

5

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1220/92

Transfer Application No.

Date of Decision : 19.7.1995

Shri V.K.Bhagat

Petitioner

Shri P.C.Marpakwar

Advocate for the
Petitioners

Versus

The Director Telecom Nagpur & Ors.

Respondents

Shri R.P.Darda

Advocate for the
respondents


C O R A M :

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri P.P.Srivastava, Member (A)

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to
other Benches of the Tribunal?


(P.P.SRIVASTAVA)

MEMBER (A)


(M.S.DESHPANDE)

VICE CHAIRMAN

(6)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY
CAMP : NAGPUR

OA.NO. 1220/92

Shri Vithoba Kaoduji Bhagat ... Applicant

V/S.

The Director Telecom Nagpur & Ors. ... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Shri P.C.Marpakwar
Advocate
for the Applicant

Shri R.P.Darda
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 19.7.1995

(PER: M.S.Deshpande, Vice Chairman)

By this OA. the applicant challenges the order holding him guilty of charge No. (ii) of the charge-sheet and imposing the punishment of removal from service.

2. The applicant was working as Junior Engineer Telegraphs w.e.f. 1.10.1974 and after several transfers finally came to be posted at Yeotmal. On 17.11.1987 a chargesheet containing four articles of charges was served on him and Article (ii) of the charge was that :-

"while working as Junior Engineer Telegraphs. Yavatmal during the year 1986-87, incurred expenditure on transport in certain cases as per list I(a), (b), (c) and (d) largely in excess of sanctioned provisions and has thus failed to adhere to the provisions of Rule 60 of F.H.B.Vol.I by spending much in excess than the occasion demanded."

One Shri R.H.Mitkari was appointed as Inquiry Officer and Shri T.R.Patil as Presenting Officer. Though the charge-sheet was dated 17.11.1987, the inquiry commenced

from 12.10.1989. The proceedings show that the Presenting Officer did not attend and he informed the Inquiry Officer that he was collecting some documents relating to this inquiry and then attending and so the case was adjourned to the next day upon application of the Presenting Officer. The applicant requested for being furnished with the additional copies of the documents but this request was not granted as according to the Inquiry Officer due notice was given to all concerned and the applicant was not entitled to any copies of the additional documents. It was stated that proper opportunity to inspect and take extract of the documents will be given to the applicant. When the inquiry commenced on the next day, the applicant was not present but the presenting officer filed several documents. The Inquiry Officer allowed additional documents to be filed and took the documentary evidence on record. The applicant did not attend on that date and the case was adjourned to the next day when the whole evidence was recorded. The Inquiry Officer submitted his report on 19.4.1990 holding that all the charges were proved. The applicant filed an appeal on 22.10.1991 but that was dismissed by the appellate authority holding that fair and proper procedure had been followed at the enquiry. The result was that the applicant stood removed from service.

3. The first submission on behalf of the applicant was that though additional documents were allowed to be filed, the request for being furnished with the copies which was made on 12.10.1989 was rejected by observing that inspection of the documents would be given to the applicant. It is true that the applicant did not attend on the next day but since additional documents were allowed to be filed and were taken on record and the enquiry officer was aware that these

documents had not been furnished to the applicant, notice could have been issued and a short adjournment could have been granted for enabling the applicant to have copies of the additional documents before the inquiry officer proceeded with the inquiry. This was not done. The inquiry proceeded against the applicant ex-parte. In Committee of Management, Kisan Degree College vs. Shambhu Saran Pandey and others. (1995) 29 ATC 123, the Supreme Court observed in a case where "the respondent, who was given a charge-sheet, at the earliest sought for inspection of the documents mentioned therein and submitted his reply to the charge-sheet. The enquiry officer replied that since the respondent had already given the reply to the charge-sheet item-wise, he was at liberty to inspect the documents at the time of final arguments. As a result of the enquiry, the respondent was dismissed from service. Postponement of the opportunity to inspect the documents to the time of final hearing was obviously an erroneous procedure. In the first instance, the delinquent should be given the opportunity for inspection and thereafter the enquiry should be conducted and then the delinquent should be heard at the time of conclusion of the enquiry." Since that procedure was not adopted and this was in violation of the principles of natural justice, the inquiry was quashed and liberty was granted to the appellant-employer to conduct an enquiry afresh.

4. In the present case after the evidence of prosecution witness was closed the stages contemplated by sub-rule 15 onwards of Rule 14 were not followed. Though the inquiry officer can allow the Presenting Officer to produce evidence

not included in the list given to the Government servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the Govt. Servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Govt. Servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interests of justice. Under sub-rule 16 opportunity has to be given to the Govt. Servant to state his defence. Under sub-rule 17 he shall be permitted to produce his evidence and under sub-rule 18, after the Government servant closes his case, if he has not examined himself, he shall generally question on the circumstances appearing against him and then after hearing the presenting officer pass the final order.

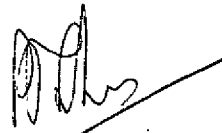
5. In *Kishan Lal Gautam vs. Union of India & Ors.* ATR 1992(1) C.A.T. 297, the Jodhpur Bench of this Tribunal took the view that under Rule 14(16) when the case for the disciplinary authority is closed, the Government servant shall be required to state his defence, orally or in writing, as he may prefer and there was no justification for denying the delinquent an opportunity to produce his defence merely because he did not attend the enquiry at the stage where prosecution evidence was recorded, particularly when as in this case, he did not attend because he had not been permitted the assistance of the defence assistant of his choice and could not arrange for another one.

10

6. In S.B.Ramesh vs. Ministry of Finance, Govt. of India & Anr. 1994 (6) SLR 183, the Hyderabad Bench of this Tribunal observed that no attempt was made to question the delinquent employee regarding the evidence appearing against him due to violation of mandatory provisions of Rule 14(18) of CCS(CCA) Rules, the enquiry was vitiated. The same position arises here and we are satisfied that on account of non-compliance of the mandatory provisions of the procedure rules of the CCS(CCA) Rules, the order holding the applicant to be guilty and imposing the punishment of removing him cannot be supported.

7. Shri Marpakwar, learned counsel for the applicant referred to the position that charge-sheet was served by one officer, the inquiry was held by another officer and finally a show cause notice was sent by another officer and the matter was concluded by a different officer. We do not have to go into this aspect of the case considering that we find that there has been substantial breach of mandatory provisions as stated above.

8. We, therefore, quash the order holding the applicant guilty and imposing the punishment of removal from service passed by the disciplinary authority and confirmed by the appellate authority and direct the respondents to reinstate the applicant within one month from the date of receipt of a copy of this order. Liberty to the respondents to proceed if ^{they} so choose ^{they} against the applicant in accordance with the rules within six months.


(P.P.SRIVASTAVA)
MEMBER (A)


(M.S.DESHPANDE)
VICE CHAIRMAN