

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-38.

Dated: 31 JAN 1994

APPLICATION NO(s) 847 of 1993.

APPLICANTS: V. Venkatesaiah v/s. RESPONDENTS: Chief General Manager,
Satellite Commn. Project, N. Delhi & Or.

TO.

1. Sri. V. Venkateshaiah
S/o, B. V. Varadaraju,
Assistant Engineer,
O/o the Divisional Engineer,
U.H.F. Installation, 2nd Floor,
14/3, Nrupathunga Road, Bangalore-2.
2. The Chief General Manager,
Satellite Communication Project,
E-2, First Floor, A.R.A. Centre,
Jhandewalan Extension, New Delhi-55.
3. Sri. M. S. Padmarajaiah, S.C.G.S.C.,
High Court Bldg, Bangalore-1.

SUBJECT:- Forwarding of copies of the Orders passed by
the Central Administrative Tribunal, Bangalore.

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Please find enclosed herewith a copy of the
ORDER/STAY ORDER/INTERIM ORDER/, Passed by this Tribunal
in the above mentioned application(s) on 12-01-1994.

*Issued on
2/2/94*

31/1
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

gm*

etc

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

APPLICATION NO. 847/1993

DATED THIS THE TWELVETH DAY OF JANUARY, 1994

Present: Shri A.N. Vujjanaradhya, Member (J)

Shri T.V. Ramanan, Member (A)

Shri V. Venkatesaiah
Assistant Engineer (UHF Installation)
2nd Floor, 14/3, Nrupathunga Road
Bangalore - 560 002

.... Applicant

Vs.

1. The Chief General Manager
Satellite Communication Project
E-2, 1st Floor, Ara Centre
Jhandewallan Extension
New Delhi - 110 055

2. Member (Services)
Telecom Commission
Govt. of India
Ministry of Communication
Dak Bhavan, Sansad Marg
New Delhi - 110 001.

.... Respondents

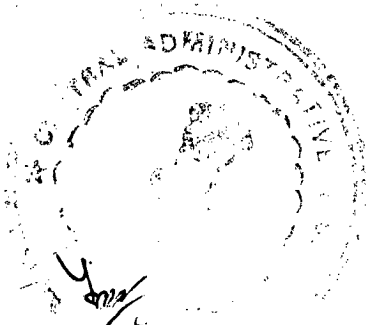
(By Shri M.S. Padmarajaiah, S.C.G.S.C.)

O R D E R

Shri T.V. Ramanan, Member(A)

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has sought reimbursement of Rs 422/- which was recovered from his salary for the month of August, 1992 and revoking the order awarding the penalty of censure dated 8th October, 1992 passed against him.

2. The brief facts of the case are: During an internal check from 4.12.1991 to 6.12.1991 it was discovered



that overpayment of Rs 164/- had been made by the applicant, an Assistant Engineer in the Satellite Project of the Department of Telecommunications. The said amount was recovered from his salary for the month of April, 1992. The applicant contested the recovery and sent six service telegrams to the Director (N), Satellite Project, New Delhi and others stating that he was not taking the salary for the month of April, 1992 because a sum of Rs 164/- had been recovered from his salary without his knowledge. Finding that the applicant had misused his position by sending personal telegrams as service telegrams because, in accordance with Rule 674 of the P & T Manual, Vol.II sending such telegrams as free service telegrams by an officer in respect of matters relating to appointments, promotions, leave or other private concerns is forbidden, a bill for payment of Rs 422/-, being the cost of the telegram, was raised against the applicant and he was required to explain as to why disciplinary action should not be taken against him under Rule 16 of CCS(CCA) Rules, 1965 (hereinafter referred to as the 'CCA Rules' for short) for misuse of powers for personal gain. The applicant in his reply denied any lapse on his part. Subsequently, on 17th August, 1992 the Vigilance Officer in the office of the Chief General Manager (Satellite Project), New Delhi, directed the Director(N), Satellite Project, New Delhi, to recover immediately the amount of loss caused to the department, that is, a sum of Rs 422/- from the applicant and it was recovered from the salary of the applicant for the month of August, 1992. On 20th August, 1992 disciplinary proceedings under Rule 16 of the CCA Rules were initiated against the applicant for having caused a loss of Rs 422/- to the department by issuing urgent service telegrams for 'personal purpose' and committing an act unbecoming of a responsible officer

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by wilfully violating the provision contained in Rule 674 of the P & T Manual, Vol.II. After considering the written statement filed in reply to the memo levelling the allegations, the Chief General Manager, Satellite Project, New Delhi, passed an order on the 8th of October, 1992 awarding the minor penalty of 'censure' on the applicant. The applicant appealed against this order before the Appellate Authority and the Appellate Authority, Member (Services), Telecom Commission, passed an order on 26th April, 1993 rejecting the appeal. Although no further appeal lies to any higher authority, the applicant filed another appeal against the order of the Appellate Authority to the Chairman, Telecom Commission. It is a matter of record that subsequently he was informed by the Chief General Manager, Satellite Project, on the basis of a communication received from the Department of Telecommunications that there was no provision for any appeal against the decision of the Appellate Authority and that if the applicant so desired he should file a revision petition under Rule 29 of the CCA Rules by addressing his petition to the appropriate authority within the time limit prescribed. This communication was sent to the applicant on 23rd September, 1993.

3. We have heard the applicant in person and also Shri M.S. Padmarajaiah, Senior Central Government Standing Counsel, appearing for the respondents and also perused the application and reply filed by the respondents.

4. The main contention of the applicant is that he was competent to send the telegrams free on service because a sum of Rs 164/- had been wrongfully recovered from his salary from the month of April, 1992, that, subsequently, the department had reimbursed the said amount to him and as such

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the action on the part of the department making a recovery of Rs 422/- being the cost of the telegrams and also proceeding against him under Rule 16 of the CCA Rules, resulting in imposition of the penalty of 'censure' was unwarranted.

5. Counsel for the respondents states that the telegrams sent being personal and not in consonance with Rule 674 of P & T Manual, Vol.II, the procedure for recovery should have been taken recourse to in accordance with Rule 673 of the P&T Manual, Vol.II. As regards imposition of the minor penalty of censure, it was done after following the procedure and as such there was no case for revocation of that order. He argued that if the Tribunal so felt, liberty could be given to the department to proceed against the applicant under Rule 16 of the CCA Rules for recovery of the amount in accordance with law.

6. We have carefully considered the arguments advanced by the applicant as also by the counsel for the respondents- Rules 674 and 673 of the P & T Manual, Vol.II read as follows:

"Rule-674: Telegrams relating to appointments, promotions, leave or other private concerns of an officer may on no account be sent by him free on service; if a reply by telegram is desired it must be repaid. Whenever a violation of this rule is noticed, the officer concerned will be called upon to pay double the cost of the message. If a violation of the rule reported by an Audit Office, the Audit officer should be informed in due course of the action taken and whether recovery has been effected. Telegrams for touring (gazetted) officers of the Department for reservation of accommodation for their use on tour and telegrams between two officers regarding appointment, promotion, leave, etc., of a third subordinate may, however, be treated as free service messages; and an officer granting leave may intimate sanction by a service telegram if this is considered advisable in the public interest."

Rule-673 : The unnecessary despatch of Service Telegrams is strictly forbidden. When a service message is faulted, the defaulting official sending the message, on account of whose fault it was issued, should be called upon to explain his negligence. If he admits his negligence and is prepared to make good the loss, he can do so. If he is not willing to make good the loss voluntarily, disciplinary proceedings as contemplated under Rule 16 of the C.C.S.(C.C.A) Rules 1965, should be started against him for imposition of the penalty of recovery of the cost, in addition to any other penalty that might be imposed by the competent authority. It should be ensured that an order for recovery is passed only after following the prescribed procedure, in cases where the officials do not accept their mistake and make good the loss voluntarily. "

A careful perusal of Rule 674 would indicate that the applicant was not competent to send service telegrams in relation to the matter concerning the recovery of Rs 164/- from his salary for April, 1992. On the other hand, under Rule 673, since the applicant was not willing to make good the loss of Rs 422/- caused to the department on account of sending the telegrams free on service voluntarily, the department should have taken disciplinary proceedings for imposition of the penalty of recovery of the cost of sending the service telegrams in addition to any other penalty that might be imposed by the competent authority. Instead of doing so, the department ordered recovery (Annexure-A14) and included the recovery of Rs 422/- in the pay slip relating to the applicant for the month of August, 1992 (Annexure-A15). No doubt, the department initiated disciplinary proceedings against the applicant on the 20th August, 1992 (Annexure-A16) and the disciplinary authority passed an order on the 8th October, 1992 awarding the penalty of censure for misconduct (Annexure-A18). The proceedings did not result in imposition of the penalty of recovery of Rs 422/- from the applicant. This is a major flaw as Rule 673 of the P & T Manual, Vol.II make it amply clear that the order of recovery ^{be} passed only after following the prescribed in case where the officials do not accept the mistake and make good



the loss voluntarily. Apparently, the prescribed procedure is the one which is prescribed in the same rule, i.e., holding disciplinary proceedings under Rule 16 of the CCA Rules. As has been seen, the department had ordered recovery in the month of August, 1992 much before the disciplinary proceedings resulted in the order of censure dated 6th October, 1992. In short, the recovery was made not as a result of the disciplinary proceedings. It is significant to mention here that in their counter reply the respondents have wrongly given the impression that the recovery was made only after following the procedure as given in Rule 673 of the P & T Manual, Vol. II, which, as we have seen above, is not correct.

7. As regards the contention of counsel for the respondents that the department could initiate fresh proceedings for recovery, we are afraid that this would not be possible for the simple reason that having taken disciplinary proceedings for misconduct and thereafter imposing the penalty of censure, a fresh set of proceedings making similar allegations and carrying the enquiry to its logical conclusion by imposing a penalty of recovery would be a case of double jeopardy.

8. Therefore, taking an overall view of the facts of the case and especially reimbursement to the applicant of Rs 164/- originally deducted from the salary of the applicant for the month of April, 1992, we are of the view that the direction given for recovery of Rs 422/- (Annexure-A14) is untenable because the said direction for recovery did not follow the culmination of the proceedings ~~which ought to have been~~ initiated under Rule 16 of the CCA Rules. We, therefore, quash the said direction given for recovery which resulted in the deduction of Rs 422/- from the salary of the applicant for the month of August, 1992. As regards the relief sought by the

applicant regarding quashing of the order of censure dated 8th October. 1992, we find that proper procedure has been followed in the disciplinary proceedings under Rule 16 of the CCA Rules and the penalty of censure imposed, No illegality or irregularity in the said order calling for our interference is made out. We find no reason whatever, looking to the circumstances of the case, to set aside the order (Annexure-A18) or the order passed in appeal (Annexure-A20).

9. In the light of our order quashing the recovery made, we direct that the amount recovered from the applicant may be reimbursed to him within a period of one month from the date of receipt of this order by respondent-1. The application is thus partly allowed. No order as to costs.

Sd-
(T.V. RAMANAN)
MEMBER(A)

Sd-
(A.N. VUJJANARADHYA)
MEMBER(J)

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S. Sankar
31/1
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: :BANGALORE

REVIEW APPLICATION NO.11/94

IN

ORIGINAL APPLICATION NO.847/93

FRIDAY, THE FIFTEENTH DAY OF APRIL, 1994

Shri A.N.Vujjanaradhya,

Member (B)

Shri T.V.Ramanan

Member (A)

V.Venkateshiah,
Assistant Engineer (UHF Installation),
II Floor,
14/3 Nrupathunga Road,
Bangalore-560 002.

...Applicant

In Person

Versus

1. The Chief General Manager,
Satellite Communication Project,
E-2, I Floor, ARA Centre,
Jhandewallan Extension,
New Delhi-110 055.

2. Member (Services)
Telecom Commission,
Govt. of India,
Ministry of Communication,
DAK Bhavan,
Sansad Marg,
New Delhi-110 001.

...Respondents

O R D E R

Shri A.N.Vujjanaradhya, Member (J)

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Heard the review applicant in person at the admission stage. He refers us to Rule 173 quoted in the order and wanted to interpret that he is entitled to send telegrams at the cost of Government for the fault of non-payment of salary, which interpretation is absolutely incorrect and not acceptable. No error apparent on the face of the record is pointed out by the review applicant. Therefore, we see no merit in this application and accordingly, the application is rejected at the admission state itself with no orders as to costs.

sd-
(T.V. RAMANAN)
MEMBER (A)

sd-
(A.A. VUDDANARADHYA)
MEMBER (J)

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S. Sankar
SECTION OFFICER 29/4
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE