

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560 038.

Dated: **11 JAN 1996**

Application No. 1494 of 1995.

Applicant(s) : Abdul Waheed,

V/s.

Respondents : The Secretary, M/o. Communications,
New Delhi and three others.,

To

1. Dr. M. S. Nagaraja, Advocate, No. 11, Sujatha Complex,
Second Floor, First Cross, Gandhinagar, Bangalore-9.
2. Sri. M. Vasudeva Rao, Addl. Central Govt. Stng. Counsel,
High Court Building, Bangalore-1.

Subject:- Forwarding of copies of the Orders passed by
Central Administrative Tribunal, Bangalore-38

-x-x-x-

A copy of the Order/Stay Order/Interim Order,
passed by this Tribunal in the above mentioned application(s)
is enclosed for information and further necessary action.
The Order was pronounced on- 07-12-1995.

Issued
W. S. Rao
11/1/96
gm*

o/c
for Deputy Registrar
Judicial Branches.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: :BANGALORE

ORIGINAL APPLICATION NO.1494/1995

THURSDAY, THE SEVENTH DECEMBER, 1995

Mr. JUSTICE P.K.SHYAMSUNDAR.
Mr. V.RAMAKRISHNAN.

VICE-CHAIRMAN
MEMBER (A)

Sri Abdul Waheed,
Aged 45 years,
S/o Late Abdul Mazeed,
No.169(4), Police Nanjaiah Lane,
Grama Devatha Street,
Aduugodi, Bangalore-560 030.

...Applicant

By Advocate Dr. M.S.Nagaraja.

Versus

1. The Union of India,
represented by the Secretary,
of the Government of India,
Ministry of Telecommunications,
New Delhi.
2. Chief Superintendent,
Central Telegraph Office,
Bangalore-560 001.
3. The Director Telecommunications,
Bangalore Area,
Bangalore-560 009.
4. Chief General Manager Telecom,
Karnataka Telecom Circle,
Ulsoor, Bangalore-560 008.

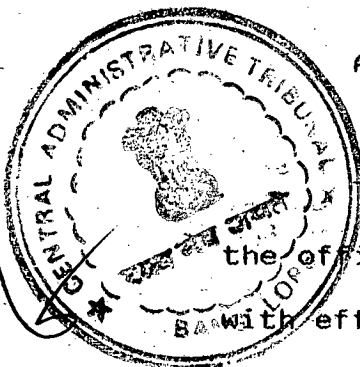
....Respondents

By A.C.G.S.C. Shri M.V.Rao.

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| O R D E R |
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Mr. Justice P.K.Shyamsundar, Vice-Chairman.

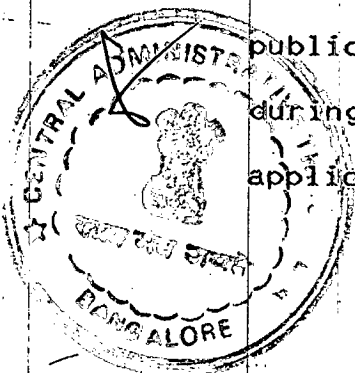
Admit.



The applicant was working as Telegraph Assistant in
the office of the Chief Superintendent, C.T.O. Bangalore
with effect from 1.1.89 to 31.3.90. During that period, the

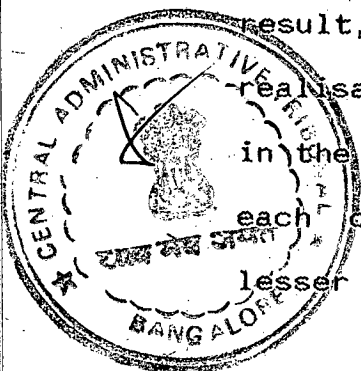
department, upon realising that there was a large gap between the amount of STD revenue due to the department and the amount actually deposited by the applicant herein while operating the STD monitor in the office of the CTO Bangalore, had initiated departmental enquiry against him charging him with failure to credit STD revenue to the tune of Rs.14,168/- and thereby failed to maintain absolute integrity lack of devotion to duty and acted in a manner unbecoming of a Government servant in terms of Rule 3 (1) (i), 3 (1) (ii) and 3 (1) (iii) of CCS (Conduct) Rules. The applicant straightaway denied the charges. The department, therefore, held an enquiry in which, they examined witnesses one being Divisional Engineer Incharge of E10B exchange, Malleswaram, where master computer is located, which is connected with CTO, where the applicant was working during the relevant period and transmitting STD and ISD calls, for which he was receiving money on behalf of the department.

The other witness for the department is the Accounts Officer, Computer, Bangalore Telecom District, who testified to the fact that the billing printout in respect of the telephone located in CTO were generated using information furnished by the E10B exchange and that this indicated the amount, which was required to be recovered from the applicant having regard to the number of calls put through from the public telephone in CTO, where the applicant was incharge during the relevant period. Some witnesses besides the applicant were examined from the side of defence among them



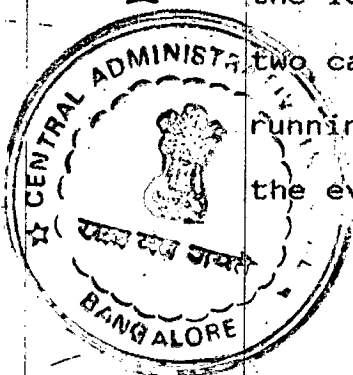
the Section Supervisors who supervised the work of the applicant at the CTO office. These witnesses stated that they had not received any communication from the department that E10B printout should be relied upon while taking over and handing over the charge. The defence witnesses have certified that they did not find any irregularity on the part of the applicant at the time of their supervision. We also notice from the records produced in case of Shri Louis in OA 14/95 the Section Supervisor deposed that the ADS monitor in CTO office had not functioned effectively atleast on 2 occasions, as the printout did not come and stop watch had to be used, since the running of the charges also did not show on the screen.

It has been brought out that periodical realisation of the amount due has to be scrutinised and certified by the Accounts Officer, but this had not been done regularly. From the materials on record it transpires that whatever calls were booked from the telephone at the CTO will automatically get registered in the E10B Master Computer at Malleswaram Exchange. The local monitor at CTO exchange is also expected to record the calls. It would appear that there was error in the recording of local monitor in this matter and as a result, the department had to look into the actual realisation from the operators working at the STD/ISD counter in the CTO establishment at Bangalore. It was found that each one of them, totaling 20 to 30 operators have deposited lesser amount with the department by recording lower turn



over as compared to what had been registered in the E10B Master Computer and thus led to loss of revenue running into several lakhs of rupees..

The charge against the applicant was that he, not only failed to credit the full STD revenue but also failed to maintain absolute integrity besides lack of devotion to duty and acted in a manner unbecoming of a Government servant. We notice that the charge did not mention that the applicant has misappropriated part of the STD revenue. The department, however, seems to have assumed that non-crediting of STD revenue automatically amount to failure to maintain absolute integrity. The case in hand presents an idiosyncratic situation. The Government servant contends that he had paid the dues as recorded in the local monitor, which is much less than what is shown at the E10B Exchange. Dr. Nagaraja, the learned counsel for the applicant submits that the Super Computer itself had gone wrong in as much as it did not record some calls made from the telephone at CTO and in that situation, recording made by the applicant in his local monitor should be taken as true and correct position. It is seen from the testimony of defence witness Shri Venkatanarayana, Section Supervisor defence witness in the case of Shri Louis in OA 14/95 that atleast on two occasions, the local monitor did not produce the printout in respect of two calls put through and stop watch had to be used since the running of the charges also did not show on the screen. From the evidence adduced, it is also seen that on some occasions,



a number may find a place in the local monitor but not in the E10B printout. Nowhere, it has come out that the E10B exchange will register calls, which were not actually made from the concerned telephone. In fact there is a definite finding, which could not be ^{rebutted} ~~reverted~~ that there was no possibility of making STD/ISD calls from any other telephone when the Master Computer E10B exchange shows them as having been made from a particular telephone. From the nature of the printout, copies of which have been annexed to the application, the E10B Super Computer generates very detailed data which gives the date, computer serial number, number to which the call was made, duration of the call. As such it would be seen that while some calls, which had actually been made from the local CTO telephone might not have found place in the printout given by the E10B exchange, whatever calls were recorded in E10B exchange did actually take place. This position has not been shaken by the defence either through their witness or through cross examination of the prosecution witness.

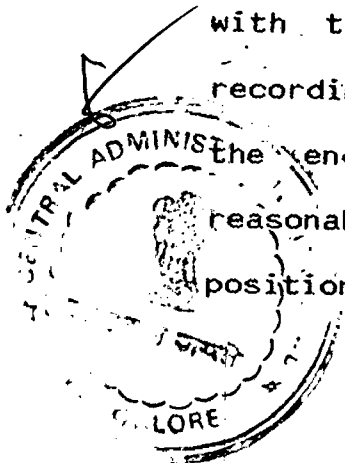
We are clear that from the evidence recorded in enquiry, no occasion arises at all to doubt the recording made by the super Computer and in ^{any} case, it had not recorded excess calls. It is not necessary that the applicant and other officials should be told that E10B printout will be relied upon. The Master Computer shows the

due to the department on account of making STD/ISD calls from the phone in CTO exchange and it is incumbent on the officer in charge to collect and deposit whatever is due to the Government.



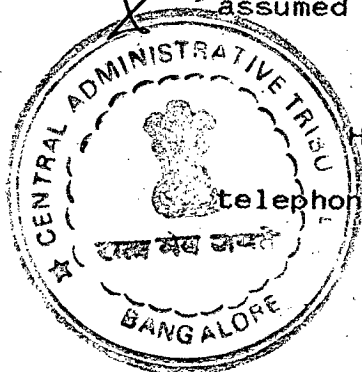
But then the applicant had been charged with failure to maintain integrity. The department seems to have gone on the assumption that the applicant has indulged in some malpractice in the local monitor to suppress local recording, but had produced no material to show that the applicant had in any manner tampered with the local monitor in the telephone at CTO so that it shows the lesser amount than what would actually have been due. The authorities have merely presumed that the applicant had tampered with the ADS monitor. The Inquiry Officer seems to have made such a presumption followed by others. The Inquiry Officer has assumed that only the ADS monitor can be manipulated, because of its manual control and operation of unwanted keys. We may in this context refer to the observation of the Disciplinary Authority, who had gone on the presumption that the applicant did not allow the ADS monitor to function freely and has used dubious keys to suppress/suspend the local recording of the ADS monitor for his personal gain.

While there is ample material to support the contention that the E10B exchange has faithfully recorded the calls put through from the CTO, from the enquiry proceedings, we notice that the allegation that the applicant had tampered with the local monitor in order to suppress the local recording was not even put across to the applicant. During the enquiry no material was made available which can form a reasonable basis to support such an assumption. This position becomes more interesting, because the person who



supervises the work of the applicant did not bring out any irregularity or mal-practice. We must point out that the evidence pointed out by the enquiry officer is totally cryptic. We had gone into this aspect and we are constrained to say that even if the evidence of the witnesses examined by the department is accepted, it had not established that the applicant was in some way responsible in tampering with the local monitor in CTO exchange during his operation. The enquiry officer also relied upon material furnished subsequent to completion of the enquiry about the modus operandi of the functioning of the machine and the applicant was kept totally in dark in respect of this post-enquiry investigation. All that has come out during the enquiry is that the performance of the Super Computer in the E 10B exchange was such that it did not reflect any excess calls compared to what were actually put through from the telephone at the CTO office and that the figures recorded by the Super Computer is much higher than what was recorded at the local monitor. Obviously there are reasons as to why the local monitor ^{did not} reflect accurately the calls put through it.

But in the absence of any evidence, it has not been established that the applicant tampered with the instrument in the CTO office. We, therefore, hold that there is no evidence at all to establish the guilt of the applicant as assumed leading to the conclusion that he lacked integrity.



However, the applicant, who was in charge of the telephone at CTO from which STD and ISD calls were put

through was expected to be vigilant and to collect what ever dues accrued to the department. The enquiry has established that the amount deposited by him are much less than what has been recorded by the Super Computer at E 108 exchange. Therefore, there is a loss of revenue to the department and the applicant is responsible to make up this loss of revenue as enjoined by the rule 58 of Posts & Telegraphs Financial Handbook, which read as follows:-

"Every Government officer should realise fully and clearly that he will be held personally responsible for any loss sustained by Government through fraud or negligence on his part and that he will also be held personally responsible for any loss arising from fraud or negligence on the part of any other Government Officer to the extent to which it may be shown that he contributed to the loss by his own action or negligence. Detailed instructions for regulating the enforcement of such responsibility will be found in Appendix 4."

("emphasis supplied")

We, therefore, hold that there is no material to prove that as a result of the enquiry, the applicant was guilty of any misappropriation or lack of integrity. But on the contrary, he is liable on the score of being negligent in not realising and properly accounting for Government revenue. The conclusion of the concerned authorities that the applicant had adopted his own personal ingenious method of suppressing the local recording and that he wanted to defraud

the Government cannot be sustained, as no evidence at all on this point was adduced during the inquiry and such an allegation of tampering with the local monitor was not even



put across to the applicant either in the statement of imputations or during the inquiry and he was not asked to putforth his submissions on this point.

Having regard to the punishment, we have to quash the punishment order passed by the Disciplinary Authority. The quashing of punishment order will not restrain the department to recover revenue loss as adumbrated in the chargesheet as the recording of Master Computer cannot be faulted, as it has not in any case recorded excess calls. In the circumstances, it would clearly show negligence on the part of the applicant and therefore, make him liable for action in terms of rule 58 referred to supra.

Though the punishment order is quashed, the department is entitled to recover a sum of 14,168/- as shortfall of revenue due to the Government, which is sought to be recovered as has ^{been decided} ~~been decided~~ by the department. However, the applicant will be eligible for consideration for advancement in his career without recourse to the order just now quashed. We also make it clear that in case, the entire amount due is not recovered before retirement from the applicant, the balance will be recovered from his DCRG.



Gaja

Sd-
(V. RAMAKRISHNAN)
MEMBER (A)

TRUE COPY

Sd-
(P.K. SHYAMSUNDAR)
VICE-CHAIRMAN

[Signature]
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore