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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No.
T.A. No. 12/88

198

DATE OF DECISION 28.8.90

Smt Rita Ashok Manwani Petitioner

Mr G. K. Masand, Advocate for the Petitioner (s)

Versus

Union of India and others Respondent

Mr P. M. Pradhan Advocate for the Respondent (s)

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The Hon'ble Mr. G. Sreedharan Nair, Vice Chairman.

The Hon'ble Mr. M. Y. Priolkar, Member (Admn).

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

G. Sreedharan Nair
Vice Chairman.

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Applicant.
Respondents.

P R E S E N T :

The Hon'ble Shri G.Sreedharan Nair, Vice Chairman

The Hon'ble Shri M.Y.Priolkar, Member(A).

For the applicant - Mr G.K.Masand, Advocate

For the respondents- Mr P.M.Pradhan, Advocate

Date of hearing - 22.8.90.

Date of Judgment and Order - 28.8.90.

JUDGMENT & ORDER :

G.Sreedharan Nair, Vice Chairman :-

This relates to Writ Petition No.1546/83
on the file of the High Court of Bombay which has been
received on transfer.

2. The applicant while employed as Supervisor,
Telephone Exchange, Ulhasnagar, was proceeded against
by the issue of a Memorandum of Charges under Rule 16
of the CCS(CC&A) Rules,1965, on 5.1.1982. The charge
was violation of Rule 3(i) and (ii) and Rule 2(i) of
the CCS(Conduct) Rules. It was alleged that she failed
to carry out her duties, particularly those given at
serial No. 3(a) and (b) of the Monitor's Duties specified
in the circular issued by the Director General, Posts
& Telegraphs on 29.10.1965. The imputation was that the a
subscriber Shri Nari Anandani complained to the 3rd
respondent, the Divisional Engineer(Telegraphs), that
there was no response from the Telephone Exchange for
a long time, pursuant to which the 3rd respondent con-
ducted an investigation when the applicant intimated
him that the Cord Connection was not disconnected by
the Telephone Operator on duty. It is alleged that there
-upon the 3rd respondent asked the applicant whether the

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the Telephone Operator on duty. It is alleged that there
-upon the 3rd respondent asked the applicant whether the

action taken by the Telephone Operator was correct, when she informed him that she was not concerned about the correctness of the procedure which she did not know. The applicant submitted her written statement of defence wherein she denied the alleged statement that she informed the third respondent that she was not concerned about the correctness of the procedure or that she was unaware of the same. By the order dated 6.3.1982, the 3rd respondent held that the charge is established and imposed upon the applicant the penalty of withholding of increment for a period of one year. On appeal, the 2nd respondent, the Appellate Authority, modified the penalty to that of withholding of one increment for six months.

3. The applicant prays to quash the order imposing the penalty. The main ground urged is that the 3rd respondent had acted as the prosecutor and the judge and as such the proceedings are vitiated.

4. The respondents have filed reply traversing the averments made in the application and stating that it was taking into account all the relevant aspects of the case that the order imposing the penalty was issued. It is pointed out that the case was decided by the Disciplinary Authority on merits, and "not merely as the result of the exchange of words".

5. Advocate Shri G.K.Masand, appearing on behalf of the applicant, stressed that the proceedings are vitiated as the 3rd respondent has assumed the role of prosecutor and judge. Though counsel of the respondents attempted to refute this submission by pointing out that the charge was for failure to carry out her duties, we are of the view that the submission of the

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counsel of the applicant has to be accepted.

6. The imputation of misconduct as contained in the Memorandum of Charges is extracted hereunder :-

" At 10.30 hrs on 4.1.82, Shri Nari Anandani complained to the DET Kalyan by speaking from UNR 378 that there was no response from the Exchange for a long time for UNR 1199.

Smt R.A.Manwani Supervisor on duty was contacted by the DET Kalyan in order to investigate the complaint. Mrs R.A.Manwani intimated to the D.E.T. Kalyan that party of the telephone 1199 was speaking with another dial no. in Ulhasnagar, but the cord connection was not disconnected from cord No.14 of position 10 attended by Shri D.P.Yadav T.O.UNR on duty.

While the DET Kalyan asked her if the action taken by Shri D.P.Yadav T.O. was correct, Mrs R.A.Manwani informed that she was not concerned about the correctness of the procedure, which she did not know.

It is alleged that Mrs R.A.Manwani Telephone Supervisor UNR has failed to carry out her duties, particularly those given in 3(a) &(b) of DGP&T N.D.No. 15 142/64-TE dt. 29.10.65.

Statement of articles of charges framed against Smt R.A.Manwani Supr UNR has violated Rule 3(i) (ii) and 2(1) of CCS(Conduct) Rules, 1964."

It is evident from the statement of imputation that on receipt of the complaint from the subscriber the 3rd respondent in order to investigate the same questioned the applicant when she explained to him that it was on account of the action of the Telephone Operator in not disconnecting the cord that the subscriber did not get response from the Exchange. Of course, the Monitors employed on Local Manual are to watch the performance of the Operators so that calls are answered without delay and are set up speedily and efficiently and also to ensure that the operators clear connection speedily at the end of the call. These are the duties enumerated at

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Clauses (a) and (b) of serial No.3 of the Monitor's Duties as contained in the circular of the Director General Posts & Telegraphs dated 20.10.1965. It is significant to note that though one of the imputations against the applicant relates to the failure to carry out these duties, there is another imputation as well that when the 3rd respondent questioned her about the propriety of the action of the Telephone Operator on duty, she " informed that she was not concerned about the correctness of the procedure, which she did not know". In thereply to the Memorandum, the applicant has specifically denied having answered as above. Thus, it is clear that one of the imputations was in respect of the alleged answer given to the 3rd respondent in an improper manner, ~~and~~ When the question whether she had answered at all in that manner was an issue, the 3rd respondent should not have acted as the Disciplinary Authority, and since he has so acted, the proceedings are vitiated. It is a settled principle of natural justice that none can be a judge in his own cause. In this context reference may also be made to the Memorandum dated 27.1.1965 issued by the Director General, Posts & Telegraphs which prescribes that in a case where the prescribed appointing or disciplinary authority is unable to function as the disciplinary authority in respect of an official, on account of his being personally concerned with the charges or being a material witness in support of the charges, the proper course for that authority is to refer such a case to Government in the normal manner for nomination of an adhoc disciplinary authority by a Presidential Order under the provisions of Rule 12(2) of C.C.S. (C.C.A.) Rules, 1965.

7. It is seen that the Appellate Authority has also not adverted to this aspect though the point was raised by the applicant in the appeal.

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8. In the result, the order of the 3rd respondent dated 6.3.1982 imposing upon the applicant the penalty of withholding of increment for a period of one year, as modified by the order of the appellate authority dated 22.2.1983 ~~is~~ hereby quashed. The applicant shall be allowed the consequential benefits within a period of two months from the date of receipt of the copy of this order.

9. The application is allowed as above.

M.Y. Priolkar
(M.Y. Priolkar)
Member (Admn)
28.8.90

G. Sreedharan Nair
(G. Sreedharan Nair
Vice Chairman.
28.8.90

S.P. Singh/
24.8.90.

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