

Central Administrative Tribunal, Mumbai Bench

O.A. No. 737/1996

Mumbai, this the 4th day of September, 2001

HON'BLE MR. KULDIP SINGH, MEMBER (J)
HON'BLE MRS. SHANTA SHAstry, MEMBER (A)

G.B. Mahajan
Telegraphist, Satpur Telegraph Office
Nasik, Maharashtra, Applicant
(By Shri G.S. Walia, Advocate)

versus

Union of India, through

1. General Manager, Telecom
Nashik
2. Divisional Engineer(Admn.)
Office of GM, Telecom, Nashik
3. Sub-Divisional Engineer
Central Telegraph Office, Nashik
4. Junior Telecom Officer
Satpur Telegraph Office, Nashik, Respondents

(By Shri S.S.Karkera, Advocate)

ORDER (ORAL)
Hon'ble Mr. Kuldip Singh, Member (J)

The applicant was issued a memo for a minor penalty vide Annexure B. In reply, the applicant submitted his defence and besides that he had requested that since the nature of imputations against the applicant are such ^{that} ~~so~~ a detailed enquiry should be held, as per the provisions under Rule 14 of CCS(CCA) Rules, 1965, instead of proceeding under Rule 16. However, his request for conducting a regular enquiry under Rule 14 was not acceded to and the department proceeded to pass an order on the basis of the documents as per the procedure prescribed under Rule 16 of the CCS(CCA) Rules and passed an order imposing a penalty of

fr

withholding of next increment for two years from the date of its falling due without cumulative effect against which the applicant filed an appeal which was also rejected, as such the applicant has filed this OA for quashing of the impugned order vide which his appeal was rejected.

2. The main ground taken by the applicant is that the non-consideration of his request with regard to holding of a regular enquiry instead of proceeding under Rule 16 is bad in law. Besides that the applicant has also submitted that the order of punishing authority has not considered his various documents and the conclusion arrived at by the punishing authority is not based on the documents which were annexed along with the memo as per Annexure C, rather the authority has relied upon some statements given by other officials which were stated to be against the applicant and those relied upon statements were not even enlisted in the list of documents, that also vitiates the order in question, so it is prayed that the same should be quashed.

3. Opposing this, the learned counsel for the respondents submitted that providing a regular enquiry under Rule 14 is a discretionary matter available to the respondent and the disciplinary authority submitted that it is the discretion of that authority whether to convert the memo issued for minor penalty into a regular enquiry or not and in this case since the documents mentioned in Annexure A-3 to the charge-sheet and the reply submitted by the applicant had been considered and applicant has also been given a personal hearing, no prejudice

pr

has been caused to the applicant and even his request for holding a regular enquiry was rejected, so on that ground alone the impugned order should not be quashed and the order of punishment should be sustained and the OA should be dismissed.

4. We have heard the learned counsel for the parties and gone through the records of the case.

5. The learned counsel appearing for the applicant referred to Rule 16 which states that on receipt of representation of government servant concerned on the imputation of misconduct or misbehaviour communicated to him, the disciplinary authority should apply its mind to all facts and circumstances and the reasons urged in the representation for holding a detailed inquiry and form an opinion whether an enquiry is necessary or not. In a case where a delinquent govt. servant has asked for inspection of certain documents and cross examination of prosecution witnesses, the disciplinary authority should naturally apply its mind more closely to the request and should not reject the request solely on the ground that an enquiry is not mandatory.

6. The learned counsel submitted that in this case the impugned order does not suggest that the disciplinary authority has applied its mind on the documents annexed by the applicant

km

along with charge-sheet so on that ground the impugned order passed by the Disciplinary Authority is vitiated and cannot be sustained. The counsel for the applicant has also referred to a judgement R.Vembu Vs. Director General of Ordnance Factory & Ors. AISLJ 1991(2) (CAT) wherein it was held as follows:

"CCS(CCA) Rules, Rule 15 - request for enquiry - a minor penalty charge sheet given - in reply he asked for enquiry - rejected and penalty imposed - no reasons shown for rejection as even that the request was fairly considered held order was bad.

7. On the basis of the above, the counsel for the applicant submitted that in this case also though the order records that there was no ground for conducting the enquiry but no reason has been given why the grounds taken up by the applicant for seeking regular enquiry are not sufficient so on that ground also the judgement fully applies to the case of the applicant.

8. To our mind also as per the request of the applicant, a regular enquiry under Rule 14 of the CCS(CCA) Rules, 1965 should have been held as per the law as declared by the Co-ordinate Bench of the CAT (Madras) (Supra) which clearly shows that at least reasons for rejecting the request for holding a regular enquiry is to be given by the disciplinary authority, otherwise it vitiates the impugned orders passed by the disciplinary authority vide which the penalty has been imposed. In the said judgment the court has also gone through the imputations made

1a

against the applicant and had found that the imputations did not warrant a regular enquiry and even if there was a demand for regular inquiry, then the applicant should have been afforded an opportunity to cross examine the prosecution witnesses. If we examine the case in that angle, we find that the memo issued to the applicant contained an allegation that the applicant while working as TL CTO during the period from 17.9.93 to 16.3.94 had violated the provisions of Rule 14 Appendix 18 of P&T Manual Volume II third Edition by removing office documents and zerox copies attached to his personal representation dated 11.11.1993 to the STT Nasik and in the second article of charge it was held that he has failed to maintain absolute devotion to duty.

10. On a perusal of the articles we find that the allegation with regard to the removing of office documents and zerox copies attached with his personal representation were though of serious nature and the same required that the applicant should have been afforded a regular enquiry to defend his case as it required cross-examination of prosecution witnesses and merely on the basis of documents probably justice could not be done.

11. Hence, we are of the considered opinion that the impugned orders cannot be sustained and the same is hereby quashed. Accordingly the respondents are directed to restore the

hur

increments to the applicant within a period of 2 months from the date of receipt of a copy of this order.

12 OA is disposed of with the above directions. No costs.

Shanta

(Mrs. Shanta Shastray)
Member (A)

Kuldip

(Kuldip Singh)
Member (J)

Rakesh