

CENTRAL ADMINISTRATIVE TRIBUNAL: MUMBAI BENCH

ORIGINAL APPLICATION NO.334 OF 1993

THURSDAY, THIS THE 8TH DAY OF JULY, 1999.

Shri Justice S.Venkataraman, .. Vice-Chairman.

Shri S.K.Ghosal, .. Member(A).

Suryabali Devraj Pande,
of Bombay Indian Inhabitant,
residing at No.5, Härharwala,
Building No.12, Ground Floor,
N.M.Joshi Marg, Bombay-400 011. .. Applicant.

(By Advocate Shri Suresh Kumar)

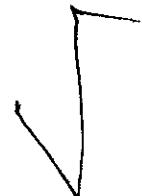
v.

1. Union of India,
through the Secretary,
Ministry of Communication,
Central Secretariat,
New Delhi-110 001.
2. Director General,
Post & Telegraph Department,
New Delhi.
3. Chief General Manager,
Mahanagar Telephone Nigam Limited,
a public limited company registered
under the Companies Act, 1956
and having his office at
Telephone House, Dadar, Bombay-400 028.
4. General Manager (North),
Mahanagar Telephone Nigam Limited,
a public Limited Company,
registered under the Companies Act, 1956 and
having his office at Wadala
Telephone Exchange Building,
Wadala, Bombay. .. Respondents.

(By Standing Counsel Shri V.S.Masurkar)

--

O R D E R



O R D E R

Justice S.Venkataraman, Vice-Chairman:-

The applicant has filed this application challenging the order dated 9-3-1993 (Annexure-A1) passed by the President acting as the Disciplinary Authority and holding that the charge against the applicant had been proved and imposing the penalty of dismissal.

2. The applicant was working as a Sub-Inspector in Bombay Telephones. The Director General of P & T by an order dated 15-3-1983 in exercise of the power under Rule 18 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as 'the Rules') directed that disciplinary action against the applicant and 4 others shall be taken in a common proceeding, that he shall function as the Disciplinary Authority for the purpose of common proceeding, competent to impose all penalties specified in Rule 11 and that the procedure prescribed in Rules 14 and 15 shall be followed. Thereafter the Director General issued a charge sheet to the applicant on 15-3-1983. The charge framed against him was ^{that} during 1978 when he was functioning as Sub-Inspector (Phones) with a view to provide telephone connection to Shaikh Amar, Proprietor of Al-Hashmi Overseas Service at Sane Guruji Marg, Bombay in the name of his wife Smt. Shehjahan Shaikh Amar for a consideration of Rs.6,000/- and for that purpose he in collusion with Sri C.D.Pande, Lineman of Bombay Telephones managed to get and used forged documents, viz., photo-copy of marriage certificate of

Smt. Shahjahan with Shri Sheikh Amar, photo copy of school leaving certificate of Miss Shahjahan, consent-cum-declaration affidavit of Shri A.S.Khan and Smt. Shahjahan Sheikh Amar etc. and got the telephone registration number of Shri A.S.Khan transferred to the name of Smt. Shahjahan Sheikh Amar and Telephone No.392905 was installed at the building of Shaikh Amar and that he demanded and accepted Rs.5,000/- from Shri Shaikh Amar for the said transaction and that he thereby committed grave misconduct. The applicant having denied the charge, the Commissioner of Inquiries (Vigilance) was appointed as Inquiring Authority. The Inquiring Authority held the preliminary hearing on 8-8-1993 at New Delhi. On that day, the applicant was not present. The Inquiring Authority admitted some additional documents produced by the Presenting Officer who was a Police Inspector of Vigilance and then after recording that the copies of statements of 15 witnesses which had earlier been recorded were handed over to the charged officers who were present, gave a direction that the Presenting Officer shall give those copies to the applicant and another charged employee who was also absent. He then gave the following directions to the Presenting Officer:-

"The P.O.shall arrange the inspection of documents in his office by all the C.Os by 17-8-1983 and confirmation to that effect will be given to me by the P.O.along with the certificate of inspection by the C.Os.

The C.Os shall give me a list of additional documents/- witnesses with copy to the P.O. by 20-8-1983 while doing so they should indicate the nature and the relevancy of the documents to the charges and also the full address of the custodian in respect of each document. RElevancy

in respect of witnesses shall also be given. The Inquiry Officer shall indicate the relevancy of the documents/witnesses by 25-8-1983 to the CO/PO.

The P.O. shall then procure the relevant additional documents by 30-8-1983 and arrange for their inspection by the C.Os by 5-9-1983 and intimation to the Inquiry Officer would be given by the P.O. about the fact that the inspection has been done by that date."

After giving the above directions, the Inquiring Authority fixed the regular hearing on 8th and 10th October, 1983. The Inquiring Authority conducted the inquiry on the above dates at Bombay.

The applicant was not present during the inquiry and the inquiry proceeded in his absence. After completing the proceedings on the above dates, the copy of the proceedings and the statements of witnesses recorded during the inquiry were sent to the applicant with a direction that he should file his defence brief. The applicant sent his defence brief wherein he pleaded that he was not at all intimated about the date of preliminary hearing or the dates for regular hearing in time, that a copy of the proceedings sheet of 8-8-1983 sent by the Inquiring Authority on 5-3-1983 was forwarded to his leave address and he received the same on 12-9-1983, that by that date ~~of~~ the time prescribed for inspection etc. had expired, that he was also not sent copies of statements, that he had been on earned leave which had been sanctioned earlier from 17-8-1983 to 18-9-1983 and that as he had fallen sick he was on leave on medical certificate till 19-10-1983 and joined duty only on 24-10-1983 and that it is for that reason he could not be present during the inquiry and that his absence was beyond his control. He also questioned the validity of the order passed by the Director

General for holding common proceedings and appointing the Inquiring Authority.

3. The Inquiring Authority submitted a report holding that the applicant was guilty of the charge. In the course of the report, he observed that the applicant had remained absent during the regular hearing deliberate to escape being identified.

4. The Board which was then in existence, by its order dated 13-12-1984 imposed the penalty of dismissal against the applicant. The appeal filed by the applicant was rejected on 15-6-1990. The Tribunal by its order dated 8-8-1991 quashed the penalty order mainly on the ground that copy of the inquiry report had not been furnished to the applicant. Subsequently, copy of the inquiry report was furnished to the applicant and after considering the representation given by the applicant the President has passed the impugned order on 9-3-1993.

5. In this application, the first ground urged by the learned counsel for the applicant was that the Director General was not competent authority who could have passed the order for holding common proceedings inasmuch as one of the charged officers could not have been dismissed by the Director General and that it was only the Board which was the competent Disciplinary Authority and as such the entire proceedings are vitiated. He also pointed out that in another case where the same officer and four others were involved and where the same Director General had passed the order under Rule 18 subsequently the entire proceedings had been held to be void by the Ministry of Communications, Department of Telecommunications as could be seen from

Annexure-A18 and that however in this case the same objection has not been accepted. It is no doubt true that Annexure-A18 would indicate that in another case the Government took the view that as the Director General was not competent to impose the penalty of dismissal on Sri S.L.Pol, the order of common proceedings issued by him and the further proceedings held in pursuance thereof are null and void. But, that does not mean that if legally the proceedings are not void, even in other similar cases the Government should take the same view.

6. The fact that the Director General was not competent to impose the penalty of dismissal against Shri S.L.Pol and that at that time it was only the Board which should have imposed that penalty is admitted by the respondents, the question is whether this irregularity in ordering common proceedings can be said to vitiate the entire proceedings. Firstly it is only against Shri Pol the Director General could not have initiated common proceedings and if at all he can take objection to that order. So far as the applicant and others are concerned, the Director General had the competence to pass the order of dismissal even though he was not the Disciplinary Authority. As such the applicant cannot contend that the entire proceedings against him are vitiated. Secondly, the legal position as laid down by the Apex Court is that even if the charge sheet is issued by an authority subordinate to the Disciplinary Authority, the proceedings initiated on the basis of that charge sheet would not be vitiated if the punishment order is passed by the competent authority [See: DIRECTOR GENERAL, ESI AND ANOTHER v. T.ABDUL

RAZAK - (1996) 4 SCC 708 and STEEL AUTHORITY OF INDIA AND ANOTHER v. Dr. R.K. DIWAKAR AND OTHERS - AIR 1998 SC 2210]. In view of this position the decisions in UNION OF INDIA v. PREMCHAND [1973 (2) SLR 344] and ASHOK Y.NAIK v. THE ADMINISTRATOR OF GOA, DAMAN AND DIU AND OTHERS [1978 (2) SLR 679] which were cited by the learned counsel for the applicant wherein it has been held that if the order under Rule 18 is passed by an authority who is not ~~the~~ competent, the entire proceedings would be without jurisdiction and void, cannot be followed.

7. The learned counsel for the applicant has mainly contended that the proceedings have been completed by the Inquiring Authority without giving reasonable opportunity to the applicant to defend himself, that he was not at all informed of the date of preliminary hearing, that though some dates had been fixed for furnishing documents and inspection of documents as well as for the applicant to furnish his list of witnesses and documents, he was not at all intimated in that regard before due date and that except the copy of the proceedings sheet which was received long after the date fixed for various steps to be followed had elapsed, no other notice for the date of hearing was received ^{by} him and that the Inquiring Authority without trying to find out whether the Presenting Officer had complied with the directions given on the previous date has proceeded to record evidence even ^{that} the applicant was absent and has completed the entire proceedings within 3 days. He also contended that the applicant had obtained sanction of earned leave and he was availing it in his place and that he was also subsequently sanctioned

medical leave on the basis of medical certificate produced by him as he had fallen sick and that though the department knew these facts, it was not brought to the notice of the Inquiring Authority who also did not try to find out whether the applicant had been served with the notice and that in the circumstances the entire proceedings held behind the back of the applicant are vitiated. He also contended that though the previous statements of witnesses which were directed to be furnished to him, the same were not furnished and without verifying that fact the Inquiring Authority has proceeded with the inquiry and that on account of these grave lapses, there is failure of principles of natural justice inasmuch as the applicant did not have reasonable opportunity to defend himself.

8. The respondents have neither categorically asserted that the applicant was served with the notice of the date of preliminary hearing which had been fixed on 8-8-1983 nor have they pleadd that the Presenting Officer had complied with the directions given to him on 8-8-1983 so far as the applicant is concerned. The learned counsel for the respondents mainly contended that admittedly the applicant received the copy of the proceedings sheet of 8-8-1983 and as such nothing prevented him to bring it to the notice of the Inquiring Authority that he received the intimation only after the date fixed for varous steps to be taken had expired or that because he was not well he was unab-le to attend the inquiry and that he cannot now take up that plea. He also submitted that as the Inquiry Officer was the Commissioner of Inquiries (Vigilance) and the impugned

order has been by the President, it must be inferred that all steps have been taken in that regard.

9. The submission that an inference that all requirements of law have been complied with merely because the Inquiring Authority was the Commissioner of Inquiries or that the order is passed by the Prsident cannot be accepted. When specific allegations about the charged employee not being informed about the date of hearing or about non-supply of essential documents and non-compliance with some statutory rules are made, the respondents have to demonstrate with reference to the records that those averments are not true and correct. In the instant case, we have gone through the records of the disciplinary proceedings and there is nothing to show that the applicant was given prior intimation of the date of preliminary hearing which was to be held at New Delhi. Though the copy of the proceedings sheet dated 8-8-1983 was received by the applicant on 12-9-1983 the fact remains that all steps which had to be taken viz., inspection of documents, furnishing of list of defence witnesses and documents, inspection of additional documents had all been over and the applicant had not been informed by the Presenting Officer about the various steps which had to be taken. In fact the records show that on 8-9-1983 the Presenting Officer wrote to the Inquiring Authority that ^{no} ~~no~~ efforts were made to secure the presence of the applicant for inspection of the documents and for handing over copies of the statements, ~~which~~ he has not attended. The Presenting Officer has not stated in that letter that the applicant was actually intimated about the date fixed

for inspection for inspection of documents etc. In his letter dated 24-9-1983 the Presenting Officer has informed the Inquiring Authority that efforts were made to secure the presence of the applicant for furnishing copies of statements and inspection of documents, that the applicant had not turned up and that he was reported to be on leave and out of headquarters. This clearly shows that the Presenting Officer had come to know even by 24-9-1983 that the applicant was on leave and he was out of headquarters. The applicant had not been informed about the date for inspection of documents nor had he been furnished with the statements of witnesses.

10. When the Inquiring Authority commenced regular hearing on 7-10-1983 he has not made any efforts to find out whether the Presenting Officer had complied with his directions so far as the applicant is concerned and as to whether the applicant had been given opportunity to inspect the documents and whether he had been given intimation about the date of hearing. Though there was material before him by way of the letter of the Presenting Officer that the applicant was on leave and was out of headquarters and as such he could not be secured, the Inquiring Authority has proceeded with the inquiry and completed it in one sitting of 3 days. It is not disputed by the respondents that the applicant had extended his leave on medical grounds and he had produced medical certificate and on the basis of that certificate the Controlling Officer had sanctioned leave. As such, the fact that the applicant was on medical leave must have been known to the departmental people and through them



to the Presenting Officer. It is no doubt true that the applicant could have also written to the Inquiring Authority about his sickness and sought for time. But, when the fact that he was on leave was already known to the Presenting Officer as well as the departmental officials, it was their duty to bring that fact to the notice of the Inquiring Authority. Neither the Presenting Officer thought it proper to inform the Inquiring Authority about the facts that the applicant had been on leave and that he was out of headquarters and that as such he could not be given inspection of documents or copies of statements nor did the Inquiring Authority took note of the letter which had been earlier submitted by the Presenting Officer. In a case where the charged employee was facing serious charge, which was likely to end in his dismissal if the charge was proved, the Inquiring Authority ought to have ensured that charged employee had reasonable opportunity to defend himself. It is not disputed that the copies of statement of witnesses recorded earlier had not at all been furnished to the applicant before the commencement of the inquiry. In STATE OF U.P.v. SHATHRUGNALAL [1998, (5) Service Law Reporter 43 (SC)] it has been held that one of the principles of natural justice is that a person against whom action is proposed to be taken has to be given an opportunity of hearing, that this opportunity has to be an effective opportunity and not a mere pretence. In that decision a reference is made to the decision of the Supreme Court in 1986 (3) SCC 229 wherein it is laid down that the lapse in supplying copies of the statement of witnesses would vitiate the departmental proceedings unless it was shown and established that the fact

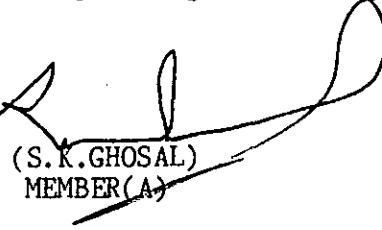
of non-furnishing copies of those documents had not caused prejudice to the delinquent in his defence.

12. This is not a case where long after the completion of the inquiry the applicant is putting forth some excuse for his absence or about the non-compliance with the directions given by the Inquiring Authority on 8-8-1983. When the Inquiring Authority sent him the proceedings of 7th to 10th October, 1983 and asked him to give his defence brief, he has mentioned about the facts that he had, ^{been} on leave and was staying in his village and that the department knew his leave address, that inspite of that he has not been informed of the date of hearing and that he was also not supplied with the copies of documents. Atleast when this defence brief was received, the Inquiring Authority could have verified if the applicant was on medical leave as stated by him and then given him an opportunity to appear and cross-examine the witnesses already examined after inspecting the documents and furnishing the copies of statements. But, the Inquiring Authority choose to submit the report stating that the applicant had deliberately remained absent, for which inference there was no justification at all.

13. In the instant case, the applicant has not been given reasonable opportunity to defend himself and as such there has been violation of the principles of natural justice and as such the impugned order cannot be sustained.

14. For the above reasons, this application is allowed and the impugned order is quashed. It is seen that the misconduct is alleged to have taken place nearly 21 years back. The

Direct
charge itself is issued 16 years back. As the charge itself is grave, we direct the competent authority to take into consideration the long lapse of time and determine whether this is a fit case where a fresh inquiry has to be held against the applicant. If it is decided to hold a fresh inquiry, which decision shall be taken within 2 months from the date of receipt of a copy of this order, then the inquiry itself shall be completed within 6 months thereafter subject however to the applicant co-operating in the inquiry.


(S.K.GHOSAL)
MEMBER(A)


(S.VENKATARAMAN)
VICE-CHAIRMAN.

np/