

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 179

199 1

DATE OF DECISION 27.3.1992

P.K. Prabhakaran _____ Applicant (s)

Mr. M. R. Rajendran Nair _____ Advocate for the Applicant (s)

Versus

The Sr. Supdt. Telegraph Traffic Respondent (s)
Calicut and others

Mr. T.P.M. Ibrahim, ACGSC _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N. V. KRISHNAN, ADMINISTRATIVE MEMBER

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

The applicant is aggrieved by the punishment order and the appellate order passed against him after the decision of this Tribunal in O.A. 287/85 quashing the original punishment of dismissal from service. The applicant while working as Telegraphist at CTO, Tellicherry, was placed under suspension by order of the Sr. Supdt. Telegraphs, Calicut dated 26.3.83. Thereafter, the first respondent conducted an enquiry under Rule 14 of the CCS (CCA) Rules 1965 after serving on him chargesheet containing the following three charges:

"Article:I: Sri P.K. Prabhakaran, Telegraphist while functioning as Telegraphist, CTO Tellicherry showed gross insubordination towards his superior Sri

E.N. Warrier, ASTT, i/c, CTO, Tellicherry at about 1100 hours on 24.3.83 inside the instrument room. He has thus violated Rule 3(1) (iii) of CCS (Conduct) Rules 1964.

Article-II: Sri P.K. Prabhakaran while working as Telegraphist, CTO, Tellicherry caused disturbance to office work at about 1100 hrs. on 24.3.83 by behaving in an unruly manner contravening Rule 3(1) (iii) of CCS (Conduct) Rules 1964.

Article-III: Sri P.K. Prabhakaran, Telegraphist made a false complaint vide his letter dated 26.3.83 against his superior Sri E.N. Warrier, ASTT, i/c, CTO, Tellicherry thereby violating sub rule (iii) of Rule 3(1) of CCS (Conduct) Rules 1964."

2. The applicant denied the charges. Hence, by order dated 12.3.85 an enquiry officer and presenting officer were appointed for conducting enquiry proceedings in accordance with law. In the meantime, a criminal case was registered against the applicant under section 332 of the IPC. He was prosecuted for the offence before the Addl. Judicial I class Magistrate, Tellicherry in CC 76/83. The applicant was convicted and sentenced to undergo imprisonment of two years. After the conviction, a memo was issued proposing to dismiss the applicant from service presumably when he was found guilty in the criminal case. The applicant submitted his objections and stated that he is filing appeal against the judgment of the Criminal Court. Nevertheless, he was dismissed from service as per order dated 17.12.85. He challenged this order before this Tribunal in O.A. 287/85. By judgment dated 13.10.88 in criminal appeal 214/85 filed by the applicant challenging his conviction, the appeal was allowed and he was acquitted. In the meanwhile, this Tribunal also allowed O.A. 287/85 and set aside the dismissal order. Thereafter, further enquiry proceedings were initiated against

the same charges after serving a copy of the enquiry report. He has filed Annexure-III reply to the memo, but after considering the enquiry report and agreed with the finding thereof, the disciplinary authority passed Annexure-I order of punishment dated 30.12.89 imposing the punishment of reducing his pay from 1210 to 1050 in the time scale of pay of Rs. 975-25-1150-30-1660/- for a period of one year w.e.f. 1.1.90 with a clause that he will not earn increment during that period, and during the expiry of the period the reduction will not have the effect of postponing his future increments. The increment already sanctioned to the applicant will not be affected by this order. He filed Annexure-IV appeal before the appellate authority but the appellate authority without adverting to the various contentions raised in Annexure-IV memorandum, dismissed the appeal by order Annexure-II dated 17.9.90. The applicant is challenging both these orders in this application filed under section 19 of the Administrative Tribunals' Act, 1985.

3. The main contentions urged by the learned counsel Shri M.R. Rajendran Nair are that:

- (i) after the acquittal by the appellate court, disciplinary proceedings cannot be sustained against the very same charges and offence.
- (ii) there is absolutely no evidence to sustain the penalty order and hence it is a case of no evidence and the disciplinary authority ought not have imposed any penalty on the basis of the evidence.

4. Having heard the arguments and after considering the available materials, we are of the view that the first

contention of the learned counsel for the applicant is liable to be rejected summarily. The approach of the Criminal court and the disciplinary authority are different. The Supreme Court repeatedly held in a number of cases that simply because of acquittal in a criminal case, the delinquent employee cannot claim that he is not liable to be punished if the charges are based on the offence involved in the criminal case. In a criminal case, there is possibility of giving the benefit of doubt and getting an acquittal. But in a disciplinary proceeding preponderence/^{of} probability is the basis of finding a delinquent employee as guilty. Since the standard of proof as also the approach in criminal cases and departmental enquiries are entirely different. We are not inclined to accept the contentions of the applicant. ^b

5. In the instant case, the offence charged against the applicant is under section 332 of IPC and he was convicted by the Magistrate's court. But in appeal, he was acquitted giving the benefit of doubt. This aspect was clearly dealt with by both the disciplinary authority and the appellate authority in Annexure-I and II orders respectively and we are not inclined to go into the matter further.

6. Regarding the next contention that this is a case of no evidence, we are satisfied that the applicant is not able to substantiate his contention. For proving the simple charge/^b the applicant that ^b caused disturbance

in the instrument room by behaving in a unruly manner unbecoming of a Government servant, as many as seven witnesses were examined on the side of the Department after producing some documents. The witnesses have deposed stating the presence of the applicant in the instrument room and about his behaviour at the point of time and date mentioned in the charge. Even though the disciplinary authority has not satisfactorily assessed or evaluated the statement of all witnesses in the proper perspective, he came to the conclusion on the basis of the available materials that the finding of the enquiry officer in respect of the charges are correct and can be upheld. His findings read as follows:

"It is admitted by the SPS himself that there was stoppage of work. SW1 kum. Nirupama and DW2 Sri Ibrahi have also stated that there was stoppage of work. Since the stoppage of work occurred due to events starting with the misbehaviour of the SPS towards the head of the office, naturally the SPS only can be held responsible for the stoppage of work. I agree with the findings of the Inquiry Officer. Therefore, Article II of the charges also stand proved and the SPS is guilty of violating Rule 3(1) (iii) of the CCS (Conduct Rules) 1964.

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" I agree with the findings of the Inquiry Officer on this charge. As the SPS is found guilty of the charge he has violated sub rule (iii) of Rule 3(1) of CCS (Conduct) Rules 1964.

Misbehaviour towards the head of an office by his staff is a serious matter and deserves deterrent action. However, since the incident happened more than 6 years ago, I am being very lenient about the punishment. The undersigned has decided that Sri P.K. Prabhakaran should be reduced to pay of Rs.1050/- for a period of one year with effect from 1.1.90."

7. The enquiry files were made available by the learned counsel for the respondents, for our perusal. A perusal of the files will reveal beyond doubt that the charges 2 & 3 can be sustained on the basis of the available evidence.

The appellate authority also concurred with the findings of the disciplinary authority also in regard to the charges 2 and 3 in the following manner:

"Regarding article of charges-II, from the deposition of the witnesses it is evident that there was disturbance in the instrument room at about 1100 hours on 24.3.88 by behaving in an unruly manner. The court has not mentioned anything on this charge and this was not a point of contention in the court. The inquiry officer found that the charge proved and the disciplinary authority after analysing the inquiry report agreed with the findings and found the second article of charge proved.

The third charge was also not a point of contention in the court. The inquiry officer found the charge proved and the disciplinary authority also agreed with the findings of the inquiry officer on this charge. His complaint against the superior was enquired into properly, analysed during the course of inquiry and it was found to be a false statement. The fact that the complaint was studied in detail by the disciplinary authority is evident from the decision taken while framing the charge sheet."

7. Regarding the first charge against the applicant, the appellate authority disagreed with the finding of the enquiry officer as approved by the disciplinary authority on the ground that the delinquent employee was not given sufficient opportunity to clarify the position. The appellate authority came to the conclusion that charge-1 has not been proved. However, since there is concurrent finding in respect of charge No.2 and 3 by both the disciplinary and appellate authority, we cannot appreciate the contention of the learned counsel for the applicant that this is a case of no evidence. We are not prepared to reappraise the evidence in this case as requested by the applicant.

8. In this view of the matter, we are of the view that there is no merit in the application and the reliefs

claimed by the applicant cannot be granted.

9. In the result, the application is only to be rejected.

Accordingly, we dismiss the same.

10. There will be no order as to costs.

N. Dharmadan
27.3.92

(N. DHARMADAN)
JUDICIAL MEMBER

V. Krishnan
27.3.92

(N. V. KRISHNAN)
ADMINISTRATIVE MEMBER

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