

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 284
T. A. No.

1990

DATE OF DECISION 13.9.91

P. R. Vijayan

Applicant (s)

Mr. M R Rajendran Nair

Advocate for the Applicant (s)

Versus

The Sub Divisional Officer, Telegraphs, Palai and others Respondent (s)

Mr. A A Abul Hassan, 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? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

This is the second time the applicant is approaching this Tribunal challenging the penal action initiated against him. When he approached this Tribunal earlier, we considered the matter in detail and passed our judgment Annexure-III dated 31.8.89 directing the petitioner to file a revision petition stating his grievances and if such a revision petition is filed before the competent authority, it shall be considered and disposed of in accordance with law.

While disposing the matter, we have indicated the

h/s

unsatisfactory manner in which both the disciplinary and the appellate authorities have dealt with the grievance of the applicant in the disciplinary proceedings initiated against him. We have observed that the revisional authority will bestow 'careful and pointed contention to the grievances of the applicant. In the instant case the petitioner's grievance was handled in a callous and indifferent manner both by the enquiry authority and the appellate authority. They have taken the matter very lightly and disposed of the case without adverting to the relevant rules and the evidence available in the case.

The revision petition filed by the petitioner after the appellate order has been returned stating that the same has been addressed to the wrong authority. Thereafter, the applicant submitted Annexure-IV detailed revision petition dated 7.10.1989 raising all these grounds. He further submitted that Annexure-V supplementary petition dated 10.1.1990 requesting that an oral enquiry as required under FR 16 (1) (b) may be directed to be conducted if proceedings are to be taken against him. The impugned order Annexure-VI has been passed by the Member (Services) Telecom Commission, DGT, New Delhi disposing of the

revision petition. According to the applicant the direction in the judgment has not been complied with and the order of the Revisional Authority is unsustainable. He also challenges Annexure A-I the order of the Disciplinary authority and the Annexure-A-II the order of the Appellate authority.

2. We have heard the arguments of learned counsel appearing on both sides and perused the records. The charges against the applicant as stated in the application read as follows:

1. He did not prepare and submit the fault analysis statement for 11/85 to 5/86 in spite of instructions from the Junior Engineer (P) Erattupetta and SDOT, Palai.
2. that he did not carry out the work of jumpering and other works for providing new telephone connection contrary to the instruction of Junior Engineer and left the Exchange at 15 hours on 26.1.86
3. On 27.1.86 he left the office at 15 hours without getting permission and without carrying out the instruction of Junior Engineer and on 28.1.86 he arrogantly talked with the Junior Engineer
4. He made false entry in log book on 21.3.86 to the effect that he observed the faults of subscriber 59 and tried to hide facts from the Junior Engineer.
5. that he did not cooperative with the P.I. for installation work and he did not show any interest in the completion of installation work and
6. that he did not carry out the required jumperings for transferring the working connections and left the office at 10 hours and on 31.3.86 without permission and returned after 3 hours."

The applicant submitted his explanation to each of the charges and he pointed out that he is a hard working Technician and an Award Winner of best Exchange maintenance in 1984-85 and he did not have any thing adverse in his service records. He alleged malafide and stated that the

Phone Inspector, Erattupetta turned against him when he expressed his unwillingness to act against the provisions of Departmental Rules and went on to harass him. In the proceedings ^b course of the enquiry/on 22.7.1986 he submitted a petition to the Divisional Engineer requesting him to permit him to take extract of log books so as to enable him to produce the same in the enquiry. This was not granted. After the conclusion of the enquiry the Disciplinary authority passed Annexure-I order finding the applicant guilty of the charges and imposed the penalty of withholding of his increment obtained as Technician for a period of three years w.e.f. the date it falls due without cumulative effect.

The appeal filed by him against the punishment order was heard and disposed of by Annexure-II order after observing that the Appellate authority only agrees with the Disciplinary authority in regard to the finding of the applicant's guilt ^b of the first and third charges alone.

Accordingly, the Appellate authority modified the penalty of ^b to the extent of withholding one increment of the applicant for a period of two years without cumulative effect. It is that ^b against this order/he has originally filed the revision petition which was returned. Then he approached this

b

..

Tribunal challenging the entire disciplinary proceedings

by filing O.A.K. 281/88. This was heard and disposed of

by Annexure-III judgment with the following directions:

"Hence in the interest of justice we direct the petitioner to file a revision application stating all his grievances including the one which was disposed of by Annexure-5 and submit the same before the third respondent within two weeks from the date of this judgment. If such a revision is filed by the petitioner before 3rd respondent, he shall take appropriate steps and dispose of the same directly (or direct the competent authority to consider and dispose of the same in accordance with law) within a period of 4 months from the date of receipt of the revision petition after giving him relevant extract of Lob Book entries of Teekoy and Pathampuzha to the petitioner, notwithstanding the observations and findings in Annexure-6 and 8. We dispose of this application in the manner indicated above, but in the circumstances without any costs."

3. Pursuant to the direction of this Tribunal the applicant filed Annexures IV and V raising series of points for consideration. In fact he has raised the following points for consideration:

1. that no fault analysis statement was sent from Teekoy Exchange and file in this regard was not available in the Exchange;
2. that fault analysis statement was prepared and sent by P/I(G) ERT or no fault analysis statement was submitted to ET since commissioning of the Exchange;
3. that neither P/I(G) ERT nor JEP(G) ERT told him about this statement after he reported for duty on 12.11.1985
4. that his duties and charges have to be intimated
5. that he requested JEP(G) ERT to intimate him the method, required forms and assistance etc. to prepare the above statements
6. that he was not aware of a statement and the method of calculation of figures.
7. that J.E. did not turn up to help him

b

8. that he intimated SDOT Palai also vide his reply to memo No. E-9/85-86/61 dated 18.3.86
9. that he did not get any help or assistance or even moral support from his higher authorities to discharge his duties
10. that he is award winner of best exchange for Koovappally for 1984-85
11. that he has no hesitation or slackness to discharge his duties if superiors help
12. that he was not intimated the date for sending the statement
13. that the required forms were not given
14. that non submission of fault analysis statement from 30.6.86 from Teekoy exchange is not due to his lapses and
15. that the period 30.6.85 to 12.11.85 is also not covered up so far."

He has also explained the facts and circumstances by which he can be exonerated from the two charges now which have been found against him. On going through the impugned order Annexure-VI/the Revisional authority we are of the view that ^h the Revisonal authority has not cared to consider any of these aspects and points specifically raised by the applicant. He has considered the two points in the following manner:

"The official's contentions in regard to the first charge are that though his higher authorities instructed him to prepare the statement he was not aware of the statement and the method to calculate the figures, the Phone Inspector and the Junior Engineer did not turn up to explain how to prepare the statement. These contentions cannot be accepted. The disciplinary authority has clearly stated in his order dated 17.9.86 as to why the said contentions are not true. No reason is found to disagree with the disciplinary authority in this regard. When he was ordered to prepare the statement, it was also the duty of the official to find out how the work is to be accomplished and comply with the order.

12

..

"3. The contention of the official that the second charge is untrue cannot also be accepted. Though it may be that he had rectified an inside fault for the proposed new connection on 27.1.1986, the fact remains that he had not completed the work in as much as he had not carried out the jumpering at the MDF. It cannot also be accepted that he left the exchange only after 15.30 hours, especially in view of the correction in the log entries made by him as also the fact that the lineman had the duplicate key of exchange and hence when the JE telephoned the lineman responded. In the circumstances I do not find that the orders that stand passed by the appellate authority in this case are unjustified. Accordingly, I hereby reject the petition for quashing the punishment."

This is not a fair consideration of the specific points raised by the applicant in the revision petition. We are not very much impressed by the way in which the matter has been dealt with by the Revisional authority in spite of the specific directions. It appears that the judgment has not been clearly understood by the Revisional authority in order to understand the case of the applicant.

4. The revisional power conferred on the authority under Rule 29 of the CCS (CCA) Rules obliges him to consider the points specifically directed to be examined by him.

The relevant portions of Rule 29 of CCS (CCA) Rules read as follows:

29 (1) (iii) The Member (Personnel) Postal Services Board in the case of a Government serving in or under Postal Services Board and Member (Personnel) Telecommunications Board in the case of a Government servant serving in or under the Telecommunications Board), under the control of such head of a department, or

may at any time, either on his or its own motion or otherwise call for the records of any inquiry and (revise) any order made under these rules or under the rules repealed by Rule 34 from which an appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed, but

from which no appeal has been preferred or from which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may

- (a) confirm, modify or set aside the order; or
- (b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or
- (c) remit the case to the authority which made the order or to any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or
- (d) pass such other orders as it may deem fit;"

5. For passing orders in revision in exercise of the powers under Rule 29 the authority is bound to examine all the aspects of the case as presented by the party in the revision petition and the points raised in the course of the hearing, if such hearing is given to the party either suo motu or at the request of the concerned party. The duty of the revisional authority to re-examine the whole case carefully assumes more important when there is a specific direction by the higher forum viz. the High Court or Central Administrative Tribunal. Justice Ramaswami of Madras High Court, in East Asiatic Company (India) Ltd. Vs. State of Madras, VII STC 299 at 314, considered the scope of statutory revisional power and held as follows:

"What is revision? The essence of revisional jurisdiction lies in the duty of the superior tribunal or officer entrusted with such jurisdiction to see that the subordinate tribunals or officers keep themselves within the bounds prescribed by law and that they do what their duty requires them to do and that they do it in a legal manner. This jurisdiction being one of superintendence

h

..

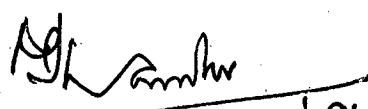
and correction in appropriate cases, it is exercisable even *suo motu* as is clear from the numerous statutory provisions relating to revision found in various Acts and Regulations such as the Civil Procedure Code, Criminal Procedure Code, Income Tax Act etc. The jurisdiction of *suo motu* revision is not circumscribed and cabined or confined by conditions and qualifications...."

It is true that it is one of the modes of exercising power conferred by the statute, but when that authority is alerted by a judicial forum while remitting the case after examining the facts and circumstances of the case, the authority is expected to handle the matter most carefully and without any further flaw. We are making this observation fully bearing in mind the subtle distinction between powers of appeal and revision. A right of appeal carries with it a right of reconsidering the matter on law as well as facts, unless the statute conferring the right limits the powers in any manner. The powers of revision is generally given to a superior authority so that it may satisfy itself that the subordinate authorities act⁴ within their bounds and a particular case had been decided according to law in the interest of justice. Essentially revision is generally discretionary in nature but as indicated above the authority is getting a wide discretion to examine all the aspects of the case and take a correct and fair decision when there is a direction

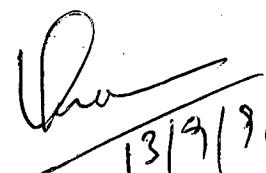
by the Court or Tribunal so that the parties would be satisfied and they may not be compelled to agitate the matter over again as happened in the instant case.

6. Having considered the matter in detail we are of the view that the Revisional authority has not considered the case of the applicant properly and fairly as directed by this Tribunal and disposed of the revision petition. In this view of the matter the impugned orders are liable to be set aside and we do so. We further direct the respondents to give the applicant all consequential benefit as if there is no punishment imposed on him. We make it clear that the respondents are free to proceed against the applicant afresh, if so advised, on the same charges in accordance with law. But a decision in respect of the same to initiate fresh proceedings shall be taken by the competent authority within three months from the date of receipt of the copy of this judgment.

7. The application is accordingly allowed. There will be no order as to costs.


13.10.91.

(N. DHARMADAN)
JUDICIAL MEMBER


13/10/91

(N. V. KRISHNAN)
ADMINISTRATIVE MEMBER