

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 909/93

Date of Decision: 30/9/98.

D. Shankar Rao

Petitioner/s

Shri G.S.Walia

Advocate for the
Petitioner/s.

v/s.

Union of India & 2Ors.

Respondent/s

Shri S.S.Karkera for
Shri P.M.Pradhan

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman.

Hon'ble Shri D.S.Baweja, Member(A).

- (1) To be referred to the Reporter or not? *NO*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *NO*

abp.

R.G. Vaidyanatha
(R.G. VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GULESTAN BLDG.NO.6, 4TH FLR, FRESCOT RD, FORT,
MUMBAI - 400 001.

ORIGINAL APPLICATION NO.909/93.

DATED THIS 30TH DAY OF SEPTEMBER, 1998.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman.
Hon'ble Shri D.S.Baweja, Member(A).

D.Shankar Rao,
Ex.Motor Driver,
In the office of
SDO Telecom, Nanded.

... Applicant.

By Advocate Shri G.S.Walia.

V/s.

1. Union of India, through
General Manager,
Telecommunication,
Marathwada,
Nanded - 431 631.
2. Telecom District Engineer,
Nanded,
Maharashtra,
431 631.
3. Telecom District Manager,
Ahmednagar,
Maharashtra,
414 001.


... Respondents.

By Advocate Shri S.S.Karkera for
Shri P.M.Pradhan.

I O R D E R I

I Per Shri R.G.Vaidyanatha, Vice Chairman I

1. This is an application filed by the applicant challenging the Disciplinary proceedings and the penalty imposed against him. Respondents have filed reply opposing the application. We have heard Shri G.S.Walia for the applicant and Shri S.S.Karkera on behalf of Shri P.M.Pradhan for respondents.
2. The applicant was working as a Driver in the Telecom Department. A Disciplinary enquiry was held against him for use of vehicle MZZ 1334. Three charges were framed against the applicant. The applicant accepted the first charge with some explanation and denied charges 2 and 3.



After holding Enquiry, the Enquiry Officer held that all the three charges are proved, the Disciplinary Authority accepting the report of Enquiry Officer also held that all the three charges are proved and then by order dated 20/3/91 imposed the punishment of dismissal from service. The applicant challenged the same by preferring an appeal before the Appellate Authority, The Telecom District Manager. The Appellate Authority, by order dated 3/10/92, accepted the appeal partly in so far as charges 2 and 3 are concerned, and exonerated the applicant but held that charge No.1 is proved due to admission of applicant and then converted the penalty of dismissal from service to removal from service.

3. Being aggrieved by the order of Appellate Authority, the applicant has preferred this application. The applicant has taken number of grounds in the OA challenging the orders of Disciplinary Authority and Appellate Authority. Respondents have filed reply justifying the action taken against the applicant. They have pleaded that enquiry has been held as per rules and the penalty imposed has been justified from the facts and circumstances of the case.

4. At the time of arguments, Shri G.S.Walia, learned counsel for applicant confined his attack only on the gravity of the penalty imposed on the applicant. The learned counsel for respondent's submitted that having regard to the facts and circumstances of the case, the penalty imposed is fully justified.

5. We have already seen that three charges were framed against the applicant. Charge No.1 pertains to applicant using the Government vehicle unauthorisedly on 7/11/87. The 2nd charge is that applicant has misused the vehicle inspite of punishment on the similar charge on previous occassion. Charge No.3 is that while the applicant was misusing the vehicle, he caused accident to the vehicle by his negligence.

6. We have already seen ^{that} both the Enquiry Officer and the Disciplinary Authority have found that all the three charges are proved. But the Appellate Authority has accepted

the applicant's case so far as charge No.2 on the ground that it amounts to double jeopardy. It also accepted the case of applicant regarding charge No.3 on the ground that the alleged allegation of accident was a mere suspicion. Having exonerated the applicant on charges 2 and 3, the Appellate Authority holds that charge.No.1 is proved due to admission of the applicant. Then he straightaway proceeds to pass the order of punishment by imposing the penalty of removal from service instead of dismissal from service. //

7. When the disciplinary authority has imposed the punishment of dismissal from service on the ground that all the three charges are proved, the Appellate Authority having held that two charges are not proved, has not given any indication for imposing the punishment of removal from service instead of dismissal from service and whether the penalty of removal from service was justified or necessary.

8. The first charge which is held to be proved on admission of applicant is that on that day the applicant had taken the Government vehicle without permission. The applicant gave an explanation which finds a place in the Enquiry report and also in the charge sheet that he took the vehicle to carry a friend, who was a colleague in the department, since the friend's father was stated to be seriously ill. We are not for a moment suggesting that Government vehicle can be taken for private purpose. If the vehicle had been taken due to emergency, though it may not be sufficient to exonerate the Officer or condone the use of vehicle for private purpose, but it will certainly have some bearing on the penalty to be imposed. The Appellate Authority has not mentioned any special circumstances of the case while imposing penalty of removal from service particularly after having accepted the applicant's case ^{not} for two charges as not proved.



9. As rightly pointed by learned counsel for respondents, the scope of interference by this Tribunal even regarding punishment is limited., and the competent authority is the authority to decide the quantum of punishment. This Tribunal cannot normally interfere with the order of punishment. As can be seen from the recent trend of Supreme Court Decisions, it is only in very rare cases, when it show the conscience of Court, then it may interfere with the quantum of punishment. Anyhow, the Tribunal should not take upon itself the task of deciding the quantum of punishment but should leave the matter to the Competent Authority to take a decision on the facts and circumstances of the case. It may be that to shorten the litigation, the Tribunal may itself substitute the punishment. The Division Bench of this Tribunal to which one of us was a party (R.G.Vaidyanatha) in OA-912/92 in order dated 28/10/97 has observed the general principles on this point on the basis of the recent Supreme Court decisions. In that case this Tribunal had remitted back the matter to the Appellate Authority to take a decision on the question of punishment short of removal from service and dismissal from service.

10. Similarly, in the present case, we are not sitting to decide as to what is the appropriate punishment., we feel that the matter should be left to the Appellate Authority to consider the facts and circumstances of the case. The admission of the applicant regarding 1st charge must be read with the explanation of the applicant; ~~the~~ fact that the applicant has been exonerated from charge No.2 and 3 must be borne in mind and then Appellate Authority to apply his mind and take a decision regarding penalty. Justice must be tempered with mercy. The penalty should not be disproportionate to the misconduct. Penalty to be ^{commensurate} commemorate to the misconduct. Therefore, we direct the Appellate Authority that after giving a personal hearing

to the applicant on the question of penalty, he must decide about nature of penalty. Since this is a matter of 1987, we feel that the Appellate Authority should be directed to take a decision with a time bound programme. At this stage it is also mentioned since the guilt of applicant is admitted the question of backwages will not arise and applicant will not be entitled to ^{any} backwages till the date of order of Appellate Authority to be passed and ~~question~~ of future wages will depend upon the decision to be taken by the Appellate Authority. Liberty to applicant to make written representation regarding quantum of penalty within 4 weeks from today.

11. In the result, the application is allowed partly. That part of the order of Appellate Authority dated 3/10/92 imposing punishment of "removal from service" is set aside. The matter is remitted back to the Appellate Authority. The Appellate Authority shall give personal hearing to the applicant regarding penalty and then apply his mind to the facts and circumstances of the case in the light of the observations made in this order and then take a conscious judicial decision about the quantum of penalty to be imposed. This exercise is to be carried by Appellate Authority within three months from the date of receipt of copy of the order. No order as to costs.


(D.S. BAWEJA)
MEMBER (A)


(R.G. VAIDYANATHA)
VICE CHAIRMAN

abp.

(5)

05/10/48.

C.P.No. 33/99 for
orders on 24.9.99

le
16/8

Per Tribunal

Date: 24/9/99

Applicant in person by

Advocate / Respondent by

Counsel. Shri G.S. Walia

The matter adjourned to 24/10/99

for adv. of 33/99

Dy. Registrar

OA 909/93 (4) Dated: 22.10.1999

Shri G.S. Walia counsel
for the applicant.

Issue notice on C.P. 33/99
returnable by 3.12.1999.

(S.L. Jain) (B.N. Bafadur)
Member (J) Member (A)

Notices issued to
Applicant / Respondents on

11/11/99

NS

3.12.99

Recd. Unserviced notice
dtd. 11/11/99 from
Respondents (Contemner)
with postal remarks
"Redirected Area"
on 17/11/99.

Applicant by Shri G.S. Walia.
Respondents by Shri V.S. Masurkar.

On the request of Counsel
for respondents, further four
weeks time is allowed for
filing reply.

List for orders on
21.1.2000.

13/11

(S.L. Jain)
M(J)

(D.S. Bafadur)
M(A)

26) 21.1.2000

Ms. Lalitha for Shri G.S. Walia, counsel for applicant.

Shri V.S. Masurkar for the respondents.

Reply is being filed today.

Adjourned to 11/2/2000.

(S.L. Jain)
M(J)

(B.N. Bahadur)
M(A)

as

Repd. Reply to CP 33/99
from Respondents on 21/1/2000.

(Signature)
9/2

Per Tribunal

Date 11.2.2000

Applicant by

Advocate Respondent by

Council. *A.S. N.O. D.B.* is available

The matter adjourned to 25.2.2000

For orders.....

(Signature)
Dy. Registrar

(Signature)

OA 909/93 (62) Dated: 25.2.2000

Shri G.S. Walia, counsel for the applicant. Shri V.S. Masurkar counsel for the respondents.

On the request of counsel for the applicant adjourned to 6.3.2000 for orders.

(Signature)
(S.L. Jain)
Member (J)

(Signature)
(D.S. Bawaj) Member (A)

Dated : 6-3-2000

Applicant in person by Advocate G.S. Walia
Respondents by Ad. No. V.S. Masurkar

On request of Applicant/Respondent(s)/

Otherwise to..... 10-3-2000

S.L. Jain
MEMBER (J)

B.N. Bahadur
MEMBER (A)

OA909/93

Dated: 10.3.2000
Shri G.S. Walia counsel for the applicant. Shri V.S. Masurkar counsel for the respondents.

On the request of counsel for the respondents adjourned to 3.4.2000. Name of Shri V.S. Masurkar be shown in the cause list in place of Shri P.M. Pradhan.

S.L. Jain
(S.L. Jain)
Member (J)

D.S. Baweja
(D.S. Baweja)
Member (A)

NS

3-4-2000 (3)

Both Counsel present.

On the request of applicant's Counsel, adjourned to 1-5-2000.

S.L. Jain
(S.L. Jain)
M(J)

B.N. Bahadur
(B.N. Bahadur)
M(A)

OA 909/93 (4) Dated: 1.5.2000

Shri G.S. Walia counsel for the applicant. Shri V.S. Masurkar counsel for the respondents.

On the request of counsel for the applicant adjourned for orders on 16.6.2000.

S.L. Jain
(S.L. Jain)
Member (J)

D.S. Baweja
(D.S. Baweja)
Member (A)

NS

OA 909/93 (31) Dated: 16.6.2000
Shri G.S. Walia counsel
for the applicant. Shri V.S.
Masurkar counsel for the
respondents.

On the request of counsel
for the applicant adjourned for
orders on 3.7.2000.

(S.L. Jain)
Member (J)

(D.S. Baweja)
Member (A)

NS

Dated: 3.7.2000 (5)

Shri G.S. Walia Counsel for
the applicant. Shri K.R. Yelwe
for Shri V.S. Masurkar Counsel
for the respondents.

On the request of counsel
for the applicant, adjourned
to 21.7.2000.

(S.L. Jain)
M (J)

(B.N. Bahadur)
M (A)

OA 909/93 (26) Dated: 21.7.2000
Shri G.S. Walia counsel
for the applicant. Shri V.S.
Masurkar counsel for the
respondents.
List the case for orders
on 4.8.2000.

(S.L. Jain)
Member (J)

(D.S. Baweja)
Member (A)

NS

HN) 4.8.2000.

None for the applicant.
Shri V.S. Masurkar for the
respondents.

From the order sheet it
is noted that counsel for applicant
has been seeking adjournment
on several dates. In view of this,
a last opportunity is given.
List for orders on 28/8/2000.

SECM -
(S.L. Jain)
m(j)

[Signature]
(D.S. Bawleja)
m(j)

OS

50) O.A.909/93

Date : 28.8.2000

None for the applicant.
Mr.V.S. Masurkar, Counsel for the
respondents.

Inspite of the last
opportunity given to the applicant
he is not present today also.

By way of last
opportunity, the matter is
adjourned to 15.9.2000. In case
the Counsel for the applicant is
not present on that date, the
present application is liable to be
dismissed for default.

[Handwritten mark]
15/9

[Signature]
(S.L. Jain)
Member (J)

[Signature]
(D.S. Bawleja)
Member (A)./

H.

Per Tribunal *[Signature]*

Date: 15/9/00

Applicant in person by Mr. Wdga

Advocate / Respondent by Mr. Masurkar

Counsel. Time on

The matter adjourned to 15/9/00
for order CP 33/99

[Handwritten mark]
15/9

Dy Registrar

(4) Dated 6-10-2000

Both the counsels present

On the request of Shri Waha,
Counsel for Applicant, adjd. to

M/10
17.11.2000
S.L. Jain
(S.L. Jain)
M(J)

B.S.
(B.N. Bahadur)
M(A)

(S.L.)

OA 909/93 (62) Dated: 17.11.2000
Applicant by Shri G.S.
Walia. Respondents by Shri V.S.
Masurkar.

The learned counsel for
the applicant seeks adjournment.
Allowed. List the case for orders
on 22.12.2000.

2-9-
(Ms. Shanta Shastry) (S.L. Jain)
Member(A) Member(J)

NS

29) 909/93
22.12.2000

The counsels for the parties
are present.

Adjourned to 22.01.2001.

(S.L. JAIN)
M(J)

(B.N. BAHADUR)
M(A)

B.

22-1-2001

Both counsels present.

Adjourned to 2-2-2001.

B. U.

Full page
022/1/01

dt. 2/20/01
order/Judgment despatched
to App'ndent (s)
on 27/2/01

NO

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

C.P.NO.33/1999
IN O.A.NO.909/93

CORAM: HON'BLE SHRI S.K.I NAQVI, MEMBER (J)
HON'BLE SMT. SHANTA SHASTRY, MEMBER (A)

V. Shankar Rao,
Ex.Motor Driver,
Office of S.D.O.
Telecom,
Nanded
(Shri G.S.Walia, Advocate)

..... Petitioner

Vs.

Shri Ravi Bhargava,
District Telecom Manager,
or his Successor in Office,
Nanded.

..... Respondents.

(Shri V.S.Masurkar, Advocate)

ORDER DATED 02.02.2001

[PER: S.K.I.Naqvi, Member (J)]

As per Petitioner's grievance, the competent authority in the Respondent establishment passed order dated 10.5.1999, without taking into consideration the directions and the observations in connected Original Application No.909/93 decided on 30th September, 1998 by this Bench.

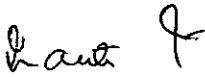
2. In the connected O.A. this Bench was pleased to make some observations in para 10 and remanded the case, with the observation that the Appellate Authority shall give personal hearing to the Applicant regarding penalty and then apply his mind to the facts and circumstances of the case in the light of observations made in the Order. Consequent to this direction, order dated 10.5.1999 has been passed. The preamble of this order goes to show that while deciding the matter at that stage the authority i.e. the District Manager of Telecommunication, Dist. Nanded, took into consideration of the direction and observation by the Bench but ultimately found that the order of removal needs no interference.

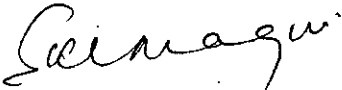
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..2./-

3. With the above position, we find that this is not the case to be covered under the head Civil Contempt. The notices are discharged accordingly.

4. Counsel for Petitioner mentions at that stage that liberty be granted to knock again by filing another O.A. Liberty granted accordingly.


(Smt. Shanta Shastri)
Member (A)


(S.K.I. Naqvi)
Member (J)

sj*

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