

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A. No. 586 of 1995.

Thursday this the 4th day of January, 1996.

CORAM:

HON'BLE MR. JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HONIBLE MR. P.V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

E.H. Basheer,  
Junior Telecom Officer (JTO)  
Strategic Business Planning)  
Office of Assistant General Manager,  
E-10-B Exchange Building,  
Annie Hall Road, Calicut-2, .. Applicant

(By Advocate Shri M.R. Rajendran Nair)

Vs.

1. General Manager, Telecom,  
Calicut-1.
2. Deputy General Manager (Planning)  
Office of General Manager,  
Telecom, Calicut-1.
3. Divisional Engineer, Telecom,  
Malappuram.
4. Chief General Manager, Telecom,  
Kerala Circle, Trivandrum. .. Respondents

(By Advocate Shri PR Ramachandra Menon, ACGSC)

The application having been heard on 4th day of January, 1996,  
the Tribunal on the same day delivered the following:

O R D E R

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN

Applicant, a Junior Telecom Officer (JTO for short)  
was charged under four heads. The Disciplinary Authority  
found two of the charges and imposed punishment of reduction  
of pay from the stage of Rs 2180/- to Rs 2120/- for one  
year, ordering further that the official will not earn  
increments during the currency of punishment. The Appellate

and Revisional Authorities affirmed the findings. Incidentally, the order of the Revisional Authority (R-1(a)) remains unchallenged.

2. The two charges found, were that registers were not properly maintained and that there was shortage of telephone instruments entrusted with applicant. The charges are sought to be established by the evidence of PW 1, 15 and 16, to the effect that entries were not made regarding the issue and receipt of telephones in the relevant register. The evidence suggests further that receipts and issue of Telephone instruments were not correctly brought into books. The Registers themselves PD 3 and DD 3 reinforced this view, according to the disciplinary authority who found that only 119 instruments were available while 227 should have been available.

3. Learned counsel for applicant who argued his case in great detail, contended that:

- (a) applicant was prejudiced in his defence as relevant documents were not given to him;
- (b) that there is no legal evidence to support the charges; and that
- (c) the evidence adduced would not justify the findings entered;

4. Elaborating the first contention counsel submitted that the fourteen documents shown as relevant in the charge sheet, were not produced at the enquiry. According to Department, the originals of these were not available and carbon copies were produced. That apart, these documents were not relied upon to find the charges. It is observed in A2 that:

.....3/-

" ... the listed documents vide Annexure of the charge sheet at sl.nos. 4 to 19 and 21 were presented by the P.O. for verification by the SPS (Charged Official). The I.O. noticed that in case of sl.nos. 4 to 17, the documents presented were not the original ones, but only some unauthenticated carbon copies... All the remaining listed documents except sl.no. 20 were also inspected by the SPS (Charged Official) on the same day.....The custodians of the said documents in Calicut SSA were also addressed by the I.O., and only few documents could be obtained.(Details given below)."

Thus whatever was available was offered to applicant and whatever was not available was not relied on. Applicant can make no grievance of this.

5. However, counsel would say that there is an absolute right to get the documents for purposes of cross-examination. We are unable to agree. An absolute obligation is caused in the case of certain documents. For example; the statements under section 162 of Code of Criminal Procedure. But there is no such statutory mandate in the case on hand. Whatever was available and whatever was relied on was made available to applicant. The decision in State of Punjab Vs. Bhagat Ram (AIR 1974 SC 2335) relied on by the applicant is also to the effect that relevant and available documents relied on have to be given and not that omission to give what are not available ,

will vitiate the enquiry. It was then argued that there was not enough evidence to reach a finding of guilt.

As we have already noticed, the evidence of PW 1 is to the effect that entries were not being made in the register.

The evidence of PW 15, the Vigilance Officer regarding the contents of the register and the registers themselves, clearly show that entries were not properly made. They would also show that in place of 227 instruments only 119 were available. When it is shown that an official had domain over certain properties and that on verification shortage was found, it will be presumed that there is loss/ misappropriation even without proof of how exactly the shortage was brought about.

6. The final contention of learned counsel was that the evidence will not satisfactorily establish the charges and that there are plausible explanations in favour of the defence. For that matter there are hardly any set of facts which do not yield two or more inferences. Even assuming that the Tribunal is persuaded to a different conclusion on facts, that will be no reason to differ from the findings of the Appellate Authority because judicial review cannot be equated to an appellate power and the Court/ Tribunal cannot reappreciate the evidence. As observed by the Supreme Court in Government of Tamilnadu and another Vs A Rajapandian ( AIR 1995 SC 561):

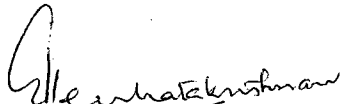
.....5/-

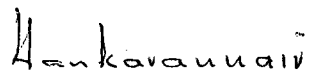
".. Administrative Tribunal fell into patent error in reappreciating and going into the sufficiency of evidence. It has been authoritatively settled by a string of authorities of this Court that the Administrative Tribunals cannot sit as a Court of Appeal over a decision based on the findings of the inquiring authority in disciplinary proceedings. .... A disciplinary proceeding is not a criminal trial. The standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt."

7. This argument of counsel does not commend acceptance. The evidence on record, oral and documentary, establish that the registers were not properly maintained and that there was a shortage in stock causing a loss of more than Rs.60,000/- (Rupees Sixty Thousand) to the Government. The findings are not liable to be interfered. The quantum of punishment cannot be considered harsh by any standards.

8. We dismiss the application. No costs.

Thursday this the 4th day of January, 1996.

  
P.V. VENKATAKRISHNAN  
ADMINISTRATIVE MEMBER

  
CHETTUR SANKARAN NAIR(J)  
VICE CHAIRMAN

**List of Annexures:**

1. Annexure A2: True copy of the Inquiry report dated 17/5/94 issued by the Inquiry Officer (Senior Assistant Engineer (Lecturer), Central Telegraph Training Centre, Trivandrum.
2. Annexure R1(a): True copy of the Revisional Order dated 6/10/95 passed by the 4th respondent in the above case.