

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Dated this the 20th day of February, 2002

Coram: Hon'ble Mr. Justice Ashok Agarwal - Chairman  
Hon'ble Mrs. Shanta Shastri - Member (A)

O.A.6 OF 2001

Suryabali Devraj Pandey,  
R/o No.5, Harharwala,  
Building No.13, Ground Floor,  
N.M.Joshi Marg, Mumbai 400 011  
(By Advocate Shri S.P.Inamdar)

- Applicant

Versus

1. Union of India,  
through the Secretary,  
to the Director General,  
Department of Telecommunication,  
Sanchar Bhawan, Ashoka Road,  
New Delhi. - 110 001.
2. The Secretary,  
Union Public Service Commission,  
New Delhi - 110 001.
3. The Chief General Manager,  
Mahanagar Telephone Nigam Ltd.,  
Telephone House,  
Mumbai 400 028.  
(By Advocate Shri V.S.Masurkar)

- Respondents

ORAL ORDER

By Hon'ble Mrs. Shanta Shastri, Member (A) -

By this OA, the applicant has challenged the charge sheet dated 15.3.1983 and the order dated 16.11.2000 dismissing him from service.

2. The applicant<sup>a</sup> had joined the Department of Telecommunications as a Lineman in June, 1963 and was promoted as Sub Inspector of Phones in the year 1979. Disciplinary proceedings were started against the applicant in 1983 by issuing a charge sheet on 15.3.1983. It was a joint and common enquiry.

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The enquiry report was submitted on 28.1.1994 and based on that report the applicant was dismissed from service vide order dated 13.12.1984. Appeal preferred against it was rejected on 15.6.1990. The applicant had approached this Tribunal in TA 54/88. The TA was allowed vide order dated 8.8.1991 on the limited ground of non-supply of the copy of the enquiry report before issuing of the order of punishment. The enquiry was conducted further after making available the enquiry report to the applicant. The applicant was again dismissed vide order dated 9.3.1993. Even a memorial preferred against the order of punishment was rejected. Being aggrieved the applicant once again knocked the doors of the Tribunal by way of OA 334/93. Again the OA was allowed by order dated 8.7.1999 quashing the impugned order with a direction "that it is seen that the misconduct has been alleged to have taken place nearly 21 years back. As the charge itself is grave, we direct the competent authority to take into consideration the long lapse of time and determine whether this is a fit case where a fresh enquiry has to be held against the applicant. If it is decided to hold a fresh enquiry, which decision shall be taken within two months from the date of receipt of a copy of this order, then the enquiry shall be completed within six months thereafter subject however to the applicant co-operating in the enquiry."

3. In pursuance of the directions of the Tribunal a letter was issued on 8.11.1999 conveying the order of the President that a fresh enquiry was to be held against the applicant. The memo was supplied to the applicant on 8.11.1999. The charge sheet was the same as in the earlier enquiries. After conducting the enquiry, the Enquiry Officer vide his report dated 13.3.2000 came to the finding that the charge stood not proved. However, the disciplinary authority disagreed with the same. Before that the UPSC was consulted and based on the advice of the UPSC the disciplinary authority finally proposed the punishment of dismissal vide notice dated 13.6.2000. Thereafter the applicant was dismissed from service vide order dated 16.11.2000 which has been impugned.

4. The applicant has contended that he was not given a copy of the advice of the UPSC before passing the order of punishment of dismissal on the applicant. In the advice given by the UPSC, the UPSC relied on the statements of the two witnesses which had been relied upon in the earlier enquiry and those witnesses who had expired, these witnesses were not available during the last enquiry thus denying the applicant, in particular, the chance to cross-examine those witnesses. The learned counsel for the applicant submits that even the statements of those dead witnesses were not part of the latest enquiry. He has drawn our attention to Para 7 of the enquiry report at page 83 of the OA which gives details of the number of statement of facts and documents admitted. Eleven documents are listed in this but none

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of these documents related to the statements of the dead witnesses relied upon by the UPSC and the disciplinary authority. Further though the statements of these witnesses had been taken into consideration in the earlier enquiry proceedings, ~~the latest~~ enquiry and those witnesses had been examined, that enquiry was an ex-parte enquiry and the applicant had not had any opportunity to challenge those statements or cross-examine the witnesses. In the circumstances relying upon the statements of these dead witnesses without producing them during the course of the enquiry vitiates the enquiry as it goes against the principles of natural justice.

5. The learned counsel for the applicant has taken us through the order of the disciplinary authority. It is evident from this order that he has clearly relied on these statements of dead witnesses. It has been discussed therein and it has been recorded that the Commission observed that the charged officer is making use of the fact of the expiry of the key witnesses but the Commission finds that these statements were duly made during the earlier enquiry before the Inquiry Officer and that merely because fresh enquiry before the Inquiry Officer has been held after a gap of 16 years, the expiry of the key witnesses who had clearly deposed regarding involvement of the charged officer in getting the telephone illegally transferred in consideration of Rs.5000/- should not be allowed to give undue benefit to the charged officer on the ground that these witnesses had not appeared before the Inquiry Officer. But the fact remains that

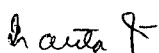
these witnesses did depose regarding involvement of the charged officer before the earlier Inquiry Officer. Therefore, based on the preponderance of probability, the Union Public Service Commission observed that the charged officer is guilty.

6. The learned counsel for the applicant therefore pleads that by not providing a copy of the UPSC report, prejudice has been caused and further because both the UPSC as well the disciplinary authority have relied upon the statements of the key witnesses who were dead, by denying him the opportunity to examine those statements or to examine the witnesses, the enquiry is vitiated and needs to be quashed and set aside.

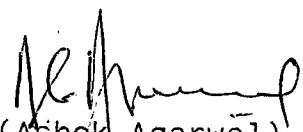
7. The learned counsel for the respondents wanted to produce the original record to ascertain whether the statements of the dead witnesses had been taken on record during the latest enquiry or not. This was rejected by us as it is very clear from the report of the Enquiry Officer itself as already pointed out above, that these statements of the dead witnesses did not form part of the last enquiry. It was held 16 years later after issuing of the charge sheet in 1983.

8. In the light of the discussion above and the reasons recorded, we are of the considered view that the orders of the disciplinary authority cannot be said to be fair and proper and in the interest of natural justice. We, therefore hold that the enquiry stands vitiated on this very ground of considering extraneous material without giving proper opportunity to the

applicant to examine the same. Accordingly, we quash and set aside the order dated 16.11.2000 as well as the advice of the UPSC dated 29.9.2000 with all consequential benefits to the applicant. We note that but for his dismissal the applicant would have retired in normal course on 1.2.2000. Since that date has already elapsed the applicant cannot now be reinstated in service. We therefore direct that he shall be deemed to be in continuous service from the date of his dismissal and shall be entitled to all consequential benefits including retiral benefits. This shall be complied with within a period of three months from the date of receipt of a copy of this order. 9. The OA is allowed. Since the applicant's <sup>case</sup> has been hanging for almost 20 years, and he had to go through a lot of harrasment we order costs to be paid by the respondents to the applicant quantified at Rs.20,000 (Rupees Twenty thousand only) within a period of three months from the date of service of a copy of this order.

  
(Smt. Shanta Shastry)  
Member (A)

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(Ashok Agarwal)  
Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

C.P. NO.: 40/2003 IN O.A. NO. 6/2001.  
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Dated this Friday, the 25th day of July, 2003.  
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CORAM : Hon'ble Shri A. S. Sanghvi, Member (J).  
Hon'ble Shri Shankar Prasad, Member (A).

Shri Suryabali Devraj Pandey ... Petitioner.  
(By Advocate Shri S. P. Inamdar)

V/s.

Union of India & others ... Respondents.  
(By Advocate Shri V. S. Masurkar)

TRIBUNAL'S ORDER :  
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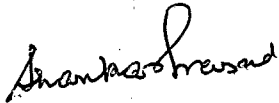
Heard Shri S. P. Inamdar, Learned Counsel for petitioner  
and Shri V. S. Masurkar, Learned Counsel for Respondents.

2. Learned Counsel for applicant submits that after the decision in the O.A. the applicant had given an option for absorption in M.T.N.L. and pursuant to the option exercised by him he has become an employee of M.T.N.L. He says that M.T.N.L. is bound to carry out its liabilities and pay the pension and other retirement benefits to the applicant as per the terms and conditions of absorption.

3. Since now the case of absorption in M.T.N.L. is put forward by the applicant and M.T.N.L. is sought to be made liable for the non-compliance of the orders of the Tribunal, we find that we have no jurisdiction to entertain and try this Contempt Petition as M.T.N.L. is not covered under our

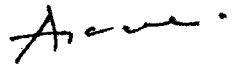
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jurisdiction. The Contempt Petition therefore deserves to be returned for presentation before the proper forum. Registry is therefore directed to return the contempt petition papers to the applicant for presentation to the proper forum retaining one set for our records. However, the alleged contemnors are discharged so far this Tribunal is concerned.



(SHANKAR PRASAD)

MEMBER (A).



(A. S. SANGHVI)

MEMBER (J).

OS\*



DATED : 27/4/2004

HIGH COURT / SUPREME COURT ORDER / DIRECTIONS

C.P. NO 389/2003  
IN

ORIGINAL APPLICATION NO. 6/2001

TRANSFERRED APPLICATION NO. —

Kindly to see High Court / Supreme Court letter NO D.D NO 1911/2004  
No. — dated 15.4.2004 (Flag 'A') together with  
the Judgment / Order — dated 12.3.2004

Above Orders is with reference to the Central Administrative  
Tribunal Order No. — dated 20.2.2002.  
(Flag 'B').

Submitted by circulation please.

SECTION OFFICER

JOINT / DEPUTY REGISTRAR

REGISTRAR

HON'BLE VICE CHAIRMAN Shri A. K. Agarwal

HON'BLE MEMBER (A) Shri Anand Kumar Bhatt

HON'BLE MEMBER (J) Shri S G Deshmukh

HON'BLE MEMBER (J) Shri Muzaffar Hussain

No action at this end is considered  
necessary because complaint filed  
against respondents. The IPC  
charges withdrawn / discharged.