

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 439/2007

This the 26th day of May, 2009

Hon'ble Mr. M. Kanthaiah, Member (J)
Hon'ble Dr. A.K. Mishra, Member-A

Abdul Lateef, aged about 66 years, S/o Sri Hubdar Khan, R/o Aashiana Jail Road, Rai Bareli, retired on 28.2.2001 from the post of Sr. Sub-Divisional Engineer, Office of Telecom District Manager, Rae-Bareli.

.....Applicant

By Advocate: Sri Amit Chandra.

Versus

1. Union of India, through the Ministry of Communications & I.T. Department of Telecommunications, Govt. of India, Sanchar Bhawan, Ashoka Road, New Delhi.
2. The Deputy Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi.
3. The Chief General Manager, Telecom, Eastern U.P. Circle, Lucknow.

.....Respondents

By Advocate: Sri D.P. Singh and Sri P. Awasthi for Sri A.K. Chaturvedi

ORDER

By M. Kanthaiah, Member-J

The applicant has filed this O.A. with a prayer to quash the impugned orders dated 19.6.2007 (Annexure-9) and 12.1.2007 (Annexure-10) passed on behalf of respondents and also for grant of pensionary benefits including deducted pension amount on the ground of disagreement note furnished by the disciplinary authority and also that the opinion of UPSC (respondent no.2) against the findings of enquiry report was without basis and further that they acted like an Enquiry Officer and also that the charges levelled against the applicant are baseless without any material.

2. The respondents have filed Counter Affidavit denying the claim of the applicant stating that the impugned orders are in accordance with rules and as such there is no irregularity in passing the impugned orders, which warrants for interference of this Tribunal.
3. The applicant has filed Rejoinder Affidavit denying the stand taken by the applicant and also reiterated the pleas taken in his O.A.
4. Heard both sides.
5. The point for consideration is whether the applicant is entitled for the relief(s) as prayed for.
6. The brief facts of the case are that the applicant while working as SDOT, Rai Bareli during the period from 1992-99, committed certain irregularities, upon which a chargesheet was issued by the respondent no.1 levelling two charges against him and after receiving his representation, they initiated enquiry proceedings under Rule 14 of CCS (CCA) Rules, 1965. The Enquiry Officer, who conducted an enquiry against the applicant, submitted his report on 31.10.2003 with the findings that the charges are not proved against him. Annexure-5 is the copy of the enquiry report. The disciplinary authority, who did not agree with the findings of Enquiry Officer, issued dis-agreement note to the applicant alongwith enquiry report asking him to submit his representation on his dis-agreement points. The applicant submitted his reply denying the dis-agreement points raised by the disciplinary authority on the findings of Enquiry officer. Annexure-

6 is the copy of dis-agreement note dated 3.6.2005, whereas Annexure-7 is the reply dated 26.7.2005 submitted by the applicant. In the meantime, the disciplinary authority also obtained the opinion of respondent no.2 (UPSC) who gave its opinion on the findings of enquiry report and also stated that the charges proved against the charged officer constitute grave misconduct and gave advice for imposition of penalty of withholding of 25% monthly pension, if otherwise admissible to him, on a permanent basis. Annexure-8 dated 8.5.2007 is the opinion of UPSC (respondent no.2). The competent authority passed the impugned punishment order dated 19.6.2007 withholding of 25% of the monthly pension, otherwise admissible to the applicant, on a permanent basis. By way of corrigendum dated 12.11.2007 (Annexure-16) the entire amount of gratuity payable to the applicant has been ordered to be withheld. By way of this O.A., the applicant has challenged the impugned punishment orders dated 19.6.2007 and 12.11.2007 passed by the respondents (Annexure 9 and 16 respectively).

7. Admittedly, the respondent-authorities have initiated the enquiry against the applicant for the charges levelled against him on 23.2.2001, whereas he retired from service on 28.2.2001 after attaining the age of superannuation, but the enquiry continued even after his retirement and thus, the Enquiry Officer submitted his report on 31.10.2003. The applicant has no grievance against the enquiry report and also the enquiry proceedings conducted by the Enquiry Officer, but his main grievance is in respect of dis-agreement note dated 3.6.2005 issued by the authorities, who did not agree with the findings of Enquiry officer on the charges

levelled against the applicant stating that such note has been issued without considering the enquiry report and further the authorities had acted like an Enquiry Officer. He also questioned the opinion given by the respondent no.2 (UPSC) on the findings of Enquiry Officer and also their advice to impose penalty upon the applicant, which also was rendered without considering the enquiry report. He further questioned the penalty imposed by the respondent-authorities in respect of withholding of 25% monthly pension, if otherwise admissible to him, on a permanent basis and also withholding of entire amount of gratuity, which is arbitrary and contrary to the Rules. In respect of the charges, it is the case of the applicant that they are false and baseless charges framed against him.

8. In view of the above points raised, the following are the questions framed for discussion in deciding the claim of the applicant in this O.A.

- (a) Whether dis-agreement note dated 3.6.2005 issued by the authorities is not correct and against Rules.
- (b) Whether the opinion given by UPSC (respondent no.2) dated 8.5.2007 is against the enquiry report and also the advice given is against the Rules.
- (c) Whether the penalty imposed against the applicant vide impugned orders dated 19.6.2007 and 12.11.2007 are illegally, arbitrary and contrary to the Rules.

9. Admittedly after examination of the evidence on both sides and after perusal of records and after following the procedure, the Enquiry officer concluded the enquiry proceedings and submitted his reply with the findings that the charge nos. 1 and 2 against the

applicant were not proved. The disciplinary authority, who did not agree with the findings of Enquiry Officer, issued a disagreement note dated 3.6.2005 (Annexure-6) with the following points:

(a) The Enquiry Officer ignored the statements of S-5 and S-2 respectively in which they had categorically stated that the phones, in question, were installed according to the directions and in the presence of the charged officer.

(b) The Enquiry Officer also ignored the statements of S-6 and S-7 who stated that the persons by name of Sri Alam and Sri Rais respectively took their premises for opening STD PCOs, but how the charged officer gave/ascertained the bonafides of the subscribers without confirming the same from the landlords in the beginning.

(c) As per records also, the advise notes for telephones STD (PCO) no. 50117 and Local PCO no. 50108 in Jais and STD PCO no. 35691 and Local PCO no. 45663 at Maharajganj were not issued in the name of Sri Rias and Sri Alam respectively.

(d) The charged officer did not disconnect the Jais and Maharajganj telephone numbers simultaneously clearly indicate his malafide intention and also his connivance with the misusers of the phones, which resulted in a heavy loss to the organization.

10. Admittedly, the points raised by way of dis-agreement note are in connection with the charge nos. 1 and 2 and as such the authority has issued such disagreement only in respect of the charges levelled against the applicant and also in connection with the findings of Enquiry Officer.

11. The applicant has submitted his reply to the disagreement note by way of his representation dated 26.7.2005 in which he has stated that the charged officer has not given any instructions or directions to PW-2 to furnish bonafide and feasibility report without seeing the site of installation of PCOs. In respect of non-consideration of statements of S-5 and S-2 in which they stated

against the charged officer that the phones, in question, were installed according to the directions and in the presence of the charged officer and bonafides were given by PW-2, without checking the same as directed by the charged officer. He gave reply stating that no such instructions or directions were given to PW-1 and further said that if the charged officer has given any such instructions to Sri R.K. Srivastava (PW-2), he ought to have counter signed on the STD application form, but no such counter signed signature of the applicant is available on the documents and as such the statement of PW-2 as given in exhibit S-2 is incorrect.

12. In respect of ignorance of statements of S-6 and S-7 by the Enquiry Officer, he stated that S-6 is the statement of Kallu Singh, whereas S-7 is the statement of Habib Ahmad Khan, who were not examined before the Enquiry Officer. The enquiry report also shows that Kallu Singh died whereas Habib Ahmad Khan, in spite of several notices did not attend the enquiry proceedings and as such he was not examined and without examination of such witnesses taking of their statement into consideration is not at all justified.

13. In respect of the points raised in connection with charge no.2 that the charge officer did not disconnect the telephone connections of Jias and Maharajanj. Simultaneously, he stated that the telephone connection of Jias was disconnected on 14.4.1999 without any list issued by the authority in respect of his non-payment of dues. He also admitted that other phone was disconnected on 18.4.1999 by the charged officer himself on his

own initiative when he found that the meter readings were abnormally high.

14. From the dis-agreement note under which the competent authority raised disagreement points on the enquiry report, which are in connection with the charges against the applicant basing on the material available on record for which the applicant has submitted his reply. On perusal of such reply dated 26.3.2005, it is clear that the applicant has not given any explanation in respect of all the points raised in the disagreement note and ultimately the authority who was not satisfied with the explanation given by the applicant, has come to the conclusion that the charges levelled against the applicant are proved and thus, taken such different view with the findings of Enquiry Officer, which he is empowered under Rule 15 of CCS (CCA) Rules, 1965. In such circumstances, finding fault with the competent authority in respect of such issuance of disagreement note is not at all convincing and as such the objection raised on such issue by the applicant is not at all maintainable.

15. Coming to the opinion given by UPSC (respondent no.2) dated 8.5.2006, as per rules, the disciplinary authority is to take opinion of respondent no.2 on the enquiry report before taking any action against the charged officer. On perusal of report, it is clear that after perusal of records i.e. charges levelled against the applicant, enquiry report, disagreement note of the disciplinary authority and explanation given by the applicant for such disagreement note, they have given their opinion particularly in respect of enquiry report and also suggested the penalty to be

imposed against the applicant, which is by way of advice only. In such circumstances, finding fault with such advice given by the UPSC (respondent no.2) to the competent authority in accordance with rules is not justified and thus, there is no irregularity to find fault such report/opinion. Thus, the argument advanced on the advice/report of UPSC by the applicant is also not at all maintainable.

16. It is the contention of the applicant that the penalty imposed against the applicant is by way of impugned punishment order dated 19.6.2007 in respect of withholding of 25% of monthly pension, if otherwise admissible to him, on a permanent basis and also by way of corrigendum dated 12.11.2007 (Annexure-16) entire amount of gratuity has been ordered to be withheld is illegal, arbitrary and contrary to the Rules. Admittedly the impugned punishment order has been issued by respondent no.1 on behalf of President of India imposing penalty withholding of 25% of monthly pension, if otherwise admissible to the applicant, on permanent basis. In respect of gratuity, it shows that the gratuity admissible to the applicant may be released, if not otherwise required to be withheld for any reason under the rules. But subsequently by way of Corrigendum dated 12.11.2007 (Annexure-16) the earlier order in respect of gratuity has been revised stating that the entire amount of gratuity admissible to the applicant also to be withheld.

17. Under Rule 9 of CCS (Pension) Rules provides the President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of

ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government.

18. In the instant case, it is also the case of the respondent-authorities that because of the act committed by the applicant and also because of misconduct on the part of the applicant, there was a loss of more than Rs. 10 lacs caused to the Department. Further, the President is empowered to withhold the pension or gratuity, or both, of the charged officer and in such circumstances finding fault with the punishment imposed by the President vide order dated 19.7.2007 (Annexure-9) and corrigendum dated 12.11.2007 is neither illegal, nor against the rules and as such there is no force in the argument of the applicant on this aspect.

19. It is also the case of the applicant that the authorities have taken lenient view against other charged officer Sri R.K. Srivastava who was also equally responsible for such misconduct. But, it is the case of the respondents that the charges levelled against the applicant are so grave in nature and as such the major penalty has been imposed, whereas the charges levelled against Sri R.K. Srivastava were for minor penalty, and as such in his case minor punishment has been imposed. In such circumstances, equating the penalty at par with other officer by the applicant is not at all sustainable and is accordingly rejected.

20. In view of the above discussions, there are no merits in the claim of the applicant and as such the O.A. is liable for dismissal.

21. In the result, the O.A. is dismissed. No costs.

A. K. Mishra
 (Dr. A.K. Mishra) 26/05/09
 Member-A

M. Kanthaiah
 (M. Kanthaiah) 26.05.09
 Member-J