

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 184 of 2008

Tuesday, this the 15th day of March, 2011

CORAM:

**HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

S.V. Venkatesa Moorthy,
S/o. S.V. Venkataramana Iyer,
(Retd. Sub Divisional Engineer
Operation & Planning (II)
Office of the Principal General Manager
Bharat Sanchar Nigam Limited
Bangalore Telecom District, Bangalore),
Residing at : C/o. V.K. Karthikeyan,
1/286-A, "AMBADI", Madathumbadi Post,
Trichur District, Pin : 680 733 ... Applicant.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India, represented by
The Secretary to the Govt. of India,
Ministry of Information & Broadcasting,
(Department of Telecommunications),
New Delhi.
2. The Member (Services),
Telecom Commission,
Ministry of Communications &
Information Technology,
Department of Telecommunications,
Room No. 915, Sanchar Bhavan,
20, Asoka Road, New Delhi : 110 001
3. The Principal General Manager,
Bharat Sanchar Nigam Limited,
Bangalore Telecom District,
Bangalore - 1 ... Respondents.

(By Advocate Mr. Sunil Jacob Jose, SCGSC)



This application having been heard on 22.02.2011, this Tribunal on 15-03-11 delivered the following :-

ORDER

HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicant was appointed as Junior Engineer (Telecom), later designated as Junior Telecom Officer on 23.06.1975. He was promoted to the Telecom Engineering Services Group-B on 23.06.1991. He was served with a charge memorandum dated 23.04.2004 listing seven allegations against him. The applicant denied the allegations and an enquiry was conducted. The enquiry officer held 6 out of 7 charges proved. The applicant submitted detailed objections against the findings of the enquiry officer. The respondent No.2, the disciplinary authority, imposed the penalty of compulsory retirement on the applicant vide Annexure A-1 order dated 31.10.2006. The applicant submitted a detailed appeal dated 16.12.2006 to the President of India. During the pendency of this O.A, on a direction from this Tribunal, the 1st respondent rejected the appeal vide Annexure A-8 order dated 28.04.2010. Aggrieved, he has filed this O.A for the following reliefs:

- (i) Call for the records leading to issue of A1 and A8 quash the same;
- (ii) Direct the respondents to grant the applicant all consequential benefits as if A1 had not been issued at all, including payment of arrears of pay and allowances;
- (iii) Award costs of incidental to this application;
- (iv) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.



2. The applicant contended that Annexure A-1 order is totally arbitrary and contrary to law. He was not given reasonable opportunity to defend his case. The first charge against the applicant was that he had disproportionate assets valued at Rs. 15 lacs+ but the finding was that he was guilty of unsatisfactory accounting of about Rs. 79,000/-. The second charge was not proved. The remaining charges deal with the failure of the applicant in intimating certain transactions to the department. Even if these allegations are found to be true, for argument sake, not conceding, even then they cannot be construed as misconduct for the purpose imposing a very major penalty of compulsory retirement. At most they would amount to only a warning. Therefore, Annexure A-1 is totally without any application of mind, arbitrary and discriminatory. Annexure A-1 order is totally non-speaking. The findings of the enquiry officer on the charges held as proved was not based on evidence on record but on surmises and personal opinion of the enquiry officer. Annexure A-8 order shows a complete non application of mind by the appellate authority and in total violation of Rule 27 of the CCS (CCA) Rules. Instead of considering Annexure A-5 appeal of the applicant what has been considered is the advice of the Union Public Service Commission as evident therein. The entire order is liable to be quashed for non-consideration of Annexure A-5 appeal of the applicant. To illustrate, the UPSC has observed in respect of Article No.1 that the enquiry officer made the findings that the CO was found to be in possession of disproportionate assets of Rs. 79,687/-. This is when the enquiry officer in Annexure A-3 report held "hence IO feels that SPS has not made any disproportionate asset." The aforesaid observation is only illustrative and not exhaustive. Annexure A-8 order confirming the



penalty of compulsory retirement imposed on the applicant by Annexure A-1 order is liable to be set aside for the simple reason that Annexure A-8 order depicts absolute non-consideration of Annexure A-5 appeal filed by the applicant. On the contrary, what has been considered is the findings of the UPSC that too beyond the records of the case.

3. The respondents submitted that the allegations in Annexure A-2 are based on the investigation conducted by the CBI, which has registered a case under the Prevention of Corruption Act, 1988 against the applicant and the applicant has been convicted and sentenced. The disciplinary authority has considered the objection raised by the applicant against the findings of the enquiry officer in paras 4 and 5 of Annexure A-1 order which cannot be termed as a non-speaking order. The applicant has been given all reasonable opportunities to defend himself during the enquiry. The contention that fair opportunity was denied to him is being raised for the first time before this Tribunal only. Issue of warning for non-intimation may be in cases where there is no case of disproportionate assets and disciplinary authority feels that the transaction was a fair one. In the instant case, the enquiry by the CBI proved that the transactions by the applicant were not fair and therefore, taking the evidence and the totality of circumstances against the applicant, a major penalty of compulsory retirement was imposed on the applicant. Findings of the enquiry officer are based on records and evidence. The applicant did not have any complaint against the enquiry officer or the enquiry proceedings being biased at any stage.



4. In the rejoinder, the applicant mostly reiterated what has already been stated in the O.A.

5. In the additional reply statement, the respondents submitted that the entire facts in respect of each and every charge has been adverted to in detail. The applicant did not at any point of time prior to the O.A. have a case that the proceedings were vitiated by malafide, arbitrariness or non-application of mind.

6. We have heard Mr. T.C. Govindaswamy, counsel for the applicant and Mr. Sunil Jacob Jose, SCGSC, for the respondents and perused the material on record.

7. As it is advantageous, paras 4 to 7 of the impugned order at Annexure A-1 dated 31.10.2006 are reproduced below:

"4. Reply of CO has been considered. Regarding Articles 1, IO has proved the charges with a rider that CO could not satisfactorily account for his earnings/expenditure. Regarding Article III, as per SD9 (v), CO has himself taken a loan of Rs. 88,250/- from Karnataka Cooperative Apex Bank Ltd., Bangalore, against pledging jewellery. Thus plea of CO that right of transactions wholly rests with CO's wife is not correct. Loan of Rs. 30,000 taken from P&T Credit Cooperative Society has also not been informed to the Department and the plea of CO that such loans are not being intimated by other members of the society to the prescribed authority is not convincing. CO cannot take plea that he has violated the rules as others are also violating this rule. Regarding Article IV, it has been concluded by the IO that vehicles were purchased from the earnings of the CO. The plea of CO that these vehicles have been purchased with the money of other family members or gifted to them by relatives cannot be accepted as no proof has been submitted by the CO. Regarding Article V, purchase of site No. 66, Marathhalli,



Bangalore, during 1994 has been admitted by the CO. Plea of CO that Department has issued a NOC for loan from the bank for the construction of this site is not tenable. CO purchased this site in 1994 and permission for taking bank loan was taken in the year 1995 without mentioning purpose of loan. Purchase of plot No. 43 at Katha No. 164, Dombarahalli, Dasanapura, Hubli, Bangalore for Rs. 27,830/- cannot be treated as a gift from his daughter to CO's wife. Sale of property at Survey No. 100/6, Kobilpappakuli, Madurai, in 2001 for Rs. 22,000/- has not been intimated to the Department. CO has only got permission to acquire the property but no permission was asked for selling this property. Regarding Article VI, for construction of house at Survey No. 187/5, Alangulam, CO was the co-applicant in the loan application of Rs. 2,82,000/- made to Indian Bank Housing Ltd., Madurai and subsequently, after construction, this house was sold. Thus plea of CO that this transaction has been financed wholly by his wife is not correct. CO failed to intimate this transaction to the Department.

5. CO has not produced any document to prove that jewels/fixed deposits have been financed by his wife. CO's wife was only a housewife and not having any regular source of income. The circumstantial evidence in numerous transactions in the name of his wife reflect an intention to account for his enormous wealth earned through illicit means. Loan obtained from father-in-law of Rs. 2 lakhs in CO's wife's name as per Article III of the charges and construction of house at Plot No. 37, S Alangulam, Madurai, shown as 'Dhanam' in CO's wife's name by his father-in-law under Article VII of the charges cannot be treated as fair deals. No documents have been submitted to prove that these transactions have been reflected by CO's father-in-law in his income tax returns for the relevant period. Payment of fare by son-in-law/daughter for foreign journey of CO and his wife and cost of one plot (Rs. 29,000) purchased at No. 8, S.No. 18715, Anayur 1st Bit Village, S. Alangulam, Madurai North District in the name of CO's wife are without any proof. The numerous transactions in the name of CO's wife may be transactions financed by CO as income proof/income-tax returns of relatives have not been provided by CO as supporting documents during inquiry. Thus arguments of CO are not acceptable.

6. Though the CO has not been examined by the IO as required under Rule 14(18) of CCS (CCA) Rules, but natural justice has not been denied to the CO, keeping in view the fact that the report of IO has been provided to



the CO and he has been provided opportunity to defend his case by the disciplinary authority. Reply of CO has not been found to be satisfactory, hence not accepted.

7. Taking into account the findings of the Inquiring Authority, records of the case and on an objective assessment of the facts & circumstances of the case in its entirety, I, A.K. Saxena, Member (Services), Telecom Commission, hereby impose penalty of **"Compulsory Retirement from Service"** on Shri S.V. Venkatesa Moorthy, SDE, with immediate effect. The receipt of the order shall be acknowledged by Shri S.V. Venkatesa Moorthy, SDE."

8. Each and every charge has been dealt with in detail. The disciplinary authority has considered the findings of the enquiry officer, the objections raised by the applicant, records of case and made an objective assessment of facts and circumstances of the case. It is a speaking order. The submissions of the applicant that Annexure A-1 order is totally arbitrary and contrary to law has not been established. The disciplinary authority has taken note of the failure to examine the CO as required under Rule 14 (18) of CCS (CCA) Rules. In spite of this infirmity, natural justice has been rendered to the applicant by giving the report of the enquiry officer. He has been provided opportunity to defend his case by the disciplinary authority. The reply of the CO was not found satisfactory. As against this position, the applicant has not proved that he has been denied natural justice.

9. The non-intimation of certain transactions by the applicant cannot be treated as a case of warning as per Annexure A-7 as this is a case of possession of disproportionate assets acquired by means of corruption. The applicant could not prove that these transactions were not at his instance. The imposition of penalty of compulsory retirement from service

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on the applicant cannot be seen as shockingly disproportionate to the gravity of the offences in the instant case of corruption. The administration has to deal with corruption strictly, with zero tolerance. The applicant should be thankful for the benefit of still having all retirement benefits.

10. In Annexure A-8 order, the advice of the UPSC that there is no merit in the appeal filed by the applicant is taken note of. In our considered view, the findings of disproportionate assets of Rs. 79,687/- is differently emphasized by the enquiry officer and the UPSC. The operative part of the order of the appellate authority reads as under.

"5. After taking into account the records of case, point raised in appeal, advice of UPSC and overall facts and circumstances of the case, the Hon'ble MoS (C&IT), on behalf of Hon'ble President, the Appellate Authority has accepted the above mentioned advice of UPSC on the appeal of Appellant. The Hon'ble MoS (C&IT), on behalf of the President, has therefore ordered to reject the appeal dated 16.12.06 submitted by Shri S.V. Venkatesa Moorthy, ex-SDE, Karnataka Telecom Circle."

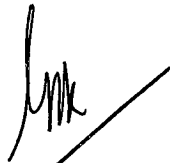
11. The above order shows application of mind by the appellate authority. It has taken into account the records of the case, points raised in appeal, advice of the UPSC in which the findings are discussed in detail and overall facts and circumstances of the case. It is clear that the appellate authority considered aspects other than the advice of the UPSC, though not elaborately. Non elaboration of the points in appeal by the appellate authority, by itself does not amount to absolute non-consideration of those points, in the facts and circumstances of the instant case.



12. In the corruption case filed by the CBI, the applicant has been convicted on 20.10.2009 and has been awarded punishment. The appellate authority has rejected vide order dated 28.09.2010 the appeal of the applicant against the imposition of the penalty of compulsory retirement from service after duly considering all the aspects of the case. The applicant has failed to substantiate any of the grounds raised in the O.A. Hence the O.A. fails.

13. The O.A. is dismissed with no order as to costs.

(Dated, the 15th March, 2011)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

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