

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 358/97

Thursday, this the 30th day of September, 1999.

CORAM:

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

HON'BLE MR G RAMAKRISHNAN, ADMINISTRATIVE MEMBER

K. Bhaskaran,
Telecom Office Assistant,
Parappanangadi Sub Divisional Office,
Telecom, Parappanangadi.

...Applicant

By Advocate Mr. N.N. Sugunapalan

Vs.

1. Divisional Engineer,
Telecom, Malappuram Division,
Pallickal Building,
Manjeri - 21.
2. General Manager,
Telecom, Calicut.
3. Deputy General Manager (Telecom),
For Office of the General Manager,
Telecom, Calicut - 1.
4. Chief General Manager,
Kerala Telecom Circle,
Department of Telecommunications,
Trivandrum - 33.
5. Union of India, represented
by its Secretary,
Department of Telecom,
New Delhi.

...Respondents

By Advocate Mr. Mathews J. Nedumpara, ACGSC

The application having been heard on 30.9.99, the
Tribunal on the same day delivered the following:

ORDER

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

The applicant seeks to set aside A-5, A-6, A-8 and
A-10 and issue necessary direction to the respondents to
grant and pay arrears of monetary benefits denied to him
pursuant to the suspension from service and grant all
other benefits.

2. While the applicant was working as Telecom Office Assistant, he was served with a charge memo dated 24.12.93 as per A-1. He was found guilty by the disciplinary authority as per A-6. He was awarded the punishment of withholding one increment of pay for a period of one year without cumulative effect. Against the order of the disciplinary authority as per A-6, withholding the increment for one year without cumulative effect, he preferred an appeal to the appellate authority. The appellate authority, as per A-8 order, enhanced the punishment imposed by the disciplinary authority by awarding the punishment of reducing by two stages from Rs.1360/- to Rs.1300/- in the time scale of pay of Rs.975-1660 for a period of one year with effect from 1.9.96 forfeiting increment during this period. Aggrieved by the order of the appellate authority, the applicant preferred a revision and the revisional authority as per A-10, confirmed the enhancement of punishment contained in A-8 appellate order rejecting the revision petition.

3. Respondents resist the application contending that the appellate authority felt that the penalty imposed by the disciplinary authority is not commensurate with the gravity of the offence and therefore, enhanced the penalty as reduction of the applicant's pay by two stages. It was not deemed necessary that the applicant should be given an opportunity of hearing since re-evaluation was made only on the basis of the documents available. Rule 27 (2) (c) proviso 4 of the Central Civil Services (Classification, Control & Appeal) Rules is applicable only in the case where minor disciplinary proceedings are initiated and a minor penalty is imposed which the appellate authority wants to enhance to a higher penalty at the time of disposing the appeal.

4. The disciplinary authority found the applicant guilty of the charges and awarded him the punishment of withholding one increment without cumulative effect. The appellate authority having felt that the punishment imposed is inadequate, enhanced the same by reducing two stages in the time scale of pay of the applicant for a period of one year forfeiting increment during this period. The learned counsel appearing for the applicant submitted that enhancement of punishment by the appellate authority as per A-8 is without notice of the proposed enhancement of punishment and it is in gross violation of the provisions contained in Rule 27 of Central Civil Services (Classification, Control & Appeal) Rules. In the O.A., the provision of law quoted with regard to the giving of notice is Rule 27 (2) proviso (iv). On a reading of the same, it is seen that it is not the correct provision and the learned counsel appearing for the applicant also fairly conceded that the correct provision applicable is the (iii) proviso to Rule 27 (2). From a reading of Rule 27 and the provisos thereto with reference to the facts of the case, it is clearly seen that it is the (iii) proviso to Rule 27 (2) applies here. Quoting a wrong provision of law will not disentitle the applicant to get the relief, if otherwise he is entitled to. The (iii) proviso to Rule 27 (2) says that " if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of Rule 11 and an enquiry under Rule 14 has been held in the case, the appellate authority shall make such orders as it may deem fit after the appellant has been given a reasonable opportunity of making a representation against the proposed penalty."

(Emphasis Supplied)

Respondents cannot escape by saying that the said (iii) proviso was substituted to the earlier one as per notification

dated 2.1.1996 for the reason that A-8 order is dated 21.8.1996 which is after the said notification. There is absolutely no case for the respondents that in compliance with the (iii) proviso to Rule 27 (2), notice of proposed enhancement of punishment was served on the applicant. Non-giving of notice to the applicant on the proposed enhanced punishment is a serious matter going to the very root of the matter. It cannot be taken as a curable irregularity.

5. Though the applicant preferred a revision against A-8 order of the appellate authority, the revisional authority has also not adverted to the necessity of giving notice to the applicant. The revisional authority could have very well looked into this aspect also since this is a mandatory requirement of the Rule.

6. Since A-8 suffers from the vice of not giving notice as contemplated under (iii) proviso to Rule 27 (2) of the CCS (CCA) Rules, the enhanced punishment imposed as per A-8 is not sustainable in law.

7. The order of the revisional authority, A-10 which has not gone into this particular aspect and having upheld A-8 order cannot also be sustained in law for the very same reason. That being the position, A-8 and A-10 are liable to be quashed.

8. Accordingly, A-8 and A-10 orders are quashed. The appellate authority, the 2nd respondent is directed to consider afresh the appeal preferred by the applicant as per A-7 dated 15.4.96 in accordance with law in the light of the observations in this order.

9. O.A. is disposed of as above. No costs.

Dated this the 30th day of September, 1999.


G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER


A.M. SIVADAS
JUDICIAL MEMBER

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LIST OF ANNEXURES REFERRED TO IN THIS ORDER

1. Annexure A-1:

True copy of the Memo No. DEM/KB/9 dated 24.12.1993 issued by the 1st respondent to the applicant.

2. Annexure A-5:

True copy of the Enquiry Report dated 30.11.1995, No. DEM/KB/29, issued by the 1st respondent to the applicant.

3. Annexure A-6:

True copy of the Memo No. DEM/KB/32 dated 5.3.1996 issued by the 1st respondent to the applicant.

4. Annexure A-7:

True copy of the Appeal Memorandum dated 15.4.1996 issued by the applicant to the 2nd respondent.

5. Annexure A-8:

True copy of the Memo No. Vig/1901/96-97/4 dated 21.8.1996 issued by the 3rd respondent to the applicant.

6. Annexure A-10:

True copy of the Memo No. STA/P-148/96 dated 8.1.1997 issued by the 4th respondent to the applicant.