

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.11/2002

Monday this the 7th day of January, 2002

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

K.C.Achuthan S/o late K.P.A.Menon,
aged 55 years, Junior Telecom Officer
(now dismissed from service)
Office of the Sub Divisional Officer,
Telecom, Nilambur residing at
Menakkath House, K.K.Road,
Ezhavathuruthu, Ponnani, Malappuram Dist.Applicant

(By Advocate Mr. M.R.Rajendran Nair)

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1. The Advisor (HRD), Telecom Commission,
West Block, Wing No.2, R.K.Puram,
New Delhi.66.
2. The Member, Telecom Commission,
Sanchar Bhavan, New Delhi.
3. Director, Vigilance Commission,
New Delhi.
4. Union of India represented by the
Secretary to Government,
Department of telecom,
Ministry of Communications,
New Delhi.
5. Bharath Sanchar Nigam Limited,
represented by the Chief
General Manager,
Kerala Circle,
Trivandrum.Respondents

(By Advocate Mr M.R.Suresh).

The application having been heard on 7.1.2002, the Tribunal
on the same day delivered the following:

O R D E R

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

This application is directed against the order dated
11.12.01 of the Ist respondent imposing on the applicant a

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penalty of dismissal from service after accepting the enquiry report and the advise of the Central Vigilance Commission a culmination of enquiry held against the applicant under the provisions of Rule 14 of CCS (CCA) Rules for certain misconduct. The applicant has assailed the impugned order on various grounds including that it lacks application of mind and that proper opportunity was not given to him to defend himself.

2, When the application came up for hearing, learned counsel for respondents Shri M.R.Suresh raised an objection that the application is not maintainable as the applicant has not exhausted the departmental remedy of appeal and that in view of what is contained in Section 20 of the Administrative Tribunals Act, the application has to be rejected.

3. We have heard the learned counsel on either side and have perused the application and other materials annexed thereto. Learned counsel of the applicant argued that as the impugned order does not disclose application of mind by the disciplinary authority, the appeal would not be an efficacious remedy and therefore, the application has to be admitted under the circumstances. In support of this argument, learned counsel invited our attention to the ruling of the Guwahati Bench of the Central Administrative Tribunal reported in 1996 (32) ATC 404 (VC Tewari Vs. Union of India and others). We do not find that any declaration

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of law has been made by the Tribunal in that ruling. Whether without exhausting alternative remedy of appeal an application under Section 19 of the Administrative Tribunals Act can be admitted in the peculiar facts and circumstances of the case is to be decided by the Tribunal in the facts and circumstances of the case. In this case apart from stating that the 1st respondent has not applied its mind properly to the facts of the case before imposing on the applicant a penalty no other error of jurisdiction is pointed out. It is therefore, upto the applicant to avail of the remedy of appeal which is statutorily provided. He cannot be allowed to rush to the tribunal normally without availing of the remedy. Whether enquiry has been held in conformity of the rules and whether the findings recorded by the disciplinary authority warranted by the evidence are matters which the appellate authority should consider under Rule 27 of the CCS (CCA) Rules.

4. Learned counsel of the applicant argued that if the appellate authority takes a long time to dispose of the appeal, while the applicant would have to remain out of service, the applicant would be put to undue hardship and for that reason the Tribunal may entertain the application even though the applicant has not resorted to the statutory remedy of appeal. We are not impressed by this argument. If the appellate authority does not dispose of the appeal within six months, the applicant would be entitled to file an application under Section 19. We expect that if an

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appeal is filed in a case like this where the employee is dismissed from service the appellate authority would consider and dispose of the appeal with utmost expedition.

5. In the light of what is stated above, we refuse to entertain this application and reject the application with the above observation.

Dated the 7th day of January, 2002


T.N.T. NAYAR
ADMINISTRATIVE MEMBER

(s)


A.V. HARIDASAN
VICE CHAIRMAN

A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of the order No.8-8/2001-Vig.II dated 11.12.2001 issued by the 1st respondent.
2. A-2: True copy of the order No.AM/KCA/2 dated 9-6-97 issued by the Area Manager, Telecom, Mancheri.
3. A-3: True copy of the Memo No.AM/KCA/7 dated 4.9.97 issued by the Area Manager, along with the Annexures.
4. A-4: True copy of the letter No.AM/KCA/13 dated 30.9.97 issued by the Area Manager.
5. A-5: True copy of the Memo No.AM/KCA/16 dated 23.10.97 issued by the Area Manager.
6. A-6: True copy of the enquiry report dated 8.10.99.
7. A-7: True copy of the representation dated 2.11.99 submitted by the applicant before the Disciplinary Authority.
8. A-8: True copy of the gazettee notification of the order No.F-13-13/92-Vig.III dated 17.5.2000.
9. A-9: True copy of the Memo No.8-8/2001-Vig.II dated 11.6.2001 issued by the 1st respondent.
10. A-10: True copy of the advice Note No.001/P&T/038 dated 30.4.2001 issued by the 3rd respondent.
11. A-11: True copy of the final order dated 26.7.2001 in OA 650/2001 of this Hon'ble Tribunal.
12. A-12: True copy of the representation dated 6.8.2001 submitted by the applicant to the 1st respondent.

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