

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 1125/95.

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DATE OF DECISION: ^{14th} December, 1998.

V. S. Khopade, Petitioner

Shri H. Y. Deo, Advocate for the Petitioners

Versus

Union of India & Others, Respondent

Shri S.S. Karkera for

Shri P. M. Pradhan, Advocate for the Respondent(s)

CORAM :

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

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

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.1125/95.

Prorogued this the, 14th day of December 1998.

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

V.S.Khopade,
24/195, Maharshinagar,
Pune - 411 037.

...Applicant.

(By Advocate Shri H.Y.Deo)
V/s.

1. Union of India
Through The Chairman,
Telecom Commission,
Deptt. of Telecommunication,
Sanchar Bhavan,
Asoka Road,
New Deli - 110 001.

2. The Chief General Manager,
Maharashtra Telecom Circle,
G.P.O. Building,
V.T. Railway Station,
Bombay - 400 001.

3. The General Manager,
Pune Telecom District,
Telephone Bhavan,
Bajirao Road,
Pune 411 002.

...Respondents.

(By Advocate Shri S.S.Karkera)

: ORDER :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. The respondents have filed reply. We have heard the learned counsel appear-ing on both sides.

2. The applicant was working as Section Supervisor (Operative) in the Department of Telecom and working at Pune at the relevant time viz. in 1994. A charge sheet was issued to him alleging that he has committed mis-conduct of bigamy in marrying a second wife ^{during} ~~giving~~ a subsistence ^{to} the first marriage and thereby he has violated the Service Conduct Rules. The applicant gave a reply denying the allegation.

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Then, an Enquiry Officer was appointed and a Presenting Officer was appointed. During the enquiry the prosecution did not adduce any oral evidence. The prosecution depended only on one document viz. the deposition of the applicant in some previous case. The ~~respondents~~^{applicant} also did not adduce any oral evidence. Subsequently, it appears that the ~~respondents~~^{applicant} gave the affidavits of his wife, father-in-law and a Sarpanch.

After the enquiry, the Enquiry Officer submitted his report to the effect that the charge is proved. Then the applicant gave his representation to the enquiry report. Then the Assistant General Manager purporting to act as Disciplinary Authority passed an order dt. 31.1.1994 holding that the charge is proved, by imposing a punishment of removal from service. Against that order, the applicant preferred an appeal before the Dy. General Manager.

The applicant did not hear anything as to what happened to his appeal, except that he came to be reinstated by order dt. 26.8.1994. He was paid back wages from 1.2.1994 till 26.8.1994. But, surprisingly three days later the applicant received another order dt. 29.8.1994 passed by the Dy. General Manager again imposing the penalty of removal from service. Then, applicant preferred appeal before the General Manager, who dismissed the appeal.

Being aggrieved by the orders passed by the respective authorities, the applicant has approached this Tribunal by taking number of grounds.

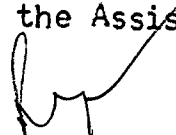
3. Respondents in their reply have justified the action taken against the applicant. They have stated that


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the enquiry has been done as per rules. It is stated that the appellate authority accepted the contention of the applicant that the Assistant General Manager was not the competent authority to pass the order for removal from service and therefore, the appellate authority allowed the appeal and the applicant was reinstated, but subsequently the appropriate Disciplinary Authority has passed the order dt. 29.8.1994 removing the applicant from service. Then on merits, the respondents have justified the impugned orders.

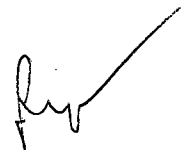
4. The learned counsel for the applicant has raised number of contentions both on merits and on defects in the enquiry and violation of principles of natural justice and contended that the impugned orders are illegal and liable to be quashed. On the other hand, respondents counsel submitted that the enquiry has been done as per rules and the applicant had sufficient opportunity to present his case and even if there is some irregularity or violation of procedural rules, the enquiry is not vitiated unless the applicant can establish that prejudice was caused to him. It was submitted that no prejudice is caused to the applicant and therefore, the orders of the respective authorities cannot be quashed even if there are some irregularities or violation of procedural rules.

5. Admittedly, the Deputy General Manager is the appointing authority of the applicant. But the first punishment order was issued by the Assistant General Manager. According to the rules, the Disciplinary Authority has to appoint an Inquiring Officer. In this case, thought out till the passing of the first punishment order, the Assistant



General Manager has acted as the Disciplinary Authority. It is he who has appointed the Inquiry Officer and the Presenting Officer, which he could not have done since he was not the appointing authority. Therefore, the whole proceedings, starting from the appointment of the Inquiry Officer and culminating in the first penalty order dated 31.01.1994 are illegal and void. After the first penalty order the applicant preferred an appeal before the Deputy General Manager and he took this as one of the grounds, namely - that the Assistant General Manager, while issuing the penalty order was not the appointing authority and he could not have issued such an order.

The first penalty order is dated 31.01.1994. When the appeal came to be considered by the Deputy General Manager on 02.06.1994, the Deputy General Manager found that the procedure of Assistant General Manager in issuing the penalty order was contrary to the rules, since he was not the appointing authority. Then it is further noted in the order sheet of the appeal that the said Assistant General Manager has since been promoted and he has become the Deputy General Manager. Therefore, the Deputy General Manager could not pass any order on the appeal, since he himself had passed the impugned first order of punishment dated 31.01.1994. Therefore, the Deputy General Manager placed the papers before the General Manager. In the appeal filed, we have an order dated 22.07.1994 which reads as follows :

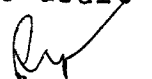


"As discussed in General Manager's chamber, the appointing authority i.e. the Deputy General Manager has to follow denovo procedure independent of person occupying the post, etc. Hence, the D.G.M. may only deal with the matter further."

Therefore, there is a specific order by the General Manager that the inquiry should be done denovo by the Deputy General Manager. Once the appellate authority passes this order, the order should have been communicated to the applicant and on the basis of this order, he should be reinstated. Nodoubt, reinstatement order is issued to the applicant and he is taken on duty without communicating the order of the Appellate Authority. He is simply reinstated without giving any reasons and three days later, one more order is passed by the Deputy General Manager dismissing him from service.

When the Appellate Authority has passed an order that the procedure adopted by the Assistant General Manager was illegal and that the Deputy General Manager should follow de novo enquiry, then the Deputy General Manager cannot straightaway pass a fresh order of penalty without conducting the de novo enquiry, as ordered by the Appellate Authority.

6. But strangely we find from the appeal record that the Deputy General Manager makes a note in the order sheet as to what is meant by the de novo procedure and sought clarifications from the General Manager. Then the General Manager makes a one sentence note stating 'from the receipt of representation'. In our view, this is not the way in which a statutory appeal should be dealt with



by the Appellate Authority. When once the appellate authority passed the order on the appeal directing de novo procedure by the appointing authority, namely - the Deputy General Manager, the matter ends there and the Appellate Authority becomes functus-officio. He cannot, behind the back of the applicant and without notice to him, give any direction or pass any order as to what is meant by de novo procedure. Therefore, the subsequent direction of the appellate authority has no legal sanctity and is not sustainable in law. The order of the Appellate Authority directing de novo enquiry should have been communicated to the applicant. It has no validity unless it is communicated to the party.

When once the Appellate Authority has passed that the enquiry should be done de novo, then the Deputy General Manager cannot straight-away pass a fresh order of punishment on the same record. Atleast he should have informed the applicant that the matter has been remanded to him and whether he wants to be heard or he wants to make any representation, etc. The applicant was kept in dark and he was not even informed that the matter has been remanded.

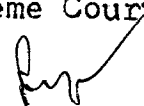
Then what is more, the Assistant General Manager, Mr. V.S. Khatav, who issued the first illegal penalty order dated 31.01.1994, has been subsequently promoted as Deputy General Manager. Then now in the capacity of Deputy General Manager he becomes the appointing authority and on that basis, he himself issues the second order of penalty, which is impugned in the present application.



In all fairness and having regard to the principles of natural justice, Mr. V.S. Khatav, who had already expressed opinion in his illegal order dated 31.01.1994, should not have passed the second order and that too, without notice to the applicant and without hearing him and behind his back. The whole action is in violation of the basic principles of natural justice. How can the same authority who had passed the illegal order as an Assistant General Manager can again pass a fresh order as Deputy General Manager and that too, without hearing the applicant and without notice to him. When the Appellate Authority has directed de novo procedure to be followed, the Deputy General Manager has no jurisdiction to pass a fresh order on the basis of the same record.

7. We have already seen how the Assistant General Manager had appointed the Inquiring Officer when he was not the appointing authority and he was not the disciplinary authority. It was the Deputy General Manager who was the Appointing Authority and the Disciplinary Authority for major penalty, who could have appointed the Inquiry Officer. Therefore, we find that from the stage of appointing of an Inquiry Officer illegality has crept in. That is why, the Appellate Authority passed an order for de novo enquiry, but still no de novo enquiry was held and the impugned order of punishment is passed on the basis of the old case file.

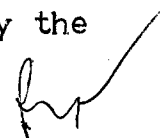
8. The Learned Counsel for the respondents invited our attention to the decision of the Supreme Court in 1996(1) SC SLJ 440 ¶ State Bank of Patiala & Others V/s. S. K. Sharma ¶ where no doubt the Supreme Court


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has observed that if there is any violation of procedure, the order should not be set aside unless prejudice is cause to the parties. In our view, in case of irregularities in procedure, naturally the test of prejudice must be applied. But even in this case, the very appointment of the Inquiry Officer was illegal and it was done by an authority who was incompetent to appoint an Inquiry Officer. Then inspite of the order of the Appellate Authority for de novo enquiry, the Deputy General Manager passes the second order of penalty without any fresh enquiry and without even hearing the applicant. Then what is more, the same authority who passed the first illegal order of penalty, without jurisdiction, has again passed the second order on his being promoted and again without hearing the applicant and without notice to him. In our view, there is gross violation of principles of natural justice, which has caused serious prejudice to the applicant and the procedure adopted is wholly illegal and not merely irregular.

For the above reasons, we hold that the impugned order of the appointing authority, and again confirmed by the Appellate Authority in the second round, are not sustainable in law and liable to be quashed. In this view of the matter, we do not want to express any opinion on the merits of the case.

9. It is seen that the complainant, Mr. Pawar, who had sent a complaint against the applicant, has not been examined. No attempt is made either by the



Prosecution or by the Defence to produce some relevant evidence ^{like} ~~regarding~~ ration card, voter's list or some other documents which would have thrown some light on the disputed question of the applicant having two wives or not. We are making these observations so that if the matter is to be again enquired into, it is open to both, the prosecution and the defence, to adduce proper and reliable evidence on the disputed point, namely - whether the applicant has two wives or not.

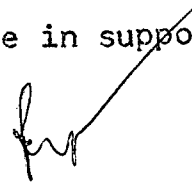
In our view, the whole enquiry proceedings, from the stage of appointment of an Inquiry Officer, should be quashed. In this case, no oral evidence has been recorded. Now the Disciplinary Authority, if he decides to continue the enquiry, he can appoint a fresh inquiry officer, who shall give opportunity to both the parties to adduce evidences and then, after recording the evidences, he can submit his report to the Disciplinary Authority and then action should be taken as per rules.

10. As a result of our discussion, the O.A. will have to be allowed and the impugned order of removal from service will have to be set aside and consequently, the applicant will have to be reinstated. The further question is, whether the applicant is entitled to get full back wages ? One of the principles in service jurisprudence is "No work no pay" but however, since the applicant is deprived of doing his work as a result of the impugned order, which is being quashed,

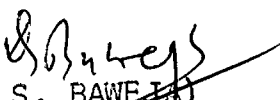


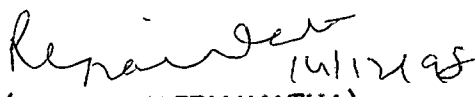
naturally he has to be given the monetary benefits. The applicant did not challenge the appointment of Inquiring Officer by the Assistant General Manager. Then we find that as a result of the remand order, the applicant will also get an opportunity of adducing both - oral and written evidence, to prove his innocence. In spite of opportunity given earlier, the applicant did not adduce any evidence. It is only after the enquiry report he wanted to produce some evidence in the form of an affidavit of his wife, father-in-law and Sarpanch. Hence, taking into consideration all these circumstances, we feel that applicant should be granted fifty per cent of the back wages.

It is now open to the Disciplinary Authority to proceed with the departmental enquiry or not. If he decides to proceed with the enquiry, then he may himself conduct the enquiry or appoint an Inquiring Officer who will conduct the enquiry as per rules. It is open to the Disciplinary Authority to collect some more evidence in the form of evidence regarding the alleged misconduct and he may have to take steps to examine Mr. Pawar, who had lodged the complaint and any other witness who can throw light on the disputed question. If the Disciplinary Authority wants to adduce additional evidence or examine any additional witnesses, he shall furnish the list of witnesses and list of documents to the applicant before producing the additional evidence. Similarly, it is also open to the applicant to produce any documentary evidence and oral evidence in support of his defence.



11. In the result, the application is allowed. The impugned order passed by the Disciplinary Authority dated 29.08.1994 and the impugned order of the Appellate Authority dated 24.07.1995 are hereby quashed. The respondents are directed to reinstate the applicant in service and to pay him 50 per cent of the back wages for the period from the date of removal from service till the date of reinstatement. Then the respondents can proceed with the departmental enquiry from the stage of appointing and Inquiring Officer afresh by the Disciplinary Authority and proceed with the enquiry according to law in the light of the observations made in this order. In the circumstances of the case, there will be no order as to costs.


(D. S. BAWEJA)
MEMBER (A)


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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