CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.378/96

Tuesday, this the 30th day of June, 1998.

CORAM:

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

K Raghunathan,
Higher Grade Telegraph Assistant,
Central Telegraph Office,
Trivandrum-1. - Applicant

By Advocate Mr Abraham Kurian

Vs

1. The Senior Superintendent of Telegraph Traffic,
Trivandrum Division,
Trivandrum-1.

2. The Deputy General Manager(A),
Offfice of the Chief General Manager,
Telecommunications,
Kerala Circle,
Trivandrum-685 033.

3. The General Manager(Operations),
Office of the Chief General Manager,
Telecommunications,
Kerala Circle,
Trivandrum-33.

4. The Chief General Manager,
Telecommunication,
Kerala Circle,
Trivandrum-33.

5. Union of India represented by
Secretary,
Government of India,
Ministry of Communication,
New Delhi. - Respondents

By Advocate Mr S Radhakrishnan, ACGSC

The application having been heard on 23.6.98, the Tribunal on 30.6.98 delivered the following:

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O R D E R

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant while working as a Higher Grade Telegraph Assistant in the Central Telegraph Office, Trivandrum was placed under suspension by order dated 24.4.90 and served with a charge sheet A-4 dated 3.7.90. The charges were that the applicant attended duty in an intoxicated state causing disturbance and inconvenience to office work at the public counter, that he failed to carry out his assigned duties properly at the Subscriber Trunk Dialling Public Call Office(STD-PCO for short)causing inconvenience to the members of the public as well as to the office, that he argued with the Superintendent and failed to carry out the instructions of the Superintendent and that despite being punished and warned for misconducts on earlier occasions failed to show any improvement in his work and conduct. Applicant denied the charges and an enquiry was conducted. By order A-1 dated 2.11.93, the second respondent found all the charges proved and imposed a punishment of reduction of pay by two stages with effect of postponing future increments. Applicant preferred an appeal which was disposed of by A-2 order dated 23.2.94. By A-2 order, the third respondent confirmed the findings on the charges but stated that even though the gravity of the misconduct warranted removal of the applicant from service and that the disciplinary authority had been extremely lenient, further reduced the punishment to one of reduction of pay by two stages for a period of three years without cumulative effect on the ground that the applicant would superannuate in May 1997. Applicant preferred a revision petition and by A-3 order dated 16.6.95 the 4th respondent confirmed the appellate order. Applicant has now filed this application praying that A-1, A-2 and A-3 orders be quashed and that a direction be issued to pay him full pay and allowances from 2.11.93.

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2. Respondents have submitted that the accused was on 2000-0200 hours duty on 23.4.90 and had reported in a fully drunken condition and was not able to carry out any duties at the STD-PCO causing resentment from the customers. He was unable to carry out his work and was found spreading the STD temporary receipts and currency notes on the table and mixing them together and was not settling the amounts with the customers when the Superintendent made a visit to the office. On demand by the Superintendent at 2330 hours the applicant failed to produce the accounts and proper records and cash for verification. The Superintendent had to call the Police to ensure safety of Government money. In the presence of Police applicant started writing the receipts and other records. The cash was handed over at 0100 hours on 24.4.90 as admitted by the applicant in his written statement of defence. In his representation R.1 dated 2.5.90 against the suspension, the applicant admitted that the Police came to the office to settle the issue. The disciplinary proceedings were processed by the Senior Superintendent, Telegraph Traffic, Trivandrum and submitted to the Deputy General Manager(Administration) for final orders under sub rule 21(a) of Rule 14 of CCS(CCA) Rules, 1965 after being satisfied that a major penalty specified in Clause(v) to (ix) of Rule 11 should be imposed for which the Deputy General Manager had the requisite power. Respondents state that if the Senior Superintendent of Telegraph Traffic was of the opinion that a minor penalty was sufficient in the facts and circumstances of the case, he himself was competent to impose the same. From the fact that the matter was forwarded to the Deputy General Manager(Administration), it is evident that the Senior Superintendent had made up his mind to impose a major penalty and specific instructions in the record to the effect that a major penalty will have to be imposed were not necessary because

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that was the sole purpose of transferring the records. The allegation that the Senior Superintendent had not expressed his opinion to impose a major penalty and that it had vitiated the proceedings was not sustainable in law. Respondents further submit that since the applicant was found not manageable the Superintendent-in-charge had informed the Police Control Room. The Police rushed to the spot and wanted to take the applicant for medical check up. But as the accounts were not maintained for a good deal of amount transacted by the applicant, this was not allowed by the Superintendent In-charge. At the same time members of the public were demanding the advance amount back for unattended calls etc. and such advance of Rs.2396/ was also refunded to the public.

3. In his rejoinder, applicant has submitted that the Superintendent of the Office(PW.I) was ill disposed towards him and has caused this action to be taken against him. Applicant states that the second respondent in his Memo dated 27.4.93 has stated that the disciplinary case was processed by the SSTT, Trivandrum but it has been submitted to the 2nd respondent for final orders. The applicant had not been informed by the 1st respondent about the submission of the papers to the 2nd respondent for passing final orders nor had he been informed about the reasons for it. The 1st respondent had not arrived at any decision on any of the findings of the Inquiry Authority and forwarding the papers to the 2nd respondent without expressing his opinion that a major penalty should be imposed is bad in law. Therefore the 2nd respondent did not have the authority or jurisdiction to act and impose any penalty on the applicant. Even in the final order A-1 issued by the 2nd respondent, no decision or opinion by the 1st respondent has been seen expressed. Applicant submits that

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since 1st respondent did not record any decision it has to be presumed that the 1st respondent was of the view that no penalty need be imposed. The fact that the applicant was not guilty is also seen from the fact that when his written statement was submitted on 11.9.90 denying the charges, the 1st respondent reinstated him on the same day. The applicant's full pay and allowances for the suspension period had also been paid and the period was treated as duty and it would show that the 1st respondent was not for imposing a penalty on the applicant and much less any major penalty. The contents of the forwarding letter from 1st respondent to the 2nd respondent should have been brought to the notice of the applicant and since this was not done, it is a violation of the principles of natural justice. The fact that extraneous matter was taken notice of also vitiates the action against the applicant. Applicant states that the Police came and found there was nothing untoward and left immediately. The fact that the Police officers were not examined also shows that there was no truth in the allegations. Applicant submits that since the Police Officers are material witnesses as far as the alleged incident on the night of 23.4.90 is concerned, the refusal to call them for cross examination is wrong and amounts to denial of opportunity to the applicant to defend himself. According to applicant, the Superintendent of the Telegraph office phoned to the Police Station and 2 or 3 police officials came and stood at the counter and finding everything calm they went away without even entering the office. Though the respondents state that PW.6 stated that the Police came within 10 minutes of the arrival of the Superintendent, the statement of PW.6 made to the Superintendent on 4.6.90 and produced as A-6 merely states that the police came, looked at the counter and went away. He has also stated that he had no knowledge that the applicant had been drunk. It is clear from the statement given by PW.6 to the Superintendent that the

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contentions that the police controlled the situation, that receipts were written in their presence, that money was handed over in their presence, and that they wanted to take applicant for medical test are not correct. This could have been clarified by examining the police officials. Applicant has not stated on 2.5.90 that the police came to the office to settle any issue. He had merely stated in R.1 that the order of suspension was issued after the police party left the office after finding fault with the Superintendent for unnecessarily trying to harass him with the aid of the police.

4. Applicant challenges the orders A.1, A.2 and A.3 on the following grounds:

1) Request of the applicant for permission to engage a legal practitioner as his defence assistant at the enquiry was not acceded to;

2) According to Sub rule 21(a) of Rule 14, it is necessary for the disciplinary authority who is not competent to impose a major penalty to arrive a conclusion regarding the charges and the penalty to be imposed and then only forward the records of enquiry to such disciplinary authority as is competent to impose any of the major penalties specified in Clauses (v) to (ix) of Rule 11. There is no such finding of the 1st respondent in this case and therefore the 2nd respondent has no jurisdiction to pass the impugned order A.1. Sending the records of enquiry to the 2nd respondent behind the back of the applicant has resulted in violation of the principles of natural justice;

3) The second respondent has stated in the impugned order A.1 that applicant was awarded

> the penalty of withholding one increment for a period of 2 years and again warned for the same offence earlier. It is also stated that it is a fact that the applicant used to attend office under the influence of intoxicating drinks even now. This amounts to consideration of extraneous matters without notice to applicant and is therefore a violation of the principles of natural justice. Even though the impugned order A.1 states that this matter was not brought before the Inquiry Authority and is not taken into consideration, applicant contends that if it was not taken into account where was the necessity to bring it out in the proceedings; and
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> 4) Police officials who are material witnesses were not examined and this amounts to denial of reasonable opportunity to applicant to establish his innocence.

5. As regards the 1st point, it is seen that Rule 14(8)(a) lays down that the Government servant:

> "may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits"

There is nothing to show in this case that the presenting officer appointed by the disciplinary authority is a legal practitioner. Therefore the denial of the request of the applicant to engage a legal practitioner is in accordance with the rules.

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6. As regards the 2nd ground, the Rule 14(21)(a) states:

> "Where a disciplinary authority competent to impose any of the penalties specified in clauses(i) to (iv) of Rule 11(but not competent to impose any of the penalties specified in clauses (v) to (ix) of Rule 11), has itself inquired into or caused to be inquired into the articles of any charge and that authority, having regard to its own findings or having regard to its decision on any of the findings of any inquiring authority appointed by it, is of the opinion that the penalties specified in clauses (v) to (ix) of Rule 11 should be imposed on the Government servant, that authority shall forward the records of the inquiry to such disciplinary authority as is competent to impose the last mentioned penalties."

The rule does not lay down that the disciplinary authority who is competent to impose a minor penalty should issue an order recording his findings and also record in writing that in his opinion the imposition of a major penalty is called for. There is no such mandatory provision violation of which can be said to cause prejudice to the applicant. The disciplinary authority competent to impose a minor penalty has only to be of the opinion that a major penalty is called for. It is not in dispute that the records have been forwarded to the 2nd respondent who is the competent authority to impose a major punishment. There is no need to give an oppotunity separately to the applicant to show cause why a major punishment should not be imposed. Therefore there is no need to communicate to the applicant that the records of enquiry had been forwarded to the 2nd respondent for the imposition of a major penalty. The charges themselves have been initiated under Rule 14 which is the rule prescribing the procedure for imposing major penalties. Therefore there is no need to give the applicant separate notice that a major penalty is proposed to be imposed.

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Applicant has stated in his rejoinder that in memo dated 27.4.93 the 2nd respondent has informed the applicant that the case has been submited to him for final orders. The applicant therefore was well aware that the records have been submitted to the 2nd respondent for the imposition of a major penalty. The very fact that the 1st respondent forwarded records of enquiry to the 2nd respondent shows that he had come to the conclusion that a major penalty is called for. If as the applicant contends in his rejoinder, the 1st respondent had come to the conclusion that no penalty need be imposed, there was no need for the 1st respondent to forward the papers of the enquiry to the 2nd respondent. There is no further need for the 1st respondent to issue an order in this behalf and communicate it to the applicant.

7. As regards the 3rd ground, it is seen that the 4th charge itself is that despite being punished and warned for misconduct on earlier occasions, he failed to show any improvement in his work and conduct. In the context of this charge, it cannot be said that the earlier punishments granted to him are extraneous matters. It was only in the context of the charge No.4 that the 2nd respondent has referred to the earlier punishments awarded to the applicant. The fact that even after 2 earlier punishments, applicant is facing the same charge is quite relevant to show that he has not improved and that charge No.4 is to be held proved. Even the fact that the applicant used to attend office under the influence of intoxicating drinks even now cannot be said to be an extraneous matter and it only goes to prove charge No.4 that he failed to show any improvement in his work and conduct. Despite this not being an extraneous or additional matter, the 2nd respondent has clearly stated that he has not taken that into consideration for coming to a conclusion regarding the gravity of the offence. We fail to see how this has caused prejudice to the applicant.

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8. As regards ground No.4, it is for the prosecution to decide who is the material witness who ought to be examined in order to support the case of the prosecution and prove the charges. It is not for the applicant to state who is the material witness to prove the case of the prosecution. If the prosecution fails to examine material witnesses, it is the prosecution who will suffer as a consequence and no prejudice is caused thereby to the applicant. If as the applicant contends the police witnesses would have supported his contention as against that of the prosecution, then it was for the applicant to have called the police officials as defence witnesses. The impugned order A.1 clearly states that no witness was cited as defence witnesses. Applicant had merely requested the Inquiry Authority to examine the police officials present but the Inquiry Authority did not agree to it. The prosecution did not consider it essential to examine police witnesses in order to prove the charges and the applicant had not cited the police officials as defence witnesses. It was therefore in order for the Inquiry Authority to refuse the request of the applicant to get the police officials as witnesses. Since the applicant had not cited any one as defence witness, no prejudice has been caused to the applicant by the prosecution by not examining the police officials whom the applicant wanted to be examined and that too as prosecution witnesses. The applicant has no right to ask that someone be examined as a prosecution witness.

9. It is clear that there is enough material to support the charges. There has been no procedural lapse which has caused prejudice for the applicant. Applicant has been given every reasonable opportunity to present his case and his contentions have been examined not only at the level of the disciplinary authority

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but also at the level of the appellate and revisional authorities. The appellate authority had modified the penalty imposed taking a lenient view. He has stated that he was of the opinion that the gravity of the misconduct warranted removal of the appellant from service and that the disciplinary authority has been extremely lenient. But considering the impending superannuation of the applicant, he had taken a further lenient view. Though an attempt has been made to allege that the Superintendent had acted mala fide and was ill disposed towards the applicant, there is nothing in the pleadings to support such a contention nor has the Superintendent been impleaded in his personal capacity. We see nothing perverse or unreasonable in the impugned orders A-1, A-2 and A-3 which would justify intervention by the Tribunal in the exercise of its powers for judicial review.

10. The Supreme Court in State Bank of Patiala Vs SK Sharma (1996 SCC(L&S) 717) has stated as follows:

> "(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether(a) the provision violated is of a substantive nature or (b) whether it is procedural in character.
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> (2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.
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> (3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally

speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases, falling under - "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof or prejudice in such cases. As explained in the body of the judgement, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions(include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B Karunakar. The ultimate test is always the same, viz, test of prejudice or the test of fair hearing, as it may be called.

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(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz, to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should

guide them in applying the rule to varying situations that arise before them.

11. The application is accordingly without merit and is dismissed. No costs.

Dated, the 30th June, 1998.

(AM SIVADAS)
JUDICIAL MEMBER

(PV VENKATAKRISHNAN)
ADMINISTRATIVE MEMBER

trs/29698

LIST OF ANNEXURES

1. Annexure A1: Proceedings No.TPC/STT-2-II/Disc/KR dated 2.11.1993 issued by 2nd respondent to the applicant.

2. Annexure A2: Order No.TT/Disc/KR/90 dated 23.2.1994 issued by the 3rd respondent to the applicant.

3. Annexure A3: Order No.STA/P-124/94 dated 16.6.1995 issued by 4th respondent to the applicant.

4. Annexure A4: Memorandum No.TT/Disc/KR/90 dated 3.7.1990 issued by Ist respondent to the applicant.

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