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CENTRAL ADMINISTRATIVE TRIBUNAL

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BOMBAY BENCH

OPEN COURT / PRE DELIVERY JUDGMENT IN OA

Hon'ble Vice Chairman / Member (J) / Member (A)
may kindly see the above Judgment for
approval / signature.

V.C. / Member (J) / Member (A) (K/S)

Hon'ble Vice Chairman

Hon'ble Member (J) *Bob Hegde* *ST 10744*

Hon'ble Member (A) (K/S)

R. R. Kotharkar

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 81/89

Transferred Application No:

DATE OF DECISION: 7.10.94

Anil Baburao Undre Petitioner

Shri G.K.Masand Advocate for the Petitioner

Versus

Divisional Engineer, Respondent
Telecommunication Kolhapur & others

Shri V.S. Masurkar Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri B.S.Hegde, Member (J)

The Hon'ble Shri M.R.Kolharkar, Member (A)

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?

B.S.Hegde
(B.S.Hegde)
Member (J)

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 81/89

Anil Baburao Undre.

... Applicant.

V/s.

Divisional Engineer, Phones
Office of Divisional Engineer
Phones, Department of Telecommunications
Kolhapur.

Director Telephones, Office of
Director of Telephones,
Kolhapur.

Member (Personnel) Telephone
Board, Department of Telecom
(Telephone Board,
New Delhi.

... Respondents.

CORAM: Hon'ble Shri B.S.Hegde, Member (J)

Hon'ble Shri M.R.Kolhatkar, Member (A)

Appearance:

Shri G.K.Masand, counsel
for the applicant.

Shri V.S.Masurkar, counsel
for the respondents.

JUDGEMENT

Dated: 07.09.96

(Per Shri B.S.Hegde, Member (J))

The applicant while working as Telephone Operator, was issued charge sheet on 27.2.85 for being caused leakage of revenue and alleged to have failed to maintain absolute integrity and was acted in a manner which is unbecoming of Government Servant thereby violated the provisions of Rule 3(1) (i) and 3(1) (iii) of CCS conduct Rules 1964.

2. The enquiry under rule 14 of the CCS (Classification Control Appeal) Rules 1965, was conducted and penalty was imposed against the applicant, that the pay of the applicant will be reduced by ten stages from Rs. 340/- to Rs. 260/- in the time scale of Telephone Operator of Rs. 260 - 480 for a period of five years with effect from 30.4.86 and will not earn increments of pay

during the period of reduction and that on expiry of this period, the reduction will have effect of postponing his future increments of pay which is at Exhibit A-3 vide order dated 17.4.86 which has the effect of postponing his future increments. Against which he preferred an appeal. The Appellate Authority examined the appeal of the applicant and have rejected the same on the ground that it is time barred. Against which he preferred a revision petition which is also rejected by the Revision Authority vide letter dated 21.6.88. Being aggrieved by the aforesaid orders, the applicant made this application for the following relief.

" To quash and set aside the impugned order passed by Divisional Engineer Firms, Kolhapur on 17th April, 1986 and Order passed by Appellate Authority viz Director, Tele-communication, Kolhapur on 8th April, 1987 (Exhibit A-7) and order passed by Member (Personnel) Tele-Communication, New Delhi, on 21st June 1988 (Exh. A-9)

3. We have heard the arguments of the learned counsel for the applicant, Shri G.K. Masand and Shri V.S. Masurkar, counsel for the respondents and perused the documents and heard oral arguments of the respective parties.

4. The short question for consideration is whether the enquiry was conducted in accordance with law.

5. The learned counsel for the applicant has drawn our attention to the various infirmities in the charge sheet and also in the conduct of enquiry proceedings, showing that the charge sheet issued

by the respondents is not in accordance with the relevant CCS (CCA) Rules 1965 and they have not examined any witnesses as required under the Rules. As a matter of fact that the main charge was, while he was working as Telephone Operator, Kolhapur during the period 19.45 to 20.10 hrs. on 15.1.85 is alleged to have caused leakage of revenue and alleged to have failed to maintain absolute integrity and acted in a manner of unbecoming of Government servant thereby, violated the provisions of Rule 3(1)(i) and 3(1)(iii) of CCS conduct Rules. It also stated that the statement of imputations of misconduct or misbehaviour in support of the article of charges framed against the applicant and also while functioning T.O. TMX, Kolhapur he has failed to observe ~~the~~ rules while handling the trunk traffic and is alleged to have connected Jalgaon call to subscriber to phone No. 24626 Kolhapur at 20001 hrs. vide ticket No. K-897 of 15.1.85 which was observed by the observation supervisor on 15.1.85 and taped. After the call was over the said call was not marked effective by the applicant and was allowed to be cancelled on enquiry without charge at 2010 hrs. thereby he is violated the CCS conduct rule 1964. They have furnished the list of documents:- such as

1. The trunk call ticket No. K - 897
2. Trunk observation tape on CCIT - XI on 15.1.85.
3. Letter dated 14.2.85 from the applicant in reply to office communication.

In the light of the above, the applicant has challenged the entire enquiry proceedings on the following grounds:

That the enquiry was an empty formality as the respondents had come to the conclusion that applicant had misconducted himself by causing leakage of revenue.

Secondly, the Enquiry officer has acted with bias and malafide manner as he refused to allow the request of the applicant to supply of all trunk call tickets of 15.1.85 and allow Shri B.M. Hukkeri 'Observation supervisor' as a witness vide his letter dated 15.5.85.

- Thirdly, that the findings of the Enquiry Officer are bad in as much as he has relied on the report of the Observation Supervisor which has been made behind the back of the applicant and the applicant was denied reasonable opportunity to cross-examine or confront the author of the said report regarding tape. This is contrary to Rules and being in violation of Rules of natural justice, hence the Enquiry Officer and consequently, Disciplinary Authority, Appellate and Reviewing Authority are liable to be dismissed.
- Fourthly, that the report of the Enquiry Officer that the conclusion arrived at by the Enquiry Officer are based on no evidence and the findings of Enquiry Officer is perverse and liable to be quashed. Further, the findings of the Enquiry Officer are based on presumptions and surmises. He has also expressed an opinion that no malafide intention on the part of the applicant have been passed by the department.
- Fiftyly, both the Appellate as well as Reviewing authority have failed to apply their mind while rejecting his petition.

6. Admittedly, no witnesses were examined in support of the prosecution, nor it is stated against that column 'Nil' and the contents of the tape has not been proved either by the author of the tape

or by anyone else. Therefore, the learned counsel for the applicant contends that the entire Disciplinary proceedings is vitiated in view of the infirmities and lacunas referred to above. The applicant, therefore contends that the enquiry is illegal and hence the same is liable to be quashed. The Enquiry Officer has passed the imputation order purported on the face of some record which has not mentioned in the order and the same has not shown to the applicant. Malafide intention of the delinquent official does not stand proved, because the delinquent official has failed to enter other particulars, but whether it was an act of omission or through by oversight or deliberate act with malafide intention of obtaining illegal gratification from the telephone subscriber remains unsettled/unproved. Therefore, his dishonest motive or malafide intention has not been proved.

7. We are of the opinion, that a fairly conducted proceeding of this kind, the statement of imputation itself must be specific and contain atleast a broad reference to the documentary or other evidence on which the imputation are based. A perusal of the impugned order of punishment shows, that it has been passed in a summary manner without specifying any facts on records. The major flaw in the impugned order is that it does not specify the reason for holding that each of the imputation mentioned above was proved. There is a vague statement that there are evidences on record to show that the applicant was guilty of offences of mis-conduct, but there is no whisper of any one of them in clear terms. Therefore, the impugned orders cannot, therefore, be held to be

a reasoned one. The disciplinary authority has observed, that the complaint of the delinquent official of denial of the right to call the observation supervisor who observed the call in question the Enquiry officer has rightly exercised his judgement not to involve unconnected and irrelevant evidences not directly pertaining to this particular case and instead permitted procedures to be explained by another observation supervisor, thus serving the main purpose and state that the malafide intention alleged by the presenting officer does not stand proved beyond any reasonable doubt itself shows that he has not applied his mind to the facts of this case, while concurring with the findings of the Enquiry Officer. Therefore, we have no hesitation in holding that the impugned order in this case is illegal and the same has to be held as vitiated, accordingly, the same has to be quashed.

8. The respondents in their written statement gave a cryptic reply negating the various contentions of the applicant. The applicant has admitted in Exhibit 'C' that he has committed a mistake for which the learned counsel for the applicant submits that the charges levelled against the applicant has not been proved i.e. lack of integrity and unbecoming of Government Servant. Both the charges have not been established. At the most, it may be treated as negligence on the part of the applicant. The Enquiry officer has turned down the request of the applicant for supply of Trunk call tickets on 15.1.85, since only one ticket bearing No. K - 897 was relevant and also allow observation supervisor as a witness who observed the call in question. The Enquiry Officer

has exercised his discretion under case law instructions No.12 from Government of India under Rule 14. Since the applicant has specifically asked for the examination of the 'observation supervisor' who was available for cross examination during enquiry. Nevertheless, the Enquiry Officer had not allowed his request and used his discretion power in an arbitrary manner. The applicant's defence Assistant objected that recorded tape could not be allowed since it does not fall within the term documents hence the Enquiry Officer vitiated the rights of the applicant.

9. It is true that the taped matter has no credibility, unless such evidence can be used for the purposes of corroboration. No documents without corroborative evidence, its value is nil. Therefore, the tape recording is not recorded as documentary evidence. The charge sheet mentiones of causing leakage of revenue and failure to maintain absolute integrity. In view of the Supreme Court decision in Union of India V/s. H.C. Goel (AIR 1964 SC 364) " Mere suspicion cannot take the place of proof. No evidential material with which some degree of definiteness points out his guilt has been produced except the tape. This has not been corroborated by any one, hence, tape recording by itself cannot be accepted as documentary evidence.

10. The learned counsel for the applicant further submitted, that so far the charges levelled against the applicant are concerned, the respondents have not observed the rudimentary rules. As stated earlier, pursuant to the rule 14(3) of CCS and charge sheet itself is defective and thus the punishment

cannot be imposed by the respondents particularly on the basis of observation supervisor who has not been examined which cannot be accepted as corroborative evidence. Further, not allowing the charged official to examine in defence after completion of prosecution evidence is over and removal of reasonable opportunity to defend and as such the enquiry is vitiated.

The applicant has given a detailed reply after the imputation of penalty, wherein he has pointed out various discrepancies in the Enquiry officer's report and he has pointed out similar case of negligence and the respondents have recovered the amount from the respective persons concerned, thereby the applicant has been discriminated. As a matter of fact, the Presenting officer has not proved any malafide intention on the part of the applicant. As a matter of fact, Presenting officer himself says that there was no malafide intention. It is nothing but arbitrary order and the reasons for delay for filing the appeal has been ~~not~~ plained as he has filed after a lapse of 112 days. Therefore, having given due consideration to the rival contentions we are of the view, that the Enquiry officer is faulted in not examining any witness on the basis of tape record as an authentic document. In the result, the applicant is discriminated and thereby attracts Article 14 of the Constitution. Therefore, the tape recording by itself ~~without~~ corroboration cannot be relied upon as correct and the same is not in accordance with law. The learned counsel for the applicant also draws our attention to the decision of the Tribunal in OA 517/89 R. Vembu v/s. The Director General of Ordnance Factories Calcutta and others of the Madras Bench (1991 (2) SLJ 387) wherein the Tribunal held that the penalty could be imposed without proof.

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11. A perusal of the impugned order of punishment shows that it has been passed in a summary manner without specifying any facts on record. The major flaw in the impugned order is that it does not at all specify the reason for holding that each of the imputation mentioned above was proved. There are no evidence on record to show that the applicant was guilty of offences of misconduct, but there is no whisper of any one of them in clear terms.

12. Normally, we are disinclined to interfere in the Disciplinary proceedings if it is conducted in accordance with law. In the instant case, since the enquiry proceedings have not been conducted in accordance with law for the reasons stated above, we are left with no other alternative but to strike down the same. In the result, we have no hesitation in quashing the impugned order, in this case, totally failed and they are liable to be quashed. The impugned order referred to in the prayer has to be set aside. In the result, the impugned order dated 17.4.86 deserves to be quashed. Accordingly we quash the impugned order dated 17.4.86 and the applicant is entitled to consequential benefit of revision of pay within two months from the date of receipt of the order. The application is allowed. No order as to costs.

M.R.Kolhatkar

(M.R.Kolhatkar)
Member (A)

B.S.Hegde

(B.S.Hegde)
Member (J)