

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 122 of 2012

Monday, this the 2nd day of December, 2013

CORAM:

Hon'ble Mr. Justice A.K. Basheer, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

M.K. Sidharthan, aged 62, S/o. Kunjitty,
Junior Telecom Officer (Retd.), Thiruvananthapuram SSA,
Kerala Telecom Circle, Residing at T.C.16/140-3,
EVRA 114, Elanjimoodu Lane, Edapazhanji,
Thycaud PO, Thiruvananthapuram-695 014.

Applicant

(By Advocate – Mr. Vishnu S. Chempazhanthiyil)

V e r s u s

1. The Principal General Manager,
Thiruvananthapuram Telecom District,
Bharat Sanchar Nigam Limited,
Uppalam Road, Statue, Thiruvananthapuram-695 001.
2. The Chief General Manager,
Bharat Sanchar Nigam Limited,
Kerala Circle, Thiruvananthapuram – 695 033.
3. The Director (HR), Bharat Sanchar Bhavan,
H.C. Mathur Lane, Bharat Sanchar Nigam Limited,
Janapath, New Delhi – 110 001.

Respondents

(By Advocate – Mr. T.C. Krishna)

This application having been heard on 02.12.2013, the Tribunal on the same day delivered the following:

OR D E R

By Hon'ble Mr. K. George Joseph, Administrative Member-

The applicant while working as JTO (Customer Service Centre) (Mobile), BSNL, Trivandrum was charge sheeted for creating and activating

Post Paid Mobile Cell One connections without following the guidelines. In the inquiry that followed, the charges against the applicant were held to have been proved partially. Though the disciplinary authority did not fully agree with the report of the inquiry officer, for not considering the lack of minimum infrastructure for online verification of the application, inadequate downward communication of guidelines and other technical lapses, imposed on the applicant the punishment of reduction by five stages in his pay scale for a period of one month with effect from 1.6.2009. Though he would not earn increments of pay during the period of reduction, on the expiry of the period, the reduction will not have the effect of postponing future increments of his pay. The appellate authority modified the punishment to reduction of the pay of the applicant by two stages only which was upheld by the reviewing authority. Aggrieved the applicant has filed this OA for the following reliefs:-

- “1. Call for the records leading to the issue of Annexure A3, A4 and A5 and set aside Annexure A3, A4 and A5.
2. Direct the respondents to restore increments as denied by the impugned orders and grant all consequential orders including revision of pensionary benefits.
3. Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.
4. Award the cost of these proceedings.”

2. The applicant contended that the order of the disciplinary authority at Annexure A3 is a non-speaking order. The disciplinary authority did not agree fully with the report of the inquiry officer. No notice was given to the

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applicant highlighting the points of disagreement and seeking his response. If the extenuating factors are taken into account the question of penalty of reduction of pay by two stages for a period of one month would be found unsustainable. The reviewing authority did not apply its mind on the contentions raised by the applicant. The guidelines in regard to creation and activation of post paid mobiles cellone connections were not circulated. Sufficient opportunity was not given to the applicant to disprove the charges effectively as certain documents were not supplied to him. No TRA terminal was provided for verification and correctness of the address for new connections. Non-provision of the threshold limit and delay in effecting timely disconnection was the reason for accumulation of arrears for which the applicant was made a scapegoat. Applicant has only followed the procedure set by his predecessor and instructions from superiors. Hence, it is unfair to punish him. The punishment inflicted upon the applicant is totally disproportionate.

3. Per contra, the respondents contended that the inquiry against the applicant was conducted in accordance with the procedure. Annexure A3 order of the disciplinary authority would show that all relevant aspects were considered by him before arriving at his conclusion. The applicant has been afforded with all reasonable opportunity to prove his innocence. The applicant has not stated the relevance of the documents not produced and what prejudice has been caused to him by non-production of the same. The applicant had certified the documents pertaining to mobile connection to be genuine without taking the least effort for verifying them. The applicant

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cannot justify his misconduct putting the blame on factors such as threshold, disconnection, etc. The punishment imposed on the applicant is proportionate to the gravity of charges leveled against him. The respondents have shown leniency towards the applicant considering the fact that he was about to retire.

4. We have heard the learned counsel for the parties and perused the records.

5. The inquiry officer had held that the charges framed against the applicant stood proved partially. The disciplinary authority did not fully agree with the inquiry officer because he failed to consider the lack of minimum infrastructure for online verification of applications for mobile and inadequate communication of guidelines. The disagreement on the part of the disciplinary authority is in favour of the applicant which does not warrant a disagreement note to be communicated to the applicant for his response. Considering his 34 years of service and the impending retirement as well as the failure of consideration on the part of the enquiry officer to consider certain extenuating factors, the disciplinary authority has taken a lenient view of the proven misconduct on the part of the applicant and imposed the penalty of reduction of pay by five stages for a period of one month with effect from 1.6.2009 with a stipulation that he will not earn increments of pay during the period of reduction but on the expiry of the said period the reduction will not have the effect of postponing the future increments. The appellate authority took a further lenient view and modified the penalty of

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reduction by two stages only which was confirmed by the reviewing authority.

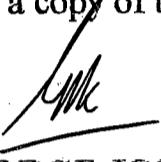
6. We are unable to agree with all the contentions of the applicant like non-application of mind by the disciplinary authority, procedural lapses, denial of opportunity to disprove the charges, etc. The competent authorities have taken note of lack of infrastructural facilities and lack of proper communication of the guidelines. However, the impact of the punishment inflicted upon the applicant calls for a closer look. The punishment of the applicant has been reduced by two stages for a period of one month only with effect from 1.6.2009. Though he will not be earning increment during the period of reduction future increments will not be postponed. It so happened that on expiry of the period of reduction of pay he retired. The disciplinary authority, the appellate authority and the reviewing authority though have noted the retirement of the applicant on 30.6.2009 did not consider the impact of the minor punishment on the pensionary benefits of the applicant. The effect of punishment is not intended to last beyond one month but as the order of reviewing authority stands, it would have a life long impact on the applicant by way of reduced pensionary benefits.

7. In the interest of justice we are of the view that the impact of the punishment on the applicant should be restricted to one month as it was intended by the disciplinary authority, appellate authority and reviewing authority.

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8. Hence, the Original Application is partially allowed as under:-

It is declared that the imposition of the penalty by the reviewing authority vide order dated 21.11.2011 will not have any impact on the pensionary benefits of the applicant. The respondents are directed to calculate and disburse the pensionary benefits of the applicant as if his pay was not reduced from 1.6.2009 to 30.6.2009. Appropriate orders in this regard should be issued within two months from the date of receipt of a copy of this order. No costs.


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER


(JUSTICE A.K. BASHEER)
JUDICIAL MEMBER

“SA”