

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No. 989/93

Date of Decision 12.2.97

B.M.Gavali

Petitioner

Shri H.Y.Deo

Advocate for the Petitioner.

Versus

Union of India & Ors.

Respondent

Shri P.M.Pradhan.

Advocate for the Respondents.

Coram:

The Hon'ble Mr. B.S.Hegde, Member(J),

The Hon'ble Mr. 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?

  
(B.S. HEGDE)  
MEMBER(J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.989 OF 93.

Provenued this the 17<sup>th</sup> day of February 1997.

Coram: Hon'ble Shri B.S.Hegde, Member(J),  
Hon'ble Shri P.P.Srivastava, Member(A).

B.M.Gavali,  
1556, Shukrawar Peth,  
Pune - 411 002. ... Applicant.

(By Advocate Shri H.Y.Deo)

V/s.

1. Union of India through  
The Chairman Telecom Commission  
Department of Telecommunication,  
Sanchar Bhavan,  
Ashok Road,  
New Delhi - 110 001.
2. The General Manager,  
Pune Telecom  
Telephone Bhavan,  
Bajirao Road,  
Pune - 411 002.
3. The Sr. Superintendent  
Central Telegraph Office  
Pune Division,  
C.T.O. Compound,  
Pune - 411 001. ... Respondents.

(By Advocate Shri P.M.Pradhan, C.G.S.C.)

ORDER

(Per Shri B.S.Hegde, Member(J))

Heard Shri H.Y.Deo for the applicant and  
Shri P.M.Pradhan for the Respondents. In this C.A.,  
the applicant is challenging the impugned order  
dt. 23.5.1992 passed by the Disciplinary Authority,  
as well as, the Appellate Order dt. 21.10.1992 respectively  
and to restore the pay scale of the applicant before the  
imposition of the punishment order.

2. The applicant is working as a Telegraph Assistant,  
Pune. It is stated that Respondent No.2 has extended  
and installed the two STD Public Call Offices in  
the premises of C.T.O. Pune, which are connected to the

....2.

Mahadji Shinde Telephone Exchange through the underground cable and the overhead line. These PCO's were attended by the Telegraph Assistants of C.T.O. Pune, round the clock, in the shift duties. One meter is provided at each Public Call Office for recording the charges for the successful call. These meters remain in the sealed condition, so that no Telegraph Assistant, attending the STD PCO can tamper with it. The Attendants of these STD PCO's are required to dial the STD Telephone Number demanded by the subscriber and after the completion of the conversation, the attendant is required to collect the charges from the subscriber, in accordance with the concerned meter situated in the Public Call Office. Then the attendant is required to note down the meter reading and the money collected in the concerned slip. All these functions of the concerned Telegraph Assistant attending the STD PCO are supervised by the Supervisor appointed specially for this purpose by the C.T.O. Pune. He further analyses the procedure adopted by the STD PCO in Pune stating that the attendant is required to deposit the collected money with the Section Supervisor, Billing, along with the necessary accounts, and hand over to the next attendant. The practice <sup>in CTO Pune</sup> is that if the accounts are not tallied, the concerned attendant keeps the collected money with him, till the accounts are tallied. Then after tallying the accounts on the next date, the concerned Section Supervisor issues the short note to the attendant. So far as para 4.3 is concerned the procedure is found to be factual, there is no dispute about it and the collection of the charges

...3.

*AK*

and issue of receipt in form ENG-8 is also done by the PCO attendant. Particulars of the call duration charges and receipt numbers are required to be entered in the call slips by the concerned attendant. So far as the para 4.4 is concerned, the respondents deny the contentions of the applicant stating that the applicant is trying to mislead the Hon'ble Tribunal by narrating the procedure of tallying the accounts and handing over cash in distorted manner. The correct procedure is to tally the accounts by the concerned attendant and make over the amount to his reliever through making over books. The attendant is not authorised to keep cash with him even though the accounts are not tallied. The Supervisor Billing Section exercises the checks of the amounts collected with respect to the receipts issued and discrepancy if any in collection of the amount by the particular attendant. As a matter of fact short remittance of the cash by the applicant on 13.6.1989, 15.6.1989, 16.6.1989 and 21.6.1989 no short note was issued by any of the Supervisor as averred by the applicant in this paragraph. The short credit was noticed by the Section Supervisor, Billing Section while checking the accounts and found no note put by the applicant for making over the accounts, and no short note was put up by the applicant and a casho so short credited by the applicant was subsequently deposited by him after two or three days. Accordingly the Respondents issued a charge sheet vide order dt. 5.8.1989, it was replied by the applicant on 5.9.1989. The Enquiry Officer was appointed by the Disciplinary Authority on 3.1.1990. On completion of the enquiry the Enquiry Officer submitted his report on 20.1.1992 and the copy of the Enquiry Report was served on the applicant by the disciplinary authority on 24.2.1992. The applicant made a representation on

the Enquiry Report on 9.3.1992 and thereafter the Disciplinary Authority has passed the impugned order dt. 28.5.1992 against which the applicant preferred an appeal on 22.6.1992 and the same was rejected by the D.G.M., Telecom Pune on 21.10.1992. Though he filed second appeal not under the Rules, no reply is received by him. Thereafter he has filed this O.A. challenging the impugned order.

3. It is submitted that the applicant was on duty during the period from 20.00 hrs on 24.4.1989 till 8.00 hrs. on 25.4.1989 and was incharge of STD PCO. The unaccounted calls in question were put through from the Telephone Numbers of these STD PCOs of the Respondents, whereby the applicant cannot escape his responsibility by merely saying that the calls in question have been dialed by some other persons from unknown places without producing any proof to that effect. It is submitted that unless such proof is produced, responsibility of the applicant is very much established by virtue of his being on duty during the period and functioning as incharge of the STD PCOs. The learned counsel for the applicant Shri H.Y.Deo during the course of hearing urged that the charge sheet issued by the respondents is vague and indefinite and the charges have not been proved against him. Secondly, the Presenting Officer during the course of the inquiry furnished the observation sheets pertaining to the observations taken in the Telephone Exchange and the same has not been signed by anybody, therefore it cannot be treated as an authentic document. All these matters have been considered by the Enquiry Officer in his report as stated, that the applicant did not engage any defence

assistant. There was no witness in the case. The final enquiry was conducted on 29.7.1991 after brief summary was taken from the Presenting Officer, as well as, officials, thereafter the report was finalised giving due opportunities to both the parties and had come to the conclusion that on a perusal of the M.L.O.E. sheets Telephone Numbers and checked the availability of the receipts. There were no receipts for 13 calls. The S.P.S. contended that these calls are made by somebody in the Telephone Exchange. This is not tenable since the M.L.O.E. print out had come from the Exchange only, accordingly, the charge is also proved. So he made representation which has been rejected by the competent authority both the Disciplinary Authority, as well as, the Appellate Authority. He has further stated that he has gone beyond the Disciplinary Authority which is found not tenable on perusal of the Appellate Order. It only stated that we find that the order passed by SSTT Pune are based on documentary evidence, Report of the Enquiry Officer considering all aspects and gravity of offence. Domestic problems cannot be ground for such serious lapses. Last five years record reveals that the SPS has been awarded punishments on account of rude behaviour with the public, misappropriation of Govt. cash and insubordination. Accordingly, he had no reason to reduce the punishment awarded by the Disciplinary Authority and agreed with the findings.

4. The learned counsel for the applicant Shri H.Y.Deo in support of his contention has cited certain decision of the Tribunal, as well as the Apex Court. (1) G.Sivadasan V/s. Garrison Engineer & Ors. (1995 (1) ATC 200) wherein it is stated that the

Appellate Authority has to examine the grounds raised in Appeal and then pass the speaking order and directed the appellate authority to pass a speaking order. That cannot be treated as a general direction to any Appellate Authority passed against the order by the Disciplinary Authority that <sup>is</sup> relevant to the facts of that case. (2) Khairati Lal V/s. Commissioner of Police ¶ 1996(1) ATC 42¶, this case has no relevance to the facts of this case. (3) Transport Commissioner, Madras V/s. A.Radha Krishna Moorthy ¶1995(1) A.T.J. 299¶, wherein the Apex Court has held that so far as the Disciplinary Proceedings are concerned the charge memo and truth and correctness of the charges, the Tribunal has no jurisdiction to go into particularly at a stage prior to the conclusion of the Disciplinary Inquiry. In that decision it is stated that non-supply of particulars of charge or supporting materials even the charges were not clear, the charges were unsustainable and not true. That vagueness of the charges ~~are concerned~~ in-sofar as that case is concerned cannot be, that the charges are vague in this case. However, the charges levelled against the applicant is established during the enquiry, that plea is not available to the applicant after the punishment is imposed on him. He should have raised that plea before the Enquiry Officer which is not done in this case. Therefore, the second proposition laid down in that case would not apply to the facts of this case. In that case also the Apex Court has clearly held that it is not for the Tribunal to re-appraise the evidence while reviewing the decision of the Competent Authority. Lastly he cited this Tribunal's decision in Purushottam Sadashiv Kakirde V/s. Union of India & Ors.

(1995 31 ATC 80) wherein it is held that nonsupply of relevant documents to applicant when <sup>were</sup> they listed in the list of documents, was against the principles of natural justice and vitiated the disciplinary enquiry against him. That is not the scenario in this case. He has been supplied with the required documents, as a matter of fact, he did not avail the defence assistant, therefore, the ratio laid down in that case would not apply to the facts of this case.

5. Therefore, in our view, the decision cited by the learned counsel for the applicant does not help him in any way to disprove his guilt. The Apex Court has held that the Tribunal cannot interfere with the finding of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislation or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with the principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority.

That being the legal position, on a perusal of the records we find that no such infirmity or injustice is caused to the applicant in imposition of the penalty by the competent authority and the learned counsel has not pointed out any such infirmity during the course of the hearing.           

For the reasons stated above, and in the facts and circumstances of the case, we do not see any merit in the OA, the same is dismissed with no order as to costs.

  
(P.P. SRIVASTAVA)  
member (A)

  
(B.S. HEGDE)  
Member (J)