

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.66/2001.

Monday this the 30th day of December 2002.

CORAM:

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

V.Mohandas,
Junior Telecom Officer,
Central Telephone Exchange,
Thiruvananthapuram.

Applicant

(By Advocate Shri Vishnu S.Chempazhanthiyil)

Vs.

1. Sub Divisional Engineer (Mis),
Office of the General Manager Telecom,
Bharat Sanchar Nigam Ltd.,
Thiruvananthapuram.
2. Assistant General Manager (OP),
Office of the General Manager,
Telecom Department,
Bharat Sanchar Nigam Ltd.,
Thiruvananthapuram.
3. Deputy General Manager (A),
Office of the General Manager, Telecom
Bharat Sanchar Nigam Ltd.,
Thiruvananthapuram.
4. General Manager, Telecom Department,
Bharat Sanchar Nigam Ltd.,
Thiruvananthapuram.
5. Union of India represented by
its Secretary,
Ministry of Communications,
New Delhi.
6. Bharat Sanchar Nigam Ltd., represented
by its Chairman, New Delhi-1. Respondents

(By Advocate Shri S.K.Balachandran, ACGSC)

The application having been heard on 30th December, 2002,
the Tribunal on the same day delivered the following:


O R D E R

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

In this application filed under Section 19 of the
Administrative Tribunals Act, 1985 the applicant, Shri V. Mohan
Das, Junior Telecom Officer (JTO for short) has challenged

Annexure A1 Memo dated 12.1.2000 issued by the first respondent, the Memo A-2 dated 18.1.2000 issued by the second respondent, Annexure A-8 communication of adverse entry in his ACR for the year 1999-2000, Annexure A11 order dated 22.6.2000 of the 4th respondent rejecting his appeal against A-8 and A-12 order dated 17.10.2000 of the 4th respondent rejecting his appeal against Annexure A2 memo.

2. The material allegation in the application can be stated as follows. While the applicant was working as JTO, the first respondent issued A1 memo dated 12.1.2000 stating that he did not make sincere efforts for preparation and submission of statements, that owing to his negligence the performance of Headquarters Exchange system etc. was badly affected, that because of that at the instruction of higher officials, work relating to monitoring of out of turn connections and preparation of out of term statement was taken away from him, that even though all other statements from him were badly delayed and that he was heard to say to his subordinate V.R.Raja that when he would be promoted as Divisional Engineer he would charge sheet Gangadharan, the SDE, and warning him to be more careful in future. Before the applicant would prefer an appeal against this the second respondent by A-2 Memo virtually affirming what is stated in A1 and also stating that an adverse entry would be made in his ACR, without even caring to watch his performance for the relevant period under observation. The applicant submitted A3 appeal against A2 Memo to the 4th respondent. In the meanwhile adverse entries in the ACR of the applicant for the year 1999-2000, was communicated to the applicant by the second



respondent vide memo dated 2.5.2000. The applicant submitted A-10 representation against the adverse entry to the 4th respondent. Since A-3 appeal of the applicant against A2 Memo was disposed of, the applicant filed O.A.913/2000 which was disposed of directing the 4th respondent to consider the applicant's appeal and pass an order. The 4th respondent had issued A-11 and A-12 orders disposing of the applicant's representation against adverse ACR and Annexure A3 turning down the applicant's claims. It is alleged in the application that the issue of A1 and A2 by respondents 1 and 2 were unjustified, that the applicant's omission pointed out in A1 was on account of pressure of work as he was given additional charge, that the adverse entry was not justified and that the 4th respondent has not applied its mind to his appeals. It has also been alleged that the second respondent in A2 stated that adverse entry would be made in his ACR without waiting to watch his performance for this whole period which is relevant and that the entry in the ACR (A8) was made by the first respondent only taking cue from A2 memo. It has also been stated that A1 and A2 not having been preceded by notice are vitiated for violation of the principles of natural justice. The applicant prays that as the impugned orders are not issued bonafide, they may be set aside.


3. Respondents contest the application. They contend that no notice need be issued before issuing warning to the official to



be careful in future and that the adverse entries were made as the performance of the applicant did not improve despite warning.

4. We have carefully perused the records in the case and have heard Sri Vishnu S.Chempazhanthiyil, the learned counsel of the applicant and Sri S.K.Balachandran, the learned Additional Central Government Standing Counsel appearing for the respondents.

5. Shri Vishnu argued that A1 memo of warning was issued making allegation against the applicant without giving him an opportunity to state the real facts and without ascertaining the correctness of the allegation especially that the applicant said that he would charge sheet the SDE when he would become Divisional Engineer, and that therefore, A1 is unsustainable. He argued that a mere reading of A1 would show that it was issued malafide. Shri Balachandran argued that there is absolutely no allegation of malafides in the O.A, that against A1 warning the applicant did not make either any representation to the first respondent or an appeal or complaint to the second respondent or any other higher authorities and that the facts on which the memo was issued being practically admitted in the application, there is no merit in the applicant's challenge against Annexure A1. We find considerable force in the argument of the counsel of the respondents. In Annexure A1 memo of warning specific instances of the lapses on the part of the applicant had been mentioned. It has been stated that certain functions have taken away from him and that even the rest of the statement were badly delayed by him. It has further been stated that he was bound to tell Mr.



Raja that he would charge sheet Gangadharan when he would become Divisional Engineer. The applicant did not venture to controvert this statement in A1, by making any representation. He has in the application at para 4.3 admitted that "because of combining of works relating to different posts he was unable to discharge the entire work in time." If as a matter of fact the failure was on account of pressure of work, nothing prevented the applicant from explaining the same on receipt of A1 memo. He never did it. Secondly, the applicant has in para 4.5 of the application admitted that he told Raja when the latter complained to him of the indecent behaviour of the SDE (Respondent No.1) that he would take a serious view of the matter when he would become a Divisional Engineer, that he would say that it was stated in a joking manner. Thus it is evident that the first respondent was justified in issuing A1 order and it was done with a view to improve the performance of duties of the applicant. We, therefore, do not find any reason to interfere with A1 Memo.

6. Coming to A-2 Memo issued by the second respondent Shri Vishnu argued that the second respondent should have waited till the relevant period under observation was over to conclude that it was necessary to make adverse entries in the ACR. Shri Balachandran argued that since the shortcomings of the applicant came to the notice of the second respondent and the second respondent came to know of the applicant's derogatory behaviour to his immediate superior the second respondent was also duty bound to warn the applicant to be careful in future, and that disciplinary proceedings would be taken if lapse was repeated. The counsel further argued that, Annexure A-2 did not indicate

that adverse entry would in any case be made even if the applicant improved his performance. He also argued that it directed the first respondent to make adverse entry in the applicant's ACR. We find that the learned counsel of the applicant is right. It is profitable to extract the relevant part of A-2 which reads thus:

".....the undersigned is constrained to warn you of invoking other severe penalty provisions unless you show signs of improvement with immediate effect. In the meantime suitable adverse entries on your quality of work, promptness in disposal of work, initiative drive, relation with fellow employees, attitude towards superiors, amenability to discipline, devotion to duty, trustworthiness, punctuality in attendance and integrity and honesty will be made in your confidential record of year 1999-2000."

Although the construction of the sentence and its long nature may create some confusion and difficulty in understanding, a careful reading of it makes it clear that the warning was to be more careful and that disciplinary action and adverse entry in the ACR would be the result if improvement was not shown. Further there was no direction to the first respondent to make adverse entry nor was a copy seen marked to first respondent.

7. The argument of the learned counsel of the applicant that A1 and A2 are bad for want of notice and opportunity has no force at all since these two memos are only warnings and not memorandum imposing any penalty. The 4th respondent has in its A12 order disposing of the applicant's A-3 appeal against A-2 memo of warning considered the appeal in details calling for records and examining the relevant records, given proper reason for not interfering with A2. The 4th respondent found that as there has been failure on his part in performing duties in time, and

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misbehaviour as disclosed from the records, the second respondent was perfectly justified in issuing A2 warning letter intended only to make the applicant aware of his short-comings and enable him to improve his performance and behaviour. We find no infirmity with A12 order.

8. The A-8 communication contains the following adverse entries:

"Part III-Assessment of the reporting officer.

6. No. He use to prepare statements of CISF, CAN, identified exchanges and VPTs only PG Cases and OOT STATEMENTS TILL 3-12-99.

9. Inadequate.

10.(II) Slow and tends to delay

11. Inadequate

12 Inadequate

13 a. Indifferent and threatening

b. Arrogant and disrespectful


14. I Indifferent

III Careless and easy going

V unreliable to entrust any responsibility.

17 Yes, He was warned orally as well as in writing on his indifferent attitude towards work and no tangible result towards improvement was observed during the period under report."

9. The first respondent is the Reporting Officer. There is



no allegation of malafides against the first respondent. The Ist respondent is expected to keenly observe the work and conduct of the applicant and make suitable entry in the ACR. As the applicant had been warned by the Ist respondent, when no tangible change to the good was noticed, he cannot be faulted in making the adverse entries. No separate notice therefore is needed before writing ACR. The shortcomings of the applicant had already been brought to the applicant's notice by A1 memo. He did not submit any representation or explanation. There is no case for the applicant that he made earnest effort to improve his work and conduct. The 4th respondent has considered the applicant's appeal against A1 after due verification of the concerned records and decided for valid reasons not to interfere with the entries in the ACR. We find the reason cogent and therefore, no justification for judicial intervention.

10. In the result, we find no merit in the application and therefore, we dismiss the same leaving the parties to bear their costs.



(G. RAMAKRISHNAN)
ADMINISTRATIVE MEMBER



(A.V. HARIDASAN)
VICE CHAIRMAN

A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of memo No.GM/TV/TD/MIS/X-1 dt.12.1.2000 of the 1st respondent.
2. A-2: True copy of memorandum No.AGM(OP)X-2/99-2000 dated 18.1.2000 of the 2nd respondent.
3. A-3: True copy of representation dated 14.2.2000 to the 4th respondent.
4. A-4: True copy of order No.GM/TD/TV/MIS/Office Order/99-2000 dated 17.5.1999 of the 1st respondent.
5. A-5: True copy of the order No.1 dated 18.5.1999 by the 2nd respondent.
6. A-6: True copy of the letter No.AGM (OP)/Office Order/99-2000/2 dated 3.12.99 of the 2nd respondent.
7. A-7: True copy of the Para 21 of the minutes of the management meeting of Thiruvananthapuram SSI Unit on 14.5.1999.
8. A-8: True copy of D.O.NO.AGM (OP) X-2/99-2000/5 dated 2.5.2000 of the 2nd respondent.
9. A-9: True copy of the confidential report form in App-11.
10. A-10: True copy of the appeal dated 22.5.2000 to the 3rd respondent.

Respondents' Annexures:

1. R-1: True copy of the order No.GM/TD/TV/Estt/1998-99/6 dated 20.5.1998 issued by the Asst. General Manager (OP) Telecom District, Trivandrum.

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15.1.03.