

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Tuesday The 7th August, 2007

ORIGINAL APPLICATION NO.154 OF 2004

CORAM:-

**HON'BLE MS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR GEORGE PARACKEN, JUDICIAL MEMBER**

P. Kuttan,
S/o late P Narayana Guptan,
Divisional Engineer (Officiating),
Palayam Telephone Exchange, Calicut-2,
"Prabhat" House,
Kadampushipuram,
PO Palakkad District. ... Applicant
[By Advocate: T.C.Govindaswamy,
KM Anthru, Mannatil Kumar and D.Heera)

-Versus-

1. Union of India,
represented by the Secretary to Govt. of India,
Ministry of Communication,
New Delhi-1.
2. Member (Services),
Telecom Commission, Ministry of Communications,
Department of Telecommunication,
Vigilance II Section,
New Delhi.
3. The Director (Vigilance), Vigilance Wing,
Ministry of Communications & Information Technology,
Department of Telecommunications,
New Delhi-66.
4. The Chief General Manager, Telecom.
Kerala Circle, Trivandrum-33.
5. The Union Public Service Commission,
Represented by its Secretary, New Delhi.

... Respondents

[By Advocates: Mr M Rajendrakumar for R/1 to 4
Mr.CB Sreekumar, ACGSC for R/5]

This application having been heard on 10th July, 2007 the Tribunal delivered the following -

ORDER

(Ms. Sathi Nair, Vice Chairman):

The applicant is presently working as Divisional Engineer (Officiating) at Palayam Telephone Exchange, Calicut. He is aggrieved by order bearing No.8/119/97-Vig.II dated 26.2.2002/1.3.2002 [Annexure-A/1] issued by the 2nd Respondent, imposing penalty of reduction of pay by two stages from Rs. 9,500/- to Rs.9,000/- in the time scale of pay of Rs.7,500-250-12,000/- for a period of one year with immediate effect with further direction that he will not earn increments during the period of such reduction and that on expiry of such period the reduction will have the effect of postponing the applicant's future increments. Being aggrieved by the Annexure-A/1 order, the applicant filed appeal before the 3rd respondent - the Director (Vigilance), Vigilance Wing, Ministry of Communications and Information Technology, Department of Telecommunications, New Delhi. The 3rd respondent on behalf of the President of India, rejected his appeal by order dated 31.3.2003 [Annexure-A/2]. According to the applicant, both the orders [Annexure-A/1 and A/2] were issued without application of mind and mechanically following the advice of Central Vigilance Commissioner (CVC) without application of mind. Annexure-A/2 is a non-speaking order and was issued by the appellate authority as if it is the order of

UPSC without application of mind and mechanically following the advice of UPSC. The applicant alleges that the finding of guilt arrived at by the Inquiry Officer in Annexure-A/5 is perverse and arbitrary and it did not take into consideration any of the valid points raised by the applicant in his defence [Annexure-A/4] and it is not based on any evidence on record. It is also against the norms of natural justice hence liable to be quashed with a direction to the respondents to grant consequential benefits thereof.

2. The respondents have filed reply statement denying the contentions of the applicant. It has been stated that the Disciplinary Authority examined the Inquiry Officer's report and consulted the CVC as per prescribed procedure. A copy of the Inquiry report alongwith the CVC advice was furnished to the applicant vide Memo Np.8-119/97 Vig. II dated 14.1.2002 for making representation. The applicant submitted his representation dated 11.2.2002, which was considered by the Disciplinary Authority. After taking into account the report of the Inquiry Officer, submissions made by the applicant in representation dated 11.2.2002 and the records of the case, the Disciplinary Authority passed final orders No.8-110/97-Vig.II date4d 26.2.2002/1.3.2002 imposing the penalty of reduction of pay by two stages in the time scale of pay for a period of one year with cumulative effect. Therefore, according to the respondents,

submission of the applicant that the orders of the Disciplinary/Appellate Authorities are arbitrary, discriminatory, without the application of mind and contrary to law has no basis and far from the truth. Respondents have further stated that the President of India, i.e. the Appellate Authority, considered the appeal dated 15.4.2002. The President consulted the Union Public Service Commission (UPSC). The President accepted the recommendation of the UPSC and endorsed the decision of the disciplinary authority on imposition of punishment and the Appellate Authority rejected the appeal preferred by the applicant. It is submitted that the CVC and Union Public Service Commission have been consulted in accordance with the Government's instructions.

3. We have heard the learned counsel for the parties. The learned counsel for the applicant filed a detailed argument note. We have perused the record and considered the submissions of the learned counsel for the applicant. Following are the grounds urged by the applicant:

- (i) That the impugned orders of Annexure-A/1 and A/2 are merely based on the enquiry report and dictation of the Central Vigilance Commissioner and *prima facie* without application of mind;
- (ii) there is absolutely no evidence in the record of enquiry to sustain the charge of misconduct as alleged against the applicant;
- and (iii) that the report of the Inquiry Officer is not based on any

evidence on record rather it was based on surmises and conjectures.

The following are the charges levelled against the applicant:

"Charge 1: The Sri P Kuttan, while functioning as Sub Divisional officer, Telecom. Pattambi, during the financial year 1994-95 and 1995-96 committed gross misconduct by making purchase of spares for a sum of Rs.23,218/- during 1994-95, by 11 purchase orders and splitting them into 51 bills each of value less than Rs.500/- and again during 1995-96, for a sum of Rs.38,062/- by 14 purchase orders and by splitting them into 79 bills each of value less than Rs.500/- violating rules and in excess of his financial power, without getting prior permission from his higher authorities and without enquiring about the availability of stock of spares in the Central Telecom. Stores Dept, as described I the statement of imputations attached herewith;

Charge No.2: The Sri P Kuttan, while functioning as Sub-Divisional Officer, Telecom. Pattambi during the period May 1995 to August 1995 committed gross misconduct by falsely showing that he had issued 37 new Push Button telephone instruments from his store for replacement of the instruments of subscribers having telephone Nos. 22202, 22292, 22563, 22384, 22550, 22324, 22251, 22056, 22275, 42377, 22747, 22647, 22795, 22235, 22620, 22628, 22509, 33226, 33368, 22156, 22679, 76276, 22870, 33251, 33368, 33226, 42209, 33227, 33257, 46355, 46377, 33315, 33346, 33257, 33269, 33349, 33247 but had misappropriated the said instruments without using them for replacement, in the manner described in the statement of imputations and thereby caused a loss of Rs.16,236/- to Telecom Department.

By the above acts, Sri P.Kuttan failed to maintain absolute integrity and devotion to duty and thereby violated Rule 3(1)(i) & (ii) of CCS Conduct Rules, 1964."

4. The grounds urged by the applicant are examined with reference to the averments made by the respondents in their reply statement. The main contention of the applicant is that the penalty imposed by the 2nd respondent by Annexure-A/1 order dated 26.2.2002/ 1.3.2002 and the appellate order dated 31.3.2002 [Annexdure-A/2] are at the dictation of the Central Vigilance Commissioner and Union Public Service Commission respectively. It is argued that the Authorities ought to have arrived at their final decisions without taking assistance of outside agency, having regard to the evidence adduced in the enquiry. In support of this contention, reliance has been placed on the decisions of the Hon'ble Supreme Court in Nabgaraj Shivarao Karjagi -v- Syndicate Bank, AIR 1991 SC 1507, wherein it was held that the disciplinary authority must apply its mind to the whole matter and cannot accept the advice of CVC in a mechanical manner. It is seen that the Disciplinary authority examined the report of the Inquiry Officer and consulted the Central Vigilance Commissioner as per the procedure and a copy of the report of the Inquiry Officer alongwith the advice of the Central Vigilance Commissioner was furnished to the applicant vide Memo dated 14.1.2002 for making representation. The applicant submitted his reply dated 11.2.2002 to the Disciplinary Authority and

thereafter, the 2nd respondent passed the Annexure-A/1 order imposing the penalty of reduction of pay by two stages in the time scale of pay for a period of one year with cumulative effect. Learned counsel for the applicant vehemently argued that no opportunity had been given to the applicant before passing the Annexure-A/1 order and the penalty of reduction of pay was made only on the advice of the Central Vigilance Commissioner, without application of mind. We have perused the Annexure-A/5 Inquiry Report and also the elaborate written reply [Annexure-A/4] submitted by the applicant before the Inquiry Officer. After consideration of the Annexure-A/4 and in consultation with the Chief Vigilance Commissioner, which is an integral part of the procedure followed as per instructions, in respect of cases investigated by the Central Bureau of Investigation (CBI), the order imposing the major penalty was passed. Therefore, the applicant's submission that the CVC need not have been consulted before passing the impugned order has no force and it cannot be termed interference by an outside agency in the proceeding. Consultation with the CVC is an integral part of the procedure prescribed. Similarly, the appellate order has been made after consultation with the UPSC. The applicant contended that he has not been given any opportunity of hearing before passing the appellate order. In this case, the President of India was the appellate authority and the applicant being a higher official, consultation with UPSC before imposition of penalty, was a vital

part of the prescribed procedure as per instructions in force. Hence, consultation with CVC and UPSC before passing the impugned orders cannot be termed as interference by outside agency and the applicant cannot find fault with the procedures being followed. There is no provision in the said instructions that the advice of the UPSC should be communicated to the charged officer. The President of India can either accept or reject the recommendation so given by the UPSC.

5. At this stage, the applicant cannot bring fourth any new point for consideration, which he had not taken before the Inquiry Officer or before the appellate authority. Learned counsel for the applicant has strenuously argued that the Inquiry Officer has not followed the prescribed procedure, though no such contentions had been taken in his application. Further there is a mention in para 4(c) of the application that the applicant had requested the Inquiry Officer for production of the case diary from CBI and also production of certain additional documents, such as, Imprest bills, Temporary advanced register, TA bills etc. It is seen that the request for production of case diary of CBI was rejected by the Inquiry Officer and in regard to production of other documents, Inquiry Officer has stated that these documents could be brought at the end of the enquiry proceeding. It is seen that prosecution has produced 106 documents as exhibits and examined 41 witnesses in support of the proceedings drawn against the

applicant and the applicant has not raised any objection to any procedural irregularities during the course of enquiry and, therefore, the applicant cannot raise such an issue before this Tribunal at this stage. We do not find any violation of the procedure prescribed under Rule 14 of the CCS (CCA) Rules.

6. The second contention is that there is absolutely no evidence on record to sustain the charge of misconduct. The charges have been extracted hereinabove. They relate to splitting of bills and placing of purchase orders in excess of financial powers of the applicant. The documentary evidence before the Inquiry Officer indicates that the applicant purchased spares for a sum of Rs.23,218/- during 1994-95 by 11 purchase orders and by splitting them into 51 bills making each of value less than 500/- to bring it within the competence of the applicant, without getting prior permission from his higher authorities. It is the case of the applicant that the overall purchase was made within the over all limit of Rs.25,000/- allotted to him on an annul basis, and the financial authority has not objected to any bill and has also not raised any objection while sanctioning the amount. The applicant has also contended that none of the witnesses have alleged that there is any misappropriation of money. According to the applicant he was only resorting to local purchase to meet the urgent requirement to satisfy the subscribers and providing prompt service to them as there were 7 telephone exchanges and about

2000 connections under his charge. It is also argued that the applicant has adopted only the accepted and prevailed procedures and practices in order to meet the urgent requirements to satisfy the subscribers. In support of his contentions the applicant has relied on various judgments of the Supreme Court in Union of India -v-HC Goel (AIR 1964 864; Krishnamoorthy -v- Govt. of Tamilnadu (1985) 1 SLJ 117(MAD); Siddartha Mohanlal Sharma-v-South Gujarat University (1982)23 GLR 233 to show that the charges should not be based on mere inference but on concrete evidence.

Both the Disciplinary and Appellate Authorities have gone to the details of the contentions of the applicant in this regard. It is also seen that the Inquiry Officer had come to the conclusion that prior permission from the higher authorities to place orders beyond his financial power without enquiring about availability of stock or spares available at the store depot. We do not think it necessary for this Tribunal to re-appreciate the evidence which has already been considered by the departmental authorities.

7. The apex Court has made very clear that judicial review is not an appeal from a decision but a review of the manner in which the decision is made. In BC Chaturvedi -v- Union of India and Ors, reported in (1995) 6 SCC 749, the Hon'ble Supreme Court held that - the Tribunal has only power of judicial review but, it is

the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charges have been proved or not. It is equally settled law that the technical rules of evidence has no application for the disciplinary proceeding and the authority is to consider the material on record. On judicial review it has been observed " the Court /Tribunal has no power or jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the court or tribunal".

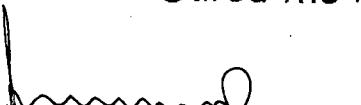
8. The above being the settled position of law, the conclusion of the Disciplinary / Appellate authority arrived at on the basis of the appreciation of evidence on record cannot be reversed on a mere allegation that it is based on surmises and conjectures. We do not find any irregularity or omission in the decision making the process and that the authorities had acted under the dictation of the different agencies, as alleged by the applicant. We are, therefore, not in a position to accept the contention of the applicant.

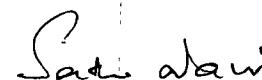
9. The applicant has also not established that there were any procedural omissions or lapses which resulted in any bias or

infringement of any provisions of the principles of natural justice. The applicant had participated in the enquiry and had the opportunity to inspect the documents and cross examine the witnesses and had also engaged his defence assistant. Therefore, none of the grounds raised by the applicant is found to be supported by any legal position as valid, warranting interference by this Tribunal.

10. For the foregoing reasons, we do not find any merit in the application and accordingly it stands dismissed. No costs.

Dated the 7th August, 2007


(George Paracken)
JUDICIAL MEMBER


(Ms Sathi Nair)
VICE CHAIRMAN