

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 290 of 2000

Tuesday, this the 28th day of May, 2002

CORAM

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

1. K. Viswanathan,
Section Supervisor (Compulsorily retired),
Office of the Telecom Dist. Manager Kollam,
Residing at Prasanthi, Mangad PO,
Kollam-15Applicant

[By Advocate Mr. P. Santhalingam]

Versus

1. Union of India, rep. by
Director General of Telecom,
Dak Bhavan, New Delhi - 110 001

2. The Chief General Manager, Telecommunication,
Kerala Telecom Circle, Trivandrum.

3. The Telecom Dist. Manager, Kollam.

4. The Divisional Engineer (Administration),
Office of the Telecom Dist. Manager, Kollam.

5. Asst. Director (TT),
Office of the Chief General Manager,
Telecommunications, Trivandrum.

6. Sri G.K.Nair, Asst. Director (TT),
Office of the Chief General Manager,
Telecommunication, Trivandrum.Respondents

[By Advocate Mr. S.K. Balachandran, ACGSC (R1 to R5)]

The application having been heard on 28-2-2002, the
Tribunal delivered the following on 28.5.2002.

O R D E R

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant while working as Telecom Office Assistant (TOA), General (Grade-II) at the office of Telecom District Manager, Kollam was alleged to have abused in filthy language Sri M.Samuel, Divisional Engineer, Office of District Telecom Manager, Kollam and tried to manhandle him without any provocation. The 2nd respondent vide letter dated 10-12-1992



(Annexure A-I) informed the applicant that Sri G.K.Nair, Assistant Director was appointed as Enquiry Officer to inquire into the charges framed against the applicant. The Enquiry Officer vide his letter dated 14-12-1992 (Annexure A-II) informed the applicant that he can nominate his defence assistant if any to assist him in the proposed enquiry within 15 days from the date of issue of the letter. The applicant filed representation dated 26-12-1992 requesting that a senior officer may be nominated as Enquiry Officer. It was also pointed out that the nominated Enquiry Officer, Sri G.K.Nair, and the complainant Sri M.Samuel and witness No.2 are members of the same Union, viz; Telecom Engineers Union. It was further pointed out that the witness No.2, Sri G.Krishna Pillai, had made a false representation to further his interest. In the aforesaid representation it was stated that one Sri Baby John, Telecom Assistant, DET Office, Kollam has assaulted and manhandled Telecom Office Assistant, DET Office, Kollam. The Director of Telegraph, Trivandrum has transferred Baby John to Sub Divisional Office, Kanjirappilly, but on interference of the Union he was again posted to Kollam Sub Divisional Office cancelling the earlier transfer order. The applicant is not a member of any Association or Union and therefore, he is unnecessarily harassed. The true copy of the representation is dated 26.12.92 (Annexure A-III). The 3rd respondent refused to change the Enquiry Officer as per letter dated 30.12.92 (Annexure A-IV). The Enquiry Officer, 4th respondent, as per letter dated 25-1-1993 (Annexure A-V), reminded the applicant to intimate the name of the applicant's defence assistant and other particulars. The applicant filed letter dated 6-2-1993 (Annexure A-VI) intimating the 4th respondent the compelling circumstances which have forced him not to participate in the enquiry. His request for staying the enquiry and the request for transfer to Quilon or Trivandrum was not considered. By representation dated 6-3-1993 (Annexure



A-VII) the applicant intimated the 3rd respondent the difficulty faced by him. His transfer to Anchal is vitiated and the enquiry at Anchal is also without basis since the incident had not taken place at Anchal. True copy of the complaint filed by the Divisional Engineer (P&A) is Annexure A-VIII. The applicant made it clear that he will not be able to attend the enquiry unless he is posted at Kollam or Trivandrum. True copy of the representation dated 15-4-1993 is Annexure A-IX. On the basis of the preliminary enquiry conducted the Enquiry Officer has submitted a report, which is Annexure A-X. As per letter dated 20-12-1993 the Enquiry Officer intimated the applicant that a final chance is given to him to attend the enquiry, which is Annexure A-XI. Again he was asked to submit his defence statement. True copy of the letter dated 11-1-1994 of the Enquiry Officer is Annexure A-XII. The defence statement submitted by the applicant on 15-1-1994 is Annexure A-XIII. Another notice was received by the applicant intimating him that the period of absence would be treated as unauthorized from 16-4-1993 to till date and the same would be treated as 'dies-non'. True copy of the notice dated 17-6-1994 is Annexure A-XIV, which is confirmed by the Divisional Manager as per letter dated 7-2-1994 (Annexure A-XV). The request of the applicant for voluntary retirement was also rejected as per order dated 23-2-1994 (Annexure A-XVI). The 3rd respondent vide his order dated 23-3-1994 declared that the period of absence from 18-1-1994 to 13-2-1994 would be treated as 'dies-non'. The said order is Annexure A-XVII. The Enquiry Officer vide his report dated 12-4-1994 held that the charges against the applicant were proved beyond reasonable doubt. By then vide order dated 16-5-1994 the applicant was compulsorily retired. The 4th respondent vide order dated 13-7-1994 held that the period of absence from 15-2-1994 to 17-5-1994 would be treated as 'dies-non'. The said order is Annexure A-XVIII. An appeal was filed against



the order of compulsory retirement. The appellate authority confirmed the punishment on 23-12-1996 vide Annexure A-XIX. Aggrieved by the appellate authority's decision, the applicant has filed this Original Application seeking the following reliefs:-

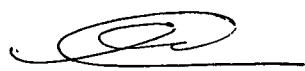
- "a) call for the records connected with the case;
- b) set aside Annexures A-15, A-16, A-17, A-18 & A-19 orders is arbitrary, illegal and without jurisdiction;
- c) declare that the bias and prejudice has vitiated the entire proceedings initiated against the applicant;
- d) direct respondents 2 and 3 to allow the applicant to proceed on voluntarily retirement with all consequential benefits; and
- e) pass such other orders as are deemed fit, fair and necessary in the circumstances of the case."

2. The Deputy General Manager (Planning) in the Office of the General Manager Telecom District, Kollam filed a reply statement on behalf of respondents 1 to 5 in the above case contending that the charge framed against the applicant is in accordance with Rule 14 of CCS (CCA) Rules, 1965. The rejection of the applicant's request for changing the 6th respondent, the Enquiry Officer, with another senior officer from Karnataka or Tamil Nadu Circle and consideration of his request for a transfer to Kollam or Trivandrum were done in accordance with the rules on the subject. The 6th respondent was one of the seniormost officials and competent to enquire the charges framed against the applicant. The applicant could not produce any evidence to substantiate his allegations against the 6th respondent. The applicant was transferred to Anchal in the interest of service only. The 3rd respondent could not consider his request for transfer to persuade him to participate in the enquiry. The applicant was given sufficient opportunities to nominate his Defence Assistant. The Enquiry



Officer is not the authority to deal with transfer cases of delinquent officials. The applicant did not participate in the enquiry wilfully. The applicant conveyed his decision to proceed on leave from 16-4-1993 till his request for transfer is acceded by the 3rd respondent. On the preliminary investigation conducted by the Divisional Engineer, prima facie, found the existence of the offence committed by the applicant. The 4th respondent issued 'dies-non' for the period of absence from 16-4-1993 to 17-1-1994 by Annexure A-XV. Annexure A-XVII and A-XVIII are other orders treating the period of unauthorized absence for the period from 18-1-1994 to 14-2-1994 and 15-2-1994 to 17-5-1994 respectively as 'dies-non'. The applicant did not make an appeal against the above orders to any of the appellate authorities. The delay in filing the Original Application after six years amounts to limitation. The appellate authority has considered the applicant's appeal with proper application of mind and found no reason to reverse or reduce the punishment imposed by the disciplinary authority. None of the witnesses had supported the applicant or denied the incident. Natural justice has been complied with. There is no procedural irregularity in the conducting of the enquiry proceedings. The denial of voluntary retirement is in accordance with the rules. The applicant has approached the issue with a negative attitude. The punishment of compulsory retirement is in conformity with the rules and since there is no merit in the Original Application, the same is to be dismissed.

3. The applicant has filed a rejoinder reiterating his contentions in the Original Application. Respondents have filed an additional reply statement contending that the applicant did not cooperate with the full-fledged enquiry.



They also contended that the earlier good conduct certificate given to the applicant had become insignificant in the present case.

4. We have heard the counsel for the parties and the rival pleadings and have perused the documents brought on record.

5. On a perusal of the records, the article of charges framed against the applicant is as under:-

"On 1.6.92 at about 13.15 hrs. Shri.K.Viswanathan abused and tried to manhandle Shri.M.Samuel, DE(P&A) at the entrance of TDM office Kollam. Shri.K.Viswanathan is under the currency of punishment imposed on him by TDM, Kollam vide memo No.X.1/KV/Appeal/5 dated 30.1.92 for a similar nature of offence. Thus Shri.K.Viswanathan is alleged to have behaved against the decorum support to be maintained in the office."

6. The disciplinary proceedings were initiated against him under Rule 14 of the CCS (CCA) Rules, 1965 and Rule 3(1)(iii) of CCS (Conduct) Rules, 1964. It is a fact that there was an earlier charge against the applicant for similar charges on a different incident and he was punished thereof. The punishment order in that incident was challenged before this Tribunal in O.A. No.1260/92 and this Tribunal dismissed that O.A. and confirmed the order of punishment. The applicant has requested the authorities to change the Inquiry Officer since he was so biased and prejudicial to him. Rule 14 of the CCS (CCA) Rules [Government of India's instructions No.15] deals with the procedure wherein an application to change the Inquiry Officer appointed on the ground of bias is concerned, on such application the Disciplinary authority should refer the matter to the appropriate Reviewing authority (in this case Appellate authority) for considering his application and to pass appropriate orders thereof. In this case, the applicant has made a representation dated 6.2.93 (Annexure A-VI) before the Inquiry Officer which is as follows:

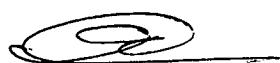


"...the enquiry officer should be a disinterested officer in the case in which he is making the enquiry. So in the light of my objection (in appointing you as enquiry officer in this case) vide my representation at S.No.17 above you can deny the post. In view of the above, if you make enquiry in this case, then it will be your personal interest which will contravenes the above order and accordingly the enquiry will not validate. So I humbly request you to kindly not accept the post of enquiry officer in my case."

7. Therefore, his request was not for change of Inquiry Officer, but requesting the Inquiry Officer to 'deny the post'. Apart from that, this request was considered and disposed of by the Telecom District Manager, Kollam as per order dated 30.12.92 (Annexure A-IV) on the preliminary stage and found that the request is flimsy and deserves no consideration. The applicant did not make any application for review or appeal before the higher-ups as laid down in the procedure. Therefore, the allegation of bias and prejudice by the Inquiry/Appellate Authority in this proceedings cannot be sustained and that ground is not sufficient to set aside the orders mentioned in the application.

8. Another contention is that the applicant was not given sufficient opportunity to contest the case. It may be found that Annexure A-III, A-VI, A-VII, A-IX and A-XIII are all representations made by the applicant before Inquiry Officer/Telecom District Manager, Kollam from time to time in which he reiterated that he is not willing to participate in the inquiry at any cost. Further, it is also seen that as per A-XI the Inquiry Officer has written a letter to him on 20th December, 93 stating that:

"... It may be noted that Shri Viswanathan has been given full opportunity to participate in the enquiry at any stage he desire and he has been offered all opportunities to cross examine the witness examined by the presenting officer. But the official has so far failed to participate in the proceedings."



9. It is settled proposition of law laid down by this Bench of the Tribunal reported in Dr.D.B. Rathod Vs. Union of India and others, [(1992) 21 ATC 451] in which the charged employee not choosing to appear before the Inquiry Officer. In such circumstances, conducting ex parte enquiry held justified. If a delinquent employee deliberately withdraw from the inquiry proceedings and if he is declared as a ex-part, it cannot be said that reasonable opportunity was not offered to him. It is a willful and deliberate behaviour on the part of the worker in this case, the Inquiry Officer constrained to declare him ex-part. Therefore, the question for not giving him the reasonable opportunity in this case does not arise. Apart from that, we have carefully gone through Annexure A-XIX dated 23.12.96, the Appellate authority's order in which the Appellate authority has gone through the minute aspect of each and every point raised by the applicant and perused the documents thereof and therefore, there is no infirmity, illegality and irregularity for the issue of Annexure A-XIX order and we found that the Appellate authority applied his mind and came to the conclusion. Therefore, there is no reason to interfere with the order of the Appellate authority or any reason to set aside the same. We also find that the request of the applicant for appointment of Inquiry Officer from Karnataka/Tamilnadu has no basis. His request for transfer to participate in the inquiry in a convenient place is also not based on any valid grounds.

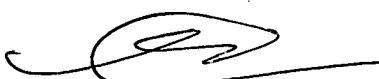
10. It is well settled position of law that in a judicial review the decision making process and not the merit of the decision is reviewable. The dictum in Tata Cellular Vs. Union of India [(1994) 6 SCC 651]. The contention that the decision making authority in this case is the Appellate authority in the earlier case on a different charge, are one and the same person (S.N. Bajpe) cannot be said to be prejudicial to the



applicant. In the circumstance, we found that there is no arbitrariness, unfairness and irregularity in any of the impugned orders and therefore, it requires no interference by this Tribunal.

11. In the conspectus of facts and circumstances of the case, we find no merit in this Original Application and therefore, we dismiss the same. There will be no order as to costs.

Dated the 28th of May, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

ka.

INDEX

Applicant's Annexure:

1. Annexure A-I A true copy of the letter No. TDM/Disc/KV/92-93/16 dtd. 10.12.92 sent by 3rd respondent.
2. Annexure A-II A true copy of the letter No. R-14/QN/KV/92 dtd. 14.12.92 sent by the 4th respondent to the applicant.
3. Annexure A-III A true copy of the representation dtd. 26.12.92 submitted by the applicant.
4. Annexure A-IV A true copy of the Order No. TDM/Disc/KV/92-93/23 dtd. 30.12.92 issued by 3rd respondent to the applicant.
5. Annexure A-V A true copy of the letter No.R-14/QN/KV/92 dtd. 25.1.93 issued by the 1st respondent to the applicant.
6. Annexure A-VI A true copy of the reply dtd. 6.2.93 submitted by the applicant to the 4th respondent.
7. Annexure A-VII A true copy of the representation dtd. 6.3.93 submitted by the applicant to P.A.Radhakrishnan, Telecom Dist. Manager, Kollam.

8. Annexure A-VIII A true copy of the complaint dtd. 2.6.92 filed by 3rd respondent to the 2nd respondent.

9. Annexure A-IX A true copy of the representation dtd. 15.4.93 submitted by the applicant to the 2nd respondent.

10. Annexure A-X A true copy of the preliminary report No.X.III/SBP/92-93/2 dtd. 17.6.92 issued Telecom Dist. Manager, Kollam.

11. Annexure A-XI A true copy of the letter No. R-14/KV/93 dtd. 20.12.93 issued by the 4th respondent.

12. Annexure A-XII A true copy of the letter dtd. 11.1.94 sent by 4th respondent.

13. Annexure A-XIII A true copy of the Defence Statement submitted by the applicant dtd. 15.1.94 to the 4th respondent.

14. Annexure A-XIV A true copy of the letter No. DE(A)/KV/Genl.Corrs/93/27 dtd. 17.6.94 issued by 3rd respondent.

15. Annexure A-XV True copy of the order No. DE(A)/KV/Genl.Corrs/94/9 dtd. 7.2.94 issued by 3rd respondent.

16. Annexure A-XVI A true copy of the order No. ST-C/Genl/TOA/I/62 dtd. 23.2.94 issued by 3rd respondent.

17. Annexure A-XVII A true copy of the order No. DE(A)/KV/Genl.Corrs/94/13 dtd. 23.3.94 issued by the 3rd respondent.

18. Annexure A-XVIII A true copy of the order No. DE(A)/KV/Genl.Cor/16 dtd. 13.7.94 issued by 3rd respondent.

19. Annexure A-XIX A true copy of the order No. GMTD/Appeal/KV/96-97/2 dtd. 23.12.96 issued by General Manager, Telecom Dist., Kollam.

Respondents' Annexure:

1. Annexure R-1 True copy of letter No. TDM/Disc/KV/92-93/13 dated 25.11.92.

2. Annexure R-2 True copy of the letter dated 3.12.1992 No. VIG/1-10-91.

3. Annexure R-3 True copy of the letter dated 28.11.1992 sent by the applicant to the 3rd respondent.

4. Annexure R-4 True copy of the letter No. R-14/QN/KV/92 dated 1.3.93 issued from the office of the CGM KT.

5. Annexure R-5 True copy of the letter No:
TDM/Sic/KV/92-93/30 dated 16.3.93.

6. Annexure R-6 True copy of the order dated 8.12.1993
in O.A. 1260/92 of the Central
Administrative Tribunal, Ernakulam
Bench.