

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH

O.A.24/87

Hari Shankar Mishra,  
Junior Engineer,  
Office of Khar III  
(E-10 B) Telephone Exchange,  
2nd Floor, Khar,  
Bombay - 400052.

.. Applicant

vs.

1. Shri S.A.Ali,  
Assistant Engineer(SPC-A),  
Local, Bandra Telephone Exchange,  
Bandra(West),  
Bombay - 400 050.

2. Shri K.S.P.Krishnan,  
Divisional Engineer(SPC-A)Local,  
Bandra Telephone Exchange,  
Bombay - 400 050.

.. Respondents

Coram: Hon'ble Member(A) Shri P.Srinivasan  
Hon'ble Member(J) Shri M.B.Mujumdar

Appearances:

1. Applicant in person.
2. Shri J.D.Desai  
Advocate for the Respondents.

JUDGMENT

Date: 1-9-1988

(Per P.Srinivasan, Member(A))

The applicant before us is working as a Junior Engineer in the Mahanagar Telephone Nigam Limited having come over from the Department of Telecommunications to the Nigam on the latter's establishment. At the material time he was working in the Bandra Telephone Exchange, Bandra. The Assistant Engineer, Bandra Telephone Exchange, initiated two separate disciplinary proceedings against the applicant. Along with a memorandum dtd. 20-5-1986 the Assistant Engineer communicated to the applicant two charges in respect of which he proposed to take action under Rule 16 of the

*P. Srinivasan*

CCS(CCA)Rules,1965. The substance of the charges was that the applicant did not attend a training course starting from 7-4-1986,even though he was <sup>relieved</sup> ~~relieved~~ on 5-4-1986 in order to do so and that while acknowledging the memo relieving him and directing him to report for training the applicant had made a note which was disrespectful to his superiors. Another memorandum of the same date was issued to the applicant by the Assistant Engineer and this time the charge was that between 18-12-1985 and 31-12-1985 the applicant did not attend the office but signed the attendance register once in the morning and once in the evening. The applicant gave his reply to the second memorandum but not to the first. In his reply, the applicant questioned the competence of the Assistant Engineer to initiate departmental proceedings against him. He also complained that a document which he wanted to inspect was not made available to him. He alleged acute personal bias against him on the part of the Assistant Engineer leading to instances of harassment against him. The Assistant Engineer proceeded to pass an order dtd.2-6-1986 in respect of the first mentioned memorandum rejecting the written explanation of the applicant and imposing on him the penalty of stoppage of increment for two years without cumulative effect. On the same date the Assistant Engineer passed another order in respect of the charge communicated along with the second memorandum stating that the applicant had not offered any explanation and again imposing the penalty of stoppage of increment for two years without cumulative effect. In his first order the Assistant Engineer also directed that the penalty imposed

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therein would "commence after the expiry of any other punishment in progress". Thus the effect of both the penalty orders together was that the increment due to the applicant was withheld for four years without cumulative effect. The applicant filed separate appeals against both these orders but these were rejected by two separate orders dtd. 16-10-1986, Neither of which, we are sorry to say, is a speaking order dealing with all the contentions raised in the appeal. It is against these orders of the Assistant Engineer and the Appellate Authority that the applicant has filed this application.

The applicant argued his case himself while Shri J.D.Desai, learned counsel, appeared for the respondents. They have been heard. The first question for determination is whether the Assistant Engineer who imposed the two penalties on the applicant was competent to initiate proceedings against the applicant under the CCS(CCA)Rules, 1965 and to pass order imposing the penalties on the applicant. Along with the application, the applicant has attached an extract of Schedule No.1 to the CCS(CCA)Rules which <sup>M sets</sup> states out the authorities competent to impose penalties on various classes of officials. According to this extract the authority competent to impose penalties on Engineering Supervisors, redesignated as Junior Engineers, is either the Deputy General Manager(Telephones) or the Divisional Engineer. We may here mention that staff drawn from the telephone department <sup>M</sup> ~~should~~ who continue to remain with the Mahanagar Telephone Nigam Limited, Bombay after the establishment of the <sup>M</sup> later are still governed by the CCS(CCA)Rules. The respondents have in their reply pointed out that

*P. S. Desai*

the Schedule to the CCS(CCA)Rules <sup>has</sup> ~~have~~ been amended in 1980 after which the power of imposing minor penalties on Engineering Supervisors or Junior Engineers is conferred on the "Gazetted Officer Group'B'(in respect of staff under his administrative control)". Upon this the applicant submitted that he was not under the administrative control of the Assistant Engineer who imposed the impugned penalties on him. He relied on Schedule No.13 to the P&T Manual Vol.III setting out the administrative powers of a Gazetted Officer, Group'B'(the Assistant Engineer falls in this category) in-charge of a Telephone Sub-Division or a Telephone Exchange "not within the jurisdiction of Madras, Bombay and Calcutta Telephone Districts" According to the Schedule the Assistant Engineer incharge of a Telephone Exchange has all the powers to impose penalties as set out in Schedule No.1 to the CCS(CCA)Rules. In other words in places other than, Madras, Bombay and Calcutta the Assistant Engineer Group'B' in-charge of a Telephone Exchange can impose minor penalties on Junior Engineers working under him, but Assistant Engineers in-charge of a Telephone Exchange at Madras, Bombay and Calcutta do not have this power. The applicant relied on Schedule 13 to show that since he was working in Bombay he was not under the administrative control of the Assistant Engineer for the purposes of imposition of penalties under the CCS(CCA)Rules. The applicant therefore submitted that the penalty proceedings initiated against him by the Assistant Engineer and the orders of penalty passed by the Assistant Engineer and confirmed by the Appellate Authority viz. the Divisional Engineer should be struck <sup>M</sup> ~~down~~ down as incompetent.

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On behalf of the respondents it was submitted that Schedule No.13 to P&T Manual Vol.III covered Assistant Engineers outside Madras, Bombay and Calcutta but that does not mean an Assistant Engineer at Bombay was deprived of the power of imposing minor penalties on persons working under his control conferred on him by the CCS(CCA)Rules. No separate schedule of administrative powers for Telephone Districts ~~and~~ of Madras, Bombay and Calcutta had been issued as the General Manager in these places can delegate his powers to functionaries under him, Asstt. Engineers being among them. The applicant as Jr. Engineer had to report to the Asstt. Engineer and the Asstt. Engineer had to allot work to him and supervise it and also <sup>M</sup><sub>L</sub> control the Junior Engineer in regard to attendance, discipline etc. Therefore the Jr. Engineer was under the administrative control of the Asstt. Engineer Group 'B' who could therefore <sup>M</sup> ~~be~~ inflict minor penalties on the Jr. Engineer <sup>M</sup>. After considerable deliberation we feel that the challenge of the applicant to the powers of the Asstt. Engineer to impose minor penalties on him has to fail. The Schedule to the CCS (CCA) Rules after amendment in 1980 gives the power to to the Assistant Engineer to impose minor penalties on Jr. Engineers under his administrative control. We do not have to look beyond this schedule to determine the appropriate authority for imposing minor penalties in this case. Schedule No.13 on which the applicant relies does not, in our opinion, displace the CCS(CCA) Rules or the schedule to those rules governing the imposition of the penalties <sup>M</sup> ~~of the~~ <sup>M</sup> various classes of officials. The Assistant Engineer in this case was working in Bandra Telephone Exchange and the applicant was also working in that exchange as Jr. Engineer in a lower post. The applicant has contended ~~that~~ in one of his representations that the Assistant Engineer <sup>did not</sup> ~~of the~~ 7

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allot any work to him. To our mind this is sufficient to constitute administrative control. We, therefore, reject the contention of the applicant that the impugned penalty orders were passed by an authority who was not competent to do so.

So far as the applicant's case against the imposition of the penalties on merits is concerned, he submitted that he had applied for Earned Leave from 14-4-1986 to go to his native village where his mother was ill. The leave was sanctioned to him though it was not communicated to him. The training period was for four weeks from 7-4-1986. That is why he expressed his inability to attend the training course. In the note which he made on the intimation received from the Divisional Engineer about his relief on 5-4-1986 to proceed for training, the applicant had not stated anything which was disrespectful. He had only stated that he was proceeding on leave from 14-4-1986 as his mother was seriously ill. He had intimated the authorities several times about the condition of his mother. Therefore, he was unable to go for training. There was nothing disrespectful in this note. He did not attend the training course on 7-4-86 and 8-4-86 because of the reasons mentioned by him. When he reported to the training class on 9-4-86 the office in-charge of the training declined to allow him to join because he had missed the first two days training. The intimation that he should proceed for training was in the form of a note on a plain piece of paper signed by the Divisional Engineer and was not a formal order. The Assistant Engineer bore a grudge against the applicant for having complained that no work had been allotted by the Assistant Engineer. The Assistant Engineer had issued several memos

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in quick succession to the applicant on account of bias. It was again due to bias that two separate disciplinary proceedings instead of one were initiated on the same date by the Asstt. Engineer against the applicant. So far as the charge concerning his irregular attendance was concerned, the applicant denied this as false and action has taken due to the animus against him on the part of the Assistant Engineer.

The Assistant Engineer who is respondent No.1 in this application and was present in Court denied the charge of bias against the applicant. Shri J.D. Desai submitted that the applicant had committed an act of insubordination by not joining the training class and had been guilty of not attending office on several days. He therefore submitted that the orders of the M penalty and the appellate orders should be sustained by this Tribunal.

Normally we would have sent the matter back to the Appellate Authority to give the applicant a hearing and to pass a speaking order. As we have already observed, the order of the Appellate Authority is not a speaking order. Having thus expressed our dissatisfaction with the quality of the order passed by the Appellate Authority we do not propose to send the case back to him because all the facts are before us and it is a fairly straight forward case. That the applicant did not attend the training class on 7-4-1986 is admitted by the applicant himself. He also admits that he recorded a note that he would not join the training course because he was proceeding on leave one week later. From this it is clear that by unilateral action, whatever the reason therefor, the applicant disobeyed the orders directing

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him to join the training class on 7-4-86. If, as per his contention he was to proceed on leave from 14-4-1986 he should have reported to the training class on 7-4-86 and made a representation to the Divisional Engineer or to the office in-charge of the training that he should be allowed to go away from 14-4-1986. Since the order sanctioning leave from 14-4-86 had not been received by him according to his own admission he could not have assumed that it would be sanctioned as a matter of course. As it happened, the leave was sanctioned by the Divisional Engineer on 2-4-1986 but subsequently cancelled on 7-4-1986 in view of the training course. At this stage we must also observe that the Assistant Engineer and the Divisional Engineer or the latter should have called the applicant and ascertained whether there was a pressing need for him to proceed on leave before deciding to depute him for training, particularly when the Divisional Engineer had sanctioned the leave applied for on 2-4-1986. One gets a feeling that the Divisional Engineer and Assistant Engineer were not altogether reasonable in deputing the applicant for training, regardless of the application for leave initially sanctioned by them. This of course was not a justification for the applicant for staying away from the training class on his own and to this extent he was guilty of insubordination. We also do not understand why two separate proceedings were initiated on the same day. The charge in the second memorandum complaining that the applicant was irregular in attendance is somewhat vague. Taking into account all the circumstance of the case we feel the levy of two separate penalties was excessive in this case. In our view it would be sufficient to impose one penalty in respect of both the memoranda served on the applicant.

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One other contention of the applicant which we failed to notice earlier was that the Asstt. Engineer had not obtained the approval of the cadre controlling authority, viz., the Department of Telecommunications before passing the order of punishment. The respondents have asserted in their reply that they have passed the orders with the concurrence of the Department of Telecommunications. We have no reason to disbelieve this. This contention is therefore rejected.

In the light of the above we set aside the orders of the disciplinary authority and appellate authority. so far as the quantum of penalty is concerned, uphold the finding of guilty and impose on the applicant only one penalty of stoppage of increment for two years without cumulative effect from the date of the original orders of the disciplinary authority in respect of the charges levelled against the applicant in both the memoranda issued to him.

The application is disposed of on the above terms but in the circumstances of the case parties to bear their own costs.

P. Srinivasan  
(P. SRINIVASAN)  
Member(A)

M. B. Mujumdar  
(M. B. MUJUMDAR)  
Member(J)