

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 6 APR 1988

APPLICATION NO 715 / 87(F)

W.P. NO. _____

Applicant

Shri S.P. Goudar

Respondent

The Secy, Dept of Telecommunications,
New Delhi & 2 Ors

To

V/s

1. Shri S.P. Goudar
S/o Shri Pavadappa Goudar
Near Khazi House
Malamaddi
Dharwad
2. Kum Veena Jadhav
Advocate
C/o Shri Shivaraj Patil
Advocate
'Nandi', 24, 8th Main Road
1st Cross, Vasanthanagar
Bangalore - 560 052
3. The Secretary
Department of Telecommunications
New Delhi

4. The Telecommunication Engineer
Hubli Engineering Division
Hubli
Dharwad District
5. The Sub-Divisional Officer
Telegraphs
Hubli
Dharwad District
6. Shri M.S. Padmajaiah
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY~~/~~INTERIM ORDER~~
passed by this Tribunal in the above said application on 30-3-88.

o/c *[Signature]*
DEPUTY REGISTRAR
(JUDICIAL)

Encl: As above
7/4/88

*Received
Veena Jadhav
7/4/88.*

CENTRAL ADMINISTRATIVE TRIBUNAL AT BANGALORE.

Dated this the 30th day of March, Nineteen hundred and eighty eight.

Coram: Hon'ble Shri L.H.A. Rego, Member (A)

and

Hon'ble Shri Ch. Ramakrishna Rao, Member (J).

APPLICATION No. 715/87(F)

S.P. Goudar,
S/o Pavadappa Goudar,
Lineman (Telegraphs),
Dharwad. ^{Kur} (Smt. Veena Jadhav, Advocate)Applicant.

v.

1. Union of India,
by its Secretary,
Telecommunications Dept.,
New Delhi.
 2. Telecommunication Engineer,
Hubli Engg. Divn.,
Hubli, Dharwad Dist.
 3. Sub-Divl. Officer,
Telegraphs,
Hubli,
Dharwad Dist.Respondents.
- (Shri M.S. Padmarajaiah, CGSC)

This application having come up for hearing on 24-3-1988,
Hon'ble Member (A), made the following:

O R D E R

In his application filed under Section 19 of the
Administrative Tribunals Act, 1985, the applicant is assailing
the Order dated 20-11-1986 (Annexure-G) passed by Respondent (R) -3,



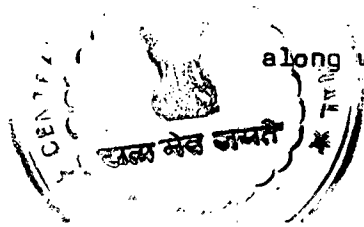
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in his capacity as Disciplinary Authority (DA), dismissing him from service and Order dated 9.3.1987 (Annexure-H) passed by R2, in his capacity as Appellate Authority (AA), upholding the order of the DA and prays that both these orders be quashed, with consequential relief to him.

2. The following is the salient background to the case.

The applicant entered service in the Telecommunication Department on 14.7.1976, as Lineman (Telegraphs) (LMT), in the establishment of R-3. On 23.11.1985, he was found to have transgressed his territorial jurisdiction in his above capacity, and was caught along with accomplices in the act of removing about 35 kg of copper wire clandestinely, from non C-8 alignment, between the spans at KM No. 485/11 to 485/14, ~~with~~ along the railway line near the Navalur Railway bridge in Dharwad district. There were three accomplices in all, in this act, two of whom were said to be the brothers of the applicant. The above act was detected by Shri H.I. Lakkundi, LMT, Hubli, who was at that time, carrying out maintenance work of the NCJ lines between Hubli and Haliyal.

3. The matter was brought by him to the notice of the higher authorities. Thereon, after due investigation, R-3 who was the DA, framed a chargesheet on the applicant on 20-12-1985 (Annexure-A), along with a statement of imputation of misconduct under Rule 14



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of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 (1965 Rules, for short).

4. The following two articles of charges were levelled against the applicant:

Article I: That the said Shri S.P. Goudar, Lineman Telegraphs, Dharwad, while functioning as Lineman Telegraphs, Dharwad, crossed his jurisdiction unauthorisedly on 23.11.85 and is alleged found himself engaged on the railway alignment near Navalur Railway bridge, acting in a manner unbecoming of a Lineman, violating provision of Rule 3(1)(iii) of CCS (Conduct) Rules-1964.

Article-II: That during the aforesaid period and while functioning as Lineman, Telegraphs, Dharwad, Shri S.P. Goudar, Lineman, Telegraphs, on 23.11.85 is alleged to have cut the copper wire unauthorisedly from non C-8 alignment along railway lines, near Navalur railway bridge and attempted to remove it from the spot, acting in a manner of unbecoming of a Government servant violating Rule No.3(1)(iii) of CCS (Conduct) Rules 1964.



5. In his defence statement dated 4.1.1986 (Annexure-B), the applicant denied the charges. A Departmental Enquiry (DE) was

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conducted by the Inquiry Officer (IO), viz., Shri A.S. Ramachandraiah, Section Supervisor in the Office of the General Manager, Telephones, Bangalore, in accordance with the 1965 Rules, after affording reasonable opportunity to the applicant, to substantiate his defence. The IO submitted his Inquiry Report to the DA, viz., R-3 on 5.9.1986 (Annexure-E). The DA after examining the Inquiry Report, by his Order dated 20.11.1986 (Annexure-G) imposed on the applicant, the punishment of removal from service, with immediate effect.

6. The applicant preferred an appeal thereon, on 14/20-1-1987 to the AA, who by his order dated 9.3.1987 (Annexure-H), dismissed the same. Aggrieved, the applicant has approached this Tribunal, through his present applicant, for redress.

7. Appearing for the applicant, Kum. Veena Jadhav, learned counsel contended, that her client was not given a fair and reasonable opportunity to plead his defence, in that, even though during the course of the DE, ^{by} the IO, ^{he} requested ^{on} 9.5.1986 (Annexure-C), for copies of certain additional documents, which were relevant and had a crucial bearing with his defence, they were denied to him, by the IO, by his letter dated 16.5.1986 (Annexure-L); that if these documents were made available to ~~his~~ client, he would have been in a position to claim alibi, on the score, that on the date of commission of the alleged offence, implicating him, he was actually

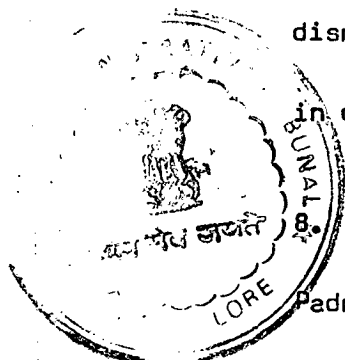
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on duty at Dharwad and that the persons who are said to have witnessed this offence, were also not on the spot; that the concerned witnesses were not allowed to be cross-examined by ^{her} his client; that a copy of the preliminary enquiry report, on the basis of which the regular DE was initiated against ~~his~~ client, was not furnished to him, as a result of which, he was handicapped in pleading his defence in the manner he desired; that the findings of the IO are based on "no evidence"; that the IO ignored the written arguments filed by ~~his~~ client on 28.7.1986 (Annexure-F), before submission of the Inquiry Report by him, on 5.9.1986 (Annexure-E); that R-3 too, in his capacity as DA, failed to take into account these written arguments, and did not apply his mind, before imposing the order of punishment on 20-11-1986 (Annexure-G); that R-2 in his capacity as AA, similarly overlooked the written arguments of ~~his~~ client and proceeded to dismiss his appeal by his order dated 9.3.1987, without examining in depth, the defence pleaded, by him.

Rebutting each of the above contentions, Shri M.S.

Padmarajaiah, learned counsel for the respondents, submitted, that the applicant was assigned a specific railway alignment, as territorial jurisdiction for performance of his duty and therefore, he had no reason to intrude on another railway alignment, assigned exclusively to Shri M.A. Benjamin, LMT,



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Dharwad, which he said, coupled with the fact, that, he was caught almost flagrante delicto, by Shri H.I. Lakkundi, LMT, Hubli and Shri Makbul Sab Sayed Sab Mulla, casual mazdoor, (who were the principal eye-witnesses) in the party, carrying out maintenance work of the NCJ line, between Hubli and Haliyal (in the territorial jurisdiction of Shri Benjamin, LMT, Dharwad), bewrayed, mens rea of the applicant in the office, for which, he was proceeded against.

9. As regards ~~the~~ copies of the additional documents requested for by the applicant in the course of the DE, Shri Padmarajaiah stated, that the requisite documents were furnished to the applicant as Annexure-III, to the chargesheet.

10. Shri Padmarajaiah repudiated the allegation, that the written arguments submitted by the applicant were ignored by the IO, DA and the AA. In this connection, he referred to Annexure-E (page 25) of the application, namely, the Inquiry Report, wherein he pointed out, it was explicitly stated, that the written brief submitted by the Defence Assistant was taken into account. He further clarified, that the said Inquiry Report analysed the points urged in this written brief. The allegation was, therefore, patently specious, he said.

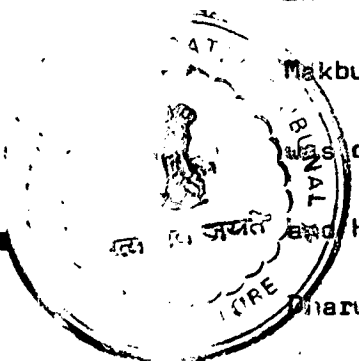
11. Shri Padmarajaiah submitted, that the applicant was not denied any opportunity to substantiate his defence and, therefore,



It could not be said, that the rules of natural justice were violated.

12. We have given due thought to the rival pleadings and examined carefully, the material placed before us. Let us first examine, as to whether the applicant was denied fair and reasonable opportunity to plead his defence and whether the principles of natural justice, were violated as alleged by Kum. Jadhav, who among other things, avers that a copy of the preliminary enquiry report, was not furnished to the applicant and that he was not given the opportunity to cross-examine the witnesses, and that copies of certain documents which were vital to the defence of the applicant, were not furnished to him.

13. We have seen Annexure-III to the chargesheet, which lists the documents on which it is based. The principal witnesses in this case are one Shri H.I. Lakkundi, LMT, Hubli and Shri Makbul Sab Sayed Sab Mulla, casual mazdoor, in the party, which was carrying out maintenance work, on the NCJ Line between Hubli and Haliyal, in the territorial jurisdiction of Shri Benjamin, LMT, Dharwad. They were eye-witnesses, to the alleged incident of copper-wire being rolled up by the applicant and his accomplices on 23.11.1985, on the railway alignment between the spans KM Nos. 485/11 to 485/14, near the Navalur railway bridge in



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Dharwad district, which was outside the assigned territorial jurisdiction of the applicant. The LMT, who was actually in charge of the alignment, was Shri N.A. Benjamin, as stated earlier.

14. Kum. Jadhav feebly argued, about the animus borne by Shri Lakkundi towards the applicant, to bring out mala fides on his part, to implicate the applicant in the above incident. We have gone through the DE proceedings minutely, to ascertain evidence if any, in support. Though the applicant was given full opportunity to cross-examine both these principal witnesses, we find, that the alleged taint of mala fides has not been established. Besides, there is no reason, as to why Shri Makbul Sab Sayed Sab Mulla who was not a departmental employee, but a mere casual mazdoor in a working party, should have borne malice or enmity towards the applicant, so as to implicate him on the above incident. Shri Mulla, has in his statement recorded on 24.11.1985, clearly testified, that he saw the applicant among others, rolling copper wire at the aforementioned site on 23.11.1985.

15. The fact, that among the accomplices in this act, two of them were actual brothers of the accused, reveals that there is more than what meets the eye in this episode.

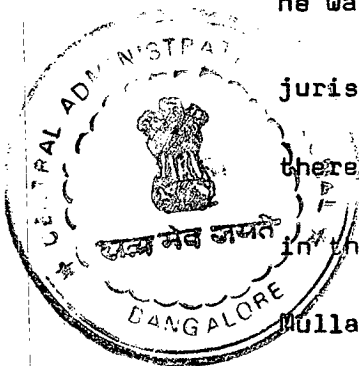


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16. If the applicant was genuinely apprehensive that his own colleague, viz., Shri Lakkundi was seeking to implicate him maliciously in this incident, he could have rushed to his immediate superior, to make a clean breast of the incident and vindicate his innocence. Instead of doing so, it is strange that he vanished in thin air, for some days, and had actually to be summoned to duty, by his superiors. Such conduct on the part of the applicant, does not help disabuse his questionable role in the incident, but on the contrary, lends suspicion.

17. He has not adduced any evidence, as to why he strayed beyond his jurisdiction, and that too in an opposite direction, (as pointed out by the departmental authorities, who were present at the hearing of this application), and at an odd hour, in early noon of the day. He has also not given any proof to show, that he was engaged elsewhere on legitimate duty, within his own jurisdiction on the relevant date and at the relevant time. Besides, there is no reason, as to why three more persons (his accomplices in the act) should have been implicated by Shri Lakkundi and Shri Mulla in this episode.

18. We are informed, that a criminal case has been filed against the applicant and that the police have recorded a statement, during the course of the enquiry relating thereto, that copper wire has been recovered from the applicant and seized. The quantity



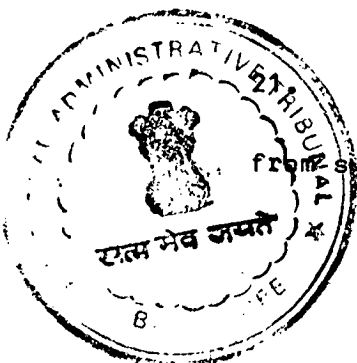
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of this wire is not insubstantial, as it is nearly 35 kg in weight and this entire act of snapping the overhead telegraph wires and bundling them, could not have been accomplished overnight and without premeditation. Besides, the snapped wires are said to have ^{been} artfully "jumped", to keep the lines temporarily in commission, to prevent immediate detection of the offence. This art and technique of "jumping", could have been accomplished none other than by a technician of the Telecommunication Department, who was proficient in it.

19. The above incident of theft of the copper wire, is seen to have occurred, in the territorial jurisdiction of Shri M.A. Benjamin, LMT, while Shri Lakkundi was working in a peripatetic party, seeing to the maintenance of the telegraph lines.

20. The above facts and circumstances viewed in the context of natural sequence of human conduct and preponderance of evidence based on probabilities, lead to the irresistible conclusion, that the applicant was actually involved in the incident of theft of copper wire and that he is vainly seeking to wriggle out of it, through falsehood and prevarication.

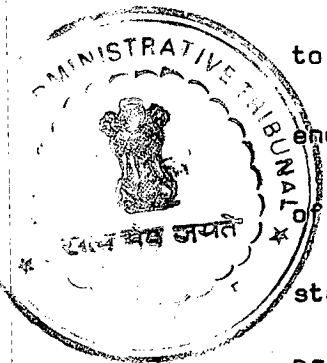
Kum. Jadhav contended, that her client was handicapped from substantiating his defence, as a copy of the preliminary enquiry



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report was not furnished to him. This contention does not ring true, as Annexure-III to the chargesheet/^{shows}that the statements of the above two principal witnesses and three others, recorded between 23.11.1985 to 25.11.1985, in the course of the preliminary enquiry, were actually furnished to the applicant. The purpose of the preliminary enquiry is, to determine as to whether there is a case prima facie, for the institution of a DE (CHAMPAKLAL's CASE SC 1964). There is no punitive element in such an enquiry and the proceedings therein, are not governed by Article 311 (2) of the Constitution (CHAMPAKLAL's case, ibid). It has been held in BIMAL KUMAR's case SC 1963 and in RAVI DUTT's case SC 1973, that in case, evidence recorded in a preliminary enquiry, is to be ~~not~~ relied upon, in the course of regular proceedings, the delinquent ^{is} to be furnished copies of such evidence, to enable him to plead his defence effectively. It is however not necessary, to disclose the source of information (which led to the preliminary enquiry), to the delinquent (SUBBARAO's case 1961). In the case of witnesses examined during the preliminary enquiry, their statements are to be recorded anew, in the course of the regular DE and in the presence of the delinquent (SULHENDRA CHANDRA's case SC 1962).

22. We notice, that the requirements spelt out in the various rulings cited above, in relation to the preliminary enquiry have



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been duly complied with, in the regular DE, conducted against the applicant, in the present case. We notice, that the applicant has been furnished copies of and/or given access to the various documents, relevant to his defence. The applicant has not been denied the opportunity of cross-examining the witnesses concerned, particularly the two principal eye-witnesses aforementioned.

23. ~~We have examined~~ We have examined the DE proceedings carefully. We find that the IO, DA and the AA have all, duly taken into account, the evidence, both documentary and circumstantial, as also the written brief presented by the Defence Counsel for the applicant and have applied their mind in their respective roles.

24. In the light of the above discussion, we are convinced, that the applicant has been afforded fair and reasonable opportunity by the respondents and that there has been no travesty of justice in this case.

25. In the result, we conclude, that the application is meritless and is liable to be dismissed. We, therefore, dismiss the same but with no order as to costs. Who shall guard, the guards of the Telecommunications Department? Quis custodiet ipsos custodes?



TRUE COPY

MEMBER(A) 30.8.1988

dms.

DEPUTY REGISTRAR (JDL) 6/4/88
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

MEMBER(J)

30/3/88