

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

O.A. No.612/87

C. Gopalan Achary
Building No.206
House No.2553
Sector 6, Antophil
Bombay - 37.

Applicant

V/s

1. Union of India through
Secretary,
Department of Telecommunication,
Sanchar Bhavan,
20, Ashoka Road, New Delhi.
2. Member (Personnel)
Telecom Board,
Sanchar Bhavan, 20 Ashoka Road,
New Delhi.
3. Chief Engineer (Civil),
Telecom, North Western Zone,
Shehadane South, New Delhi-92.
4. Superintending Engineer,
Telecom Civil Circle,
2nd Floor, Sion P.O.Bldg,
Bombay - 400 022.
5. Superintending Engineer,
Civil Postal Circle,
3rd Floor, Matre Pen Bldg,
S.B. Marg, Bombay - 400 028.
6. N. Asnani, Enquiry Officer,
Superintending Surveyor of Works,
Telecom Civil Planning Circle,
2nd Floor, Sion PO Building,
Bombay - 22.
7. P. Shrinivasan, Enquiry Officer,
Executive Engineer,
Telecom Civil Division, Pune,
Mahali Building, Zanjali Road,
Swergate, Pune-37.
8. K.P. Kapoor,
Assistant Engineer,
Telecom Civil Sub-Division No.II,
Telephone Square, Cadell Road,
Bombay-28.
9. N.Y. Bhide, Executive Engineer,
Postal Civil Division,
2nd Floor, Mdyog Bhavan,
Nasik Road.
10. G.G. Tulasi, Executive Engineer,
Telecom Civil Division No.I,
Telephone Square, Cadell Road,
Bombay - 28.

Coram : Hon'ble Mr. Justice B.C.Gadgil, Vice-Chairman

Hon'ble Mr. P. Srinivasan, Member (A)

Appearances

Mr. Mohan Sudame for
the applicant

Mr. V.S. Masurkar for
the Respondents

ORAL JUDGMENT
Per Mr. B.C. Gadgil

Date : 8.10.1987

This application was admitted and certain interim orders were passed. The matter is placed today before us for considering as to whether the said interim orders should be continued.

2. When the matter was argued before us we suggested to both the Advocates that the main application itself should be heard today on merits as the matter can be disposed of on a short point. It is true that Mr. Masurkar submitted that the Respondents had not filed a detailed reply to the main application. However, we told him that he may make oral submission with respect to the points on which we propose to decide.

3. The Departmental inquiry was held against the applicant. The Inquiry Officer submitted a report. The Disciplinary Authority on 13.1.1982 passed an order (Annexure 5 - page 140 of the compilation) imposing a penalty that a sum of Rs.18,359 should be recovered from the applicant. The applicant preferred an appeal to the Chief Engineer. That appeal was decided on 15.6.1982 (vide Annexure 7 - page 155 of the compilation). The Appellate Authority set aside the order imposing the penalty and remitted the case to the Disciplinary Authority to hold a further inquiry according to the CCS(CCA) Rules, 1965. It appears that the said further inquiry as directed by the Appellate Authority was not held. The Member (Personnel), Telecom Board, acting as a Revisional Authority (RA) passed the impugned order dated 16.7.1987

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(vide Annexure 9 - page 158 of the compilation)

imposing a penalty of recovery of an amount of Rs.6,000 from the applicant's pay. It was directed that the said recovery should be made in 36 monthly instalments.

4. It is not in dispute that the RA before passing the impugned order has not given an opportunity to the applicant of being heard. Mr. Sudame contended that under Rule 29 the RA cannot on its own impose a penalty without giving a reasonable opportunity to the applicant of being heard. Mr. Masurkar tried to support this order by saying that the Disciplinary Authority has already imposed a penalty of recovery of the amount of Rs.18,359 after hearing the applicant and that, therefore, it was not necessary for the RA to give a fresh opportunity. What is important, however, is that the Appellate Authority has set aside the said penalty order passed by the Disciplinary Authority and has remanded the matter for fresh inquiry. Thus at the time when the RA passed the impugned order there no subsisting order imposing the penalty on the applicant. Thus the RA imposed the penalty for the first time on the applicant. In our opinion it would not be possible for the Respondents to contend that such penalty can be imposed without hearing the delinquent simply because the delinquent was given a reasonable opportunity in the departmental inquiry which was initially held. This is, more so, when by reason of the appellate order the said penalty imposed by the Disciplinary Authority has ~~ceased~~ seized to exist. Even otherwise rules of natural justice would require that the applicant has to be given a reasonable opportunity of being heard while imposing a penalty by the RA and that too for the first time. In the absence of such opportunity being given to the applicant the impugned order is liable to be quashed. Hence, we pass the following order.

P. S. B.

5. The impugned order dated 16.7.1987 (Annexure 9 page 158 of the compilation) is quashed and set aside. Of course this order would not come in the way of the RA to take such action as it deems fit in accordance with law. Parties to bear their own costs.

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(P.SRINIVASAN)
Member (A)

B.Gadgil

(B.C.GADGIL)
Vice Chairman

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