme Court in Narayan Misra vs. State of Orissa, (1969) 3

SLR 657, has been holding the view that if the disciplinary authority disagrees with the Enquiry Officer and takes a view adverse to the

delinquent officer, the disciplinary authority must give a notice to the delinquent officer before drawing adverse conclusions against him contrary to the findings of the Enquiry Officer. Since this was not done, we feel that the principles of natural justice have not been followed properly in this case.

5. We are also doubtful about the propriety of the Enquiry Officer introducing new documents like the opinion of the handwriting expert after the prosecution evidence had been closed. The disciplinary authority in the punishment order at Annexure-III dealt with this issue in the following manner:-

" The Inquiry Authority allowed the production of the above documents except the letter written by SPS, holding that these documents are only corroboratory evidence. As per Rule 14(15) of CCS(CC&A) Rules 1965, the Inquiry Authority can allow the Presenting Officer to produce evidence not included in the list, provided such evidence are not meant for filling up a gap in the evidence. I find that the trunk call tickets produced by the Presenting Officer were already included as item 5 in Annexure III of chargesheet issued to the SPS. As such they are neither new nor additional evidences. In this particular case the opinion of the Government Examiner of Questioned Documents referred is for clearing the lacuna in the evidence produced for proving the charge of forgery. As such I fully agree with the decision of the Inquiry Authority in allowing the production of documents listed above before the close of prosecution case. Hence the decision of defence not to participate in the inquiry was quite unwarranted."

We are not convinced by the logic of the arguments. Firstly the opinion of the Government Examiner is not a corroboratory evidence but main evidence to clinch the point about forgery. Secondly the report of the Government Examiner is a document of primary evidence and could not be introduced merely because trunk call tickets had already been produced by the Presenting Officer and included in the annexure to the chargesheet. The Note below Rule 14(15) of the CCS CCA Rules

reads as follows:-

"NOTE - New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally."

(emphasis added)

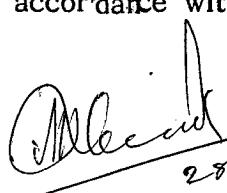
Non-production of the expert opinion regarding the forged nature of the trunk call tickets cannot be stated to be a lacuna or defect in evidence but a gap in evidence and cannot be filled by introducing the new evidence of the report of the handwriting expert. Further, since the handwriting expert was not called to prove the document on which his opinion ^{was recorded in} nor was there any handwriting of the applicant duly owned by him with the handwriting expert on the basis of which he gave his opinion about forgery by the applicant, the prosecution evidence relied upon by the Enquiry Officer and the disciplinary authority does not seem to have been sanctified by the purifying fire of natural justice.

6. Further, even though the appellate order is a speaking order, there is nothing to show that the applicant had been given by the appellate authority any opportunity of personal hearing. In *Ramchander vs. Union of India*, ATR 1986(2) SC 252 the Supreme Court has laid down that at the appellate stage especially after the Forty Second Amendment of the Constitution taking away the second opportunity of notice on the proposed punishment, the appellate authority should not only pass a speaking order but also give a personal hearing to the appellant.

7. In the facts and circumstances considering that the rules of natural justice have been violated at various stages of the disciplinary

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proceedings by the Enquiry Officer and the disciplinary authority, we allow the application, set aside the impugned orders dated 6.1.88 at Annexure-III and 4.4.90 at Annexure-V with liberty to the respondents to initiate disciplinary proceedings de novo if they are so advised and in accordance with law. There will be no order as to costs.



28/8/91

(A.V.Haridasan)
Judicial Member



28.8.91

(S.P.Mukerji)
Vice Chairman

n.j.j.