

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.No.1050/99

Dated this Tuesday the 9th Day of April, 2002.

Hon'ble Shri Justice Birendra Dikshit, Vice Chairman
Hon'ble Smt.Shanta Shastry, Member (Administrative)

Shri P.N. Joshi,
C/o. L.D. Lohani,
603, Saiprabha,
S.N. Road, Mulund (West),
Mumbai - 400 080.

.. Applicant.

(By Advocate Shri K.R. Yelwe)

Versus

1. The Union of India
(through Secretary
Ministry of Tele Communication),
New Delhi.
2. Chief General Manager,
MTNL, "Telephone House",
17th Floor, Prabhadevi,
Mumbai - 400 028.
3. Assistant General Manager,
(CCF), M.H.Tele com Circle,
Mumbai.
4. Sub Divisional Manager,
MTNL, Shrikrishna Sadan,
40 Feet Road, Mulund (E),
Mumbai - 400 081.

.. Respondents.

(By Advocate Shri R.C. Kotiankar)

ORDER (Oral)

{ Per : Smt.Shanta Shastry, Member (A) }

The applicant was appointed as Wireman in the Bombay Telephones on 15.9.1976 and was deemed on deputation to M.T.N.L. (Mumbai) with effect from 25.2.1986. A chargesheet was issued to him on 5.8.1996 alongwith statement of articles of charges. The statement of imputation of mis-conduct or mis-behaviour

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in support of Articles of Charges, the list of documents and list of witnesses. The charges against the applicant were as follows:-

"ARTICLE OF CHARGES"

That the said Shri P.C. Joshi, Wireman, St.No.14015, who is functioning as Wireman under AMLN-V Committed a grave misconduct during the period from March '94 to May '94 by-

- i) Manipulation and installing Tel.No.567 2110 by Introducing Shri Ramesh Denanath Upadhya (Subr) to Dr. Meera Chakravarthy, Owner of C-20, Shiv Darshan, Central Railway Co-op. Hsg. Soc. Mumbai (West), Mumbai - 400 080.
- ii) Manipulated and carried out with few others connected as unauthorised NSD/ISD Centre and connected International, National Calls in clandestine manner.
- iii) Earned wrongful revenue in the business of un-authorized ISD/NSD Centre.
- iv) Placed the MTNL, Mumbai in a revenue loss of Rs.1,83,357/-".

The applicant replied to the Memorandum vide letter dated 7.3.1996. As the same was not satisfactory, oral inquiry was ordered and inquiry officer and presenting officer were appointed in 9.1.1996. A preliminary hearing was conducted on 1.2.1996. Thereafter regular hearings were held but the applicant did not attend the inquiry. Therefore, an exparte finding was given by the inquiry officer holding that the charges against the applicant had been proved, vide his report dated 23.3.1998, A copy

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of inquiry report was given to the applicant vide letter dated 29.4.1998. The applicant submitted his ^{representation} ~~report~~ to the Disciplinary Authority on 18.8.1998. After careful examination of entire record and the enquiry proceedings and taking into consideration, the submissions made by the applicant on the inquiry officer's report, the disciplinary authority fully agreed with the findings of the inquiry officer and passed orders on 3.12.1998, imposing the punishment of dismissal from service on the applicant with immediate effect. The applicant preferred an appeal against the aforesaid order on 22.12.1998. The Appellate Authority also satisfying himself that the inquiry proceedings were held in conformity with the procedure laid down under Rule 14 of CCS (CCA) Rules, 1965, rejected the appeal and confirmed the order of punishment imposed by the Disciplinary Authority. The Appellate Authority's order is dated 12.4.1999.

2. Being aggrieved by the aforesaid order of the Disciplinary Authority dated 3.12.1998 and the order of the Appellate Authority dated 12.4.1999, the applicant has approached this Tribunal for quashing and setting aside the same. According to the applicant he was on medical leave from 1.12.1993 to 12.7.1996 and the inquiry was conducted in his absence. It is further submitted that this is a case of no evidence. The applicant being a Wireman had no authority to influence anybody to

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sanction telephone connection. Inspite of his producing medical certificates for granting extension of time to enable him to remain present before the inquiry officer, the inquiry was conducted exparte. Further, the applicant submits that Dr.Meera Chakravarthy had not given any reply and was not cross examined, therefore, mere reference to her statement given to the inquiry officer is not sufficient to prove the guilt of the applicant. According to the applicant the findings of the Enquiry Officer are perverse and are not sustainable and, therefore, the inquiry proceedings are vitiated and the same need to be quashed and set aside.

3. The respondents submit that the applicant was given ample opportunity to be present at the inquiry. He did not attend the inquiry despite service of notice of inquiry in advance and the copies of the daily order sheets were issued to him regularly by the enquiry officer and, therefore, the enquiry officer had to hold exparte enquiry, when the applicant failed to be present. Also the Disciplinary Authority after careful examination of the entire records and taking into account, the submissions made by the applicant had passed the order of punishment which is a speaking order. It is confirmed that letters were sent to the applicant intimating him about the dates of regular hearings. The applicant had avoided enquiry deliberately and, therefore, after

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careful consideration and critically examining the records the disciplinary authority had agreed with the conclusion of the enquiry officer and had imposed the penalty. The Appellate Authority's order is also a speaking order. The point taken by the applicant regarding his being on medical leave during the period of enquiry has been duly considered by the Appellate Authority and after careful and critically examining the records of the inquiry including documentary evidence, The Appellate Authority agreed with the findings of the inquiry officer. The Appellate Authority has also recorded that the procedure laid down in Rule 14 of the CCS(CCA) Rules, 1965 had been complied with. It is the applicant who evaded being present at the inquiry. Changing one Doctor to another was not a valid reason when a Government Doctor had declared him fit. There was enough evidence on record to hold the charges against the applicant having been proved. In view of this position no fault can be found with the inquiry proceedings, orders of the Disciplinary Authority or the Appellate Authority. Since the applicant chose to be not present in the inquiry inspite of having been given opportunity at every stage he cannot now raise the plea that a particular witness was not cross examined. We do not find any good reason to interfere with the orders of the

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Disciplinary Authority or the Appellate Authority. The application is devoid of merits and is accordingly dismissed, without any order as to costs.

Shanta K

(Smt. Shanta Shastry)
Member (A)

B. Dikshit

(Birendra Dikshit)
Vice Chairman.

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21.9/4/02

Order/Judgement despatched
to Applicant/Respondent (s)

on *19/4/02*

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