

(02)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 826/89
T.A. No.

198

DATE OF DECISION 7.12.1989

Shri Dilip V. Malihalli Petitioner

Shri D.V. Gnagal Advocate for the Petitioner(s)

Versus

The Union of India & another Respondent

Shri M.I. Sethna Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.B. Mujumdar, Member(J)

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

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

(03)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

ORIGINAL APPLICATION NO. 826/89.

Shri Dilip V. Malihalli,
R/at Gokul Nagar, Joshi Chawl,
Near Block 703 A,
Behind Netaji High School,
Ulhasnagar - 421 005.

...Applicant.

V/s

1. The Union of India through
the Chief General Manager,
Maharashtra Telecom Circle,
Bombay - 400 001.

Union of India, through
The Chief Genl. Manager,
Mahanagar Telephone Nigam Ltd.,
10th floor, Prabhadevi Admn. Bldg.
V.S. Road, Dadar (West),

2. The Divisional Engineer(E) Construction, Bombay - 400 028.
Extension Telephone - II,
Mahanagar Telephone Nigam Limited,
Garcha House, Rajawadi,
Ghatkopar (E), Bombay - 400 077.

...Respondents.

Coram: Hon'ble Member(J) Shri M.B. Mujumdar.
Hon'ble Member(A) Shri M.Y. Priolkar.

Appearance:

Shri D.V. Gangal, Advocate
for the applicant.

Shri R.C. Kotiankar for
Shri M.I. Sethna
for the Respondents.

ORAL JUDGMENT

Date: 7.12.1989.

(Per Shri M.B. Mujumdar, Member(J))

The applicant is B.E.(Electrical) from Jabalpur University. He was appointed as Junior Engineer on 25.11.1974 in the Department of Telecommunication. On 1.3.1980 he was confirmed in that post. From 1.4.1986 he is on deputation to the Mahanagar Telephone Nigam Limited. Since February 1985 he is working under Assistant Engineer (East) Construction, External, Mulund. According to him though he has to work in the Mulund Telephone Exchange, he is kept in-charge of the Ganesh Depot which is in Thane. However, according to the respondents he is only required to sign the muster-roll at

P.T.O.

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Mulund Telephone Exchange, but he has to work at Ganesh Depot, Thane. At the Ganesh Depot various articles of the Mahanagar Telephone Nigam Ltd. are stored. As it was found that there was some pilferage or theft in that Depot, a memorandum dated 25.11.1987 was issued to the applicant. The applicant replied to that memorandum. However, by order dated 15.3.1988 he was placed under suspension. About two months thereafter, alongwith the memorandum dated 17.5.1988 a statement containing four articles of charge was served on him. The said charges were, however, subsequently amended and the amended charges were served on him along with the memorandum dated 8.6.1988. The departmental inquiry which was conducted thereafter is now completed and the Inquiry Officer has submitted his report on 14.6.1989. However, the disciplinary authority has not yet passed any final order.

2. The applicant's repeated requests for quashing or revoking the suspension are turned down by the respondents. Hence, the applicant has filed this application on 27.11.1989. He has made two main prayers. First is for revoking the suspension as the departmental inquiry is over and it is not necessary to continue the order of suspension. The second prayer is for directing the respondents to give a copy of the inquiry officer's report to him before passing any order of penalty.

3. We have just now heard Mr. D.V. Gangal for the applicant and Mr. R.C. Kotiankar for Mr. M.I. Sethna for the respondents. As the facts stated above are not at all in dispute, we admit the application and propose to dispose it of finally.

4. It was not disputed before us that the departmental proceedings which were initiated against the applicant are completed and the inquiry officer has submitted his report to

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the disciplinary authority in June 1989. It is not clear why final orders are not yet passed. But in view of the facts narrated above, we are of the view that it is not necessary to continue the suspension of the applicant. In Kanwarpal Singh v. Union of India, (1989) II ATC 54, New Delhi Bench of this Tribunal has taken the view on the facts and circumstances of that case that when the oral inquiry is already completed and there is no possibility of the delinquent tampering with the evidence, it is not necessary to continue his suspension. We are inclined to take the same view in this case and direct the respondents to revoke the suspension.


5. As regards the second main prayer for directing the respondents to supply a copy of the inquiry officer's report before awarding any penalty to the applicant, we feel that this prayer is preposterous. We do not know and even the learned advocate for the respondents was not aware as to what is the report of the inquiry officer. In case the applicant is exonerated by the inquiry officer and if the disciplinary authority does not disagree with that finding, then there will be no question of awarding any penalty to the applicant and hence there would be no purpose in asking the respondents to supply a copy of the report of the inquiry officer. The question will arise only if the disciplinary authority finds it necessary to award some penalty either by agreeing with the inquiry officer's report or by disagreeing with the report. In that case supplying a copy of report and giving an opportunity to the applicant would be absolutely necessary. In result, we pass the following order :-

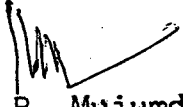
- (i) Respondents are directed to revoke the suspension of the applicant within one month from the date of receipt of a copy of this order.

(ii) Respondents will be at liberty to transfer the applicant from the post which he was holding at the time of suspension.

(iii) Needless to say that in case disciplinary authority finds it necessary to award any punishment to the applicant, he should not do so without giving a copy of the inquiry officer's report to the applicant and without considering his representation.

(iv) The application is disposed of on the above lines with no order as to costs.


(M.Y. Priolkar)
Member(A)


(M.B. Majumdar)
Member(J)