

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 8/9TH DAY OF APRIL, 1987.

PRESENT:

Hon'ble Mr. Justice K.S. Puttaswamy, .. Vice-Chairman.

And.

Hon'ble Mr. L.H.A. Rego, .. Member(A).

APPLICATION NUMBER 1867 OF 1986.

F.A. Nadaf,
Major, Telephone Operator,
Gokak, District: Belgaum.
(By Sri C.R. Patil, Advocate).

.. Applicant.

v.

1. The Divisional Engineer,
Telegraphs, Belgaum.

2. The Director of Tele-
Communications, Hubli.

3. The Assistant Engineer,
Trunks, Belgaum.

.. Respondents.

(By Sri M.S. Padmarajaiah, CGSSC).

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This application coming on for hearing this day, Vice-Chairman made the following:

ORDER

This is a transferred application and is received from the High Court of Karnataka under Section 29 of the Administrative Tribunals Act, 1985 ('the Act').

2. On 8-4-1980, the applicant was working as a Telephone Operator ('TO') in the Telephone Exchange of Gokak Town, Belgaum District. On that day, one Sri R.P. Navalyal, Sub-Division Officer (Telegraphs), Gokak Telegraph Sub-Division ('SDO') visited the Gokak Telephone Exchange and during that visit there was an incident between the applicant and the SDO. In connection with the same, the Divisional Engineer (Telegraphs), Belgaum ('DE') initiated disciplinary proceedings against the applicant under the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and served Articles

Articles of charges as set out in Annexure to his memorandum No.Q-1025/136 dated 20th February, 1981 (Annexure-D) along with the statement of imputation and list of witnesses. The charge framed against the applicant by the DE reads thus:


"STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST
SRI F.A.NADAF, TELEPHONE OPERATOR, GOKAK.

That the said Sri F.A.Nadaf, T.O.Gokak, while functioning as Telephone Operator, in Gokak Telephone Exchange on 8-4-1980, failed to discharge his duties, disobeyed the instructions of his superiors, abused Sri R.P.Navalyal then SDOT Gokak and misbehaved with him when called upon to do the duties properly and attempted to manhandle the then SDOT Gokak, Sri R.P.Navalyal. Thus, the said Sri F.A.Nadaf acted in a manner (i) lacking devotion to duty and (ii) unbecoming of a Government servant violating Rule 3(1)(ii) and (1)(iii) of C.C.S.(Conduct) Rules, 1964."

The applicant denied the charge and, therefore, the DE appointed one Shri S.Y.Jartarkar, Assistant Engineer, Belgaum Telephone Exchange as the Inquiry Officer ('IO') to hold a regular inquiry and submit his report.

3. Before the IO one Sri A.M.Kambi, a co-official working in the Gokak Telephone Exchange was the defence assistant of the applicant.

4. On completing the inquiry the IO submitted his report to the DE on 25-11-1982 (Annexure-E) in which he found the applicant guilty of the charge levelled against him. On 10-12-1982 (Annexure-F) concurring with the IO, the DE issued a show cause notice to the applicant proposing to inflict the penalty of removal from service to which he made representations urging various grounds for dropping the proceedings. On an examination of the same, the DE on 31st December, 1982 (Annexure-H) concurring with the findings of the IO inflicted the penalty of reduction to the minimum of the time scale of the applicant for a period of five years with effect from 1-1-1983 with a condition that he shall not earn increments during the said period of reduction.




5. Aggrieved by the order of the DE the applicant filed an appeal under the Rules before the Director, Tele-Communication, Hubli Area, Hubli ('Director') inter alia contending that the punishment imposed against him was wholly unjustified and should be annulled in its entirety. But, the Director taking the view that the punishment imposed against the applicant was inadequate, issued him a show cause notice proposing to enhance the penalty to one of removal from service as originally proposed by the DE. In response to the said show cause notice, the applicant filed his representations reiterating the case pleaded in his appeal and in any event not to enhance the penalty imposed against him by the DE. But, the Director on 27-2-1984 (Annexure-B) while concurring with the DE and the IO on the guilt of the applicant, held that the punishment imposed by the DE was inadequate enhanced the punishment imposed against the applicant to that of removal from service and in compliance of the same the DE by his order dated 28-2-1984 (Annexure-A) had removed the applicant from service with effect from 1-3-1984. Aggrieved by them, the applicant approached the High Court on 9-3-1984 in Writ Petition No.4721 of 1984 which on transfer has been registered as Application No.1867 of 1986.

6. Among others, the applicant has urged that in concluding the inquiry and imposing the punishment of removal from service, the IO had not afforded him a reasonable opportunity to defend himself against the accusation.

7. In their reply, the respondents have asserted that the applicant had been afforded all reasonable opportunity to defend himself before the IO. At the hearing, the respondents have also produced the records.

8. Sri C.R.Patil, learned counsaël for the applicant contends that whatever be the developments that took place on 3-6-1982, there




there was no justification whatsoever for the inquiry officer to place the applicant ex-parte, refuse audience to his defence assistant and complete a farce of an inquiry, which in reality and substance had denied a reasonable opportunity to the applicant to defend himself against the accusation in contravention of Article 311 of the Constitution, Rule 14 of the Rules and the principles of natural justice.

9. Sri M.S.Padmarajaiah, learned Central Government Senior Standing Counsel appearing for the respondents refuting the contention of Sri Patil, contends that though the IO, while using inapt words like placing ex-parte had afforded all reasonable opportunity to the applicant to defend himself against the accusation on 3-6-1982 and on all the subsequent dates of inquiry and the same was legal and valid.

10. Before the commencement of the inquiry, the applicant had sought the permission of the DE to be defended by one Sri Kambi which had been allowed by him. In pursuance of such permission Sri Kambi was acting as defence assistant of the applicant before the IO.

11. After one or two adjournments, with which we are not concerned, the inquiry before the IO was set down to 3-6-1982. On that day, the applicant did not appear before the IO on the ground that he was unwell which fact he had intimated to his superior officer and the IO and his friend and defence assistant Sri Kambi. On 3-6-1982, the inquiry commenced at 11-00 a.m. as earlier scheduled. When the inquiry so commenced on that day, Sri Kambi moved for an adjournment of the inquiry on the ground of illness of the applicant which was opposed by Sri C.M.Gaddi, the presenting officer of the Department. When Sri Gaddi opposed the request made by Sri Kambi, there were hot exchanges between them and on noticing them, the IO very strangely placed the applicant ex-parte, proceeded with the inquiry, examined a number of witnesses on that day and on the subsequent dates and then concluded the inquiry and submitted his report to the DE, which had been accepted by him. As the case of the applicant turns on what happened on 3-6-1982, we consider it useful to set out inextenso the events as recorded by the IO him-



himself on that day before commencement of examination of witnesses which reads thus:

" Inquiry held on 3-6-1982 at 11-00 hours in the Chamber of Assistant Engineer, Trunks, Belgaum, against the articles of charges framed against Sri F.A.Nadaf, Telephone operator, Gokak.

Following were present:

1. Sri S.Y.Jatarkar, Inquiry Officer,
2. Sri C.M.Gaddi, Presiding officer,
3. Sri A.M.Kambi, Defence Counsel.

It has been informed by the Sub-Divisional Officer Telegraphs, Gokak, on phone on 2-6-1982, that Sri F.A.Nadaf, the delinquent official has reported sick. The Inquiry Officer asked the Defence Counsellor whether he has to say anything. The defence counsel is of the opinion that the meeting should be adjourned. The Presenting Officer objects for adjournment because the enquiry held on 12-8-1981 was adjourned because the defence assistant had reported sick and on 15-3-1982, the delinquent official had reported sick and therefore, the inquiry was journed. Further, the Presenting Officer says that the inspite of giving ample of opportunities, the delinquent official and the defence counsel using dilatory tactics, hence, the inquiry should not be adjourned. The witnesses have already been summoned and they may examind.


The defence counsel says that the reported allegations made by Presenting Officer are un-founded and baseless ~~xxx~~ because not attending the enquiry on medical ground is beyond the comments of anybody including Presenting Officer. Moreover postponement of enquiry on medical ground is not a mercy shown by Presenting Officer or anybody. Hence, Presenting Officer has no business to challenge the medical leave and term it as delaying tactics. Therefore, enquiry should be adjourned as my party has reported sick.

The Presenting Officer further says that the delinquent official should have informed the Inquiry Officer about his sickness directly giving some proof about his sickness. In the absence of such proofs, the inquiry should not be adjourned.

The defence counsel says that again the comments made by Presenting Officer are unnecessary and not supported by any statutory provisions. Because there is no obligation on the delinquent official to intimate his sickness to the Inquiry Officer. Hence, Presenting Officer's expectations from the Delinquent Official are beyond the frame work of statutory provisions and null and void.

Inquiry Officer: The intimation of the enquiry to be held on 3-6-1982 has been received by the delinquent official on 19-5-1982 and the delinquent official reports sick on 2-6-1982. The enquiry has been adjourned on two occasions i.e., on 12th August, 1981 and 15-3-1982 because of sickness of the defence assistant and delinquent official respectively. And now the above facts and the behaviour of the delinquent official during the enquiry held on 25-7-1981 and 7-4-1982. I have arrived at the conclusion that the delinquent official is using dilatory tactics to delay the case. So, the enquiry will proceed ex-parte.

The Presenting Officer should present the witnesses one by one.




The meeting has been adjourned at 11-55 hours for 15 minutes. Inquiry will start at 12-1-.

The Presenting Officer presented first witness Sri S.S. Nandeppanavar, Junior Engineer, Gokak. The statement given during the preliminary investigation was read out to him and has admitted fully....."

On the basis of this order, the IO does not appear to have permitted Sri Kambi to cross-examine the witnesses examined on that day or on the subsequent dates also which is the very definite case pleaded by the applicant but not specifically denied by the respondents. Even otherwise, an examination of the proceedings held on 3-6-1982 and on the subsequent dates clearly establish this plea of the applicant.

12. The latin term 'ex parte' means that a party to a proceeding which necessarily includes his authorised counsel or defence assistant as is the case is physically absent when a case is called before a Court or Inquiry Officer and the Court or that authority noticing their absence, places them ex parte or treat~~s~~ them as absent and then proceeds with the inquiry. This is the true meaning and ambit of 'ex parte' proceedings.

13. We have earlier noticed that on 3-6-1982 the applicant was absent and his defence assistant was present before the IO. When the defence assistant was present whatever be the provocations he caused and the submissions he made, it was not open to the IO to hold that the applicant and his defence assistant were absent on that day or place them ex parte and then proceed with the inquiry. When the delinquent official or his defence assistant are present before the IO, then it is even odd to hold that that they are absent or place them ex parte and then proceed with the inquiry as if they are absent. In any event the IO could not have refused the defence assistant Sri Kambi to cross-examine the witnesses, who were examined by the department in support of the charge. What had been done on 3-6-1982 was plainly illegal and clearly amounts to a denial of opportunity guaranteed to applicant by Article 311 of the Constitu-



Constitution and Rule 14 of the Rules. The mistake committed by the IO on 3-6-1982 repeated itself on the subsequent dates of inquiry.


14. In order to salvage the situation Sri Padmarajaiah strongly relies on the instructions issued by Government printed on page 78 as para 28 of Swamy Compilation of the Rules, 1962 Edition.

15. We are of the view that those instructions do not really bear on the question and do not in any way help the respondents to sustain the illegality committed by the IO. We see no merit in this contention of Sri Padmarajaiah.

16. When once we find that the IO had not afforded a reasonable opportunity of hearing to the applicant, who alone in law is required to afford the same, then all orders made on the basis of the report of the IO cannot be upheld by us. Unfortunately the Director and the DE have glossed over this incurable illegality on superficial or irrelevant reasons. We cannot, therefore, uphold their orders, the report of the IO and the proceedings held before him on and after 3-6-1982. On this view, it is unnecessary to examine all other questions except those relating to hold a fresh inquiry.

17. The charge levelled against the applicant is a serious one. The infirmity in the conduct of the inquiry cannot be a ground for not holding a fresh inquiry on the basis of the charge already framed which is valid. We, therefore, consider it necessary to reserve liberty to hold a fresh inquiry against the applicant with appropriate safeguards to both sides.

18. We find that a number of witnesses have been examined -in-chief on 3-6-1982 and STATE OF MYSORE AND OTHERS v. SHIVABASAPPA SHIVAPPA MAKAPUR (AIR 1963 SC 375) it is proper to maintain their examination-in-chief and permit the applicant or his defence assistant to cross-examine them with liberty to the presenting to further examine them also, if he so chooses. When any of




of those witnesses are further examined or cross-examined, undoubtedly the presenting officer of the department has a right to re-examine them. We also find that the IO had put questions to each of the witnesses and had recorded their answers. In the circumstances that also had to be treated as examination-in-chief only or questions by the IO to which also the applicant is entitled to cross-examine.

19. Before the commencement of the inquiry and in the course of the inquiry, the applicant had represented before the DE and his superiors to change the IO Sri S.Y.Jatarkar on grounds of bias. We will even assume that they were not well founded. But, still to allay all apprehensions of the applicant, we consider it proper to direct the disciplinary authority to change the inquiry officer in making the further inquiry against him. But, as to who should be appointed as the IO is a matter for the disciplinary authority to examine and decide.

20. On the view we have expressed Sri Padmarajaiah contends that we should not permit the applicant to rejoin duty till a fresh inquiry is completed and that we should expressly deny all back wages to the applicant from 1-3-1984 till to-day. Sri Patil vehemently opposes both these requests made by Sri Padmarajaiah.

21. Whatever be legality or illegality committed by the IO, the fact remains that from 1-3-1984 the applicant had not rendered public service. When that is so, we will not be justified in allowing back wages to the applicant from 1-3-1984 till to-day and in any event till the end of this month.

22. When the inquiry was in progress the applicant was not under suspension. But, having regard to the gravity of the charge levelled and all other circumstances, we consider it necessary to reserve liberty to the disciplinary authority to keep the applicant under suspension if he so decides or otherwise as he decides and




and then complete the inquiry with all such expedition as is possible in the circumstances of the case.

23. Admittedly, the applicant had already been furnished with the statements of all witnesses recorded at the inquiry. If that is so, the applicant shall treat those statements as examination-in-chief of the respective witnesses and cross-examine them as a date to be fixed by the IO.

24. An early disposal of the proceedings is in the interests of the applicant, the department and the interests of justice. In that view, it would be proper for the disciplinary authority to appoint an IO with utmost expedition and direct him to complete the inquiry with all such expedition as is possible in the circumstances of the case.

25. In the light of our above discussion, we make the following orders and directions:

- (a) We quash Memo No.E-10/84-85/196 dated 28-2-1984 (Annexure-A); Memo No.STA/10-40 dated 27-2-1984 (Annexure-B); Memo No.Q-1025/82-83 dated 31-12-1982 (Annexure-H); the report of the Inquiry Officer (Annexure-E) and the decision of the Inquiry Officer dated 3-6-1982 in so far as he had placed the applicant and his defence assistant ex-parte;
 - (b) We deny all back wages to the applicant from 1-3-1984 to 30-4-1987.
 - (c) We direct the respondents to reinstate the applicant to service with effect from 1-5-1987 and regulate the inquiry, if necessary by placing him under suspension or otherwise as they may choose to decide.
 - (d) We direct the disciplinary authority to appoint a fresh inquiry officer who will commence the inquiry and continue the same treating the evidence of witnesses recorded on 3-6-1982 and on the later dates as examination-in-chief of those witnesses and permit the applicant or his defence assistant Sri Kambi to cross-examine all of them and then submit his fresh report on an evaluation of the entire evidence to be recorded at the inquiry and on receipt of that inquiry report the Disciplinary Authority is free to pass such orders as he deems fit in accordance with law.
 - (e) We direct the new Inquiry Officer to be appointed by the disciplinary authority to complete the inquiry with all such expedition as is possible in the circumstances of the case and in any event within a period of four months from the date he actually commences the inquiry.
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Deputy Registrar
~~SECTION OFFICER~~
(JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 4TH DAY OF SEPTEMBER, 1987

Present: Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman
and
Hon'ble Shri P. Srinivasan, Member (A)

REVIEW APPLICATION NO. 78/1987

Shri F.A. Nadaf,
Major, Telephone Operator,
Gokak, District: Belgaum.

.... Applicant

(Shri S. Ranganatha Jois, Advocate)

v.

1. The Divisional Engineer,
Telegraphs, Belgaum.
2. The Director of Tele-Communi-
cations, Hubli.
3. The Assistant Engineer,
Trunks, Belgaum.

.... Respondents.

This application having come up for hearing to-day,
Vice-Chairman made the following:

O R D E R

In this application made under Section 22(3)(f)
of the Administrative Tribunals Act, 1985, the applicant
has sought for a review of an order made by this Tribunal
on 8/9.4.1987 partially allowing his application No.1367/86.

2. The order of the Tribunal was made on 8/9.4.1987.
But the review application is presented before us on
8.6.1987 and thus there is a delay of 31 days in making
the application. The applicant has not made any application
for condonation of delay.



3. But Shri S.Ranganatha Jois, learned counsel for the applicant, orally moved us to condone the delay and deal with the application on merits.

4. An oral application for condonation of delay cannot be properly entertained and granted. On this short ground the application is liable to be rejected without examining the merits. But, we do not propose to do so, and proceed to examine whether this is a fit case for review of our order.

5. On a detailed examination of every one of the contentions urged, this Tribunal had disposed of the application in the manner it had done.

6. Shri Jois contends (i) that this Tribunal was not justified in denying back wages from 1-3-1984 to 30-4-1987; (ii) that this Tribunal was not justified in reserving liberty to hold a fresh inquiry; (iii) that the Tribunal was not justified in reserving liberty to place the applicant under suspension, and (iv) that the Tribunal was not justified in disallowing the costs of the application.

7. We are of the view that Shri Jois really asks us to examine our earlier order as if we are a Court of appeal and come to a different conclusion which is impermissible in a review. We are of the view that every one of the grounds urged by Sri Jois do not justify us to review our earlier order.



8. In the light of our above discussion, we hold that this application is liable to be rejected. We, therefore, reject this application at the admission stage, without notices to the respondents.

Sd/-
Vice-Chairman

Sd/-
Member (A)

- True copy -

dms/Mrv.



[Signature]
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE
18/9