

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 264/1997.

Date of Decision: 20-6-97

Shri B. Chengalva Rao,

Petitioner/s

Shri G. K. Masand,

Advocate for the
Petitioner/s

V/s.

Union Of India & Others,

Respondent/s

Shri V. S. Masurkar,


Advocate for the
Respondent/s

CORAM:

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

Hon'ble Shri M. R. Kolhatkar, 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).

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 264/97.

Dated this 20 the Friday day of June, 1997.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).
HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

B. Chengalva Rao,
Sub-Divisional Engineer,
Office of the Deputy G.M.,
S.D. Parel Telephone Complex,
M.T.N.L. Parel,
Mumbai - 400 012.

... Applicant.

(By Advocate Shri G. K. Masand)

VERSUS

1. Union Of India through
the Director General,
Deptt. of Telecommunications,
Sanchar Bhavan,
Ashoka Road,
New Delhi - 110 001.

2. Shri P. S. Saran,
Member Services,
Telecom Commission,
Department of Telecom,
West Block No. 1, Wing No. 02,
Ground Floor, R.K. Puram,
New Delhi - 110 066.

... Respondents.

3. Shri Chandy Andrews,
Commissioner for Departmental
Enquiries,
Central Vigilance Commission,
10th Block, Jamnagar House,
Akbar Road,
New Delhi - 110 011.

4. The Chief General Manager,
Mahanagar Telephone Nigam Ltd.,
Prabhadevi, Dadar (West),
Bombay - 400 028.

(By Advocate Shri V.S. Masurkar)

: ORDER :

! PER.: SHRI B. S. HEGDE, MEMBER (J) !

Heard Shri G. K. Masand for the applicant
and Shri V.S. Masurkar for the respondents.

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2. The applicant in this O.A. prays for quashing of the impugned order passed by the respondents (Disciplinary Authority) vide dated 14.02.1995 which reads as follows :-

"On denial of the charges by Shri B. Chengalva Rao, an inquiry was conducted by Shri Chandy Andrews, Commissioner for departmental inquiries C.V. . Shri Chandy Andrews has submitted his report on 28.09.1994. From the report it is noticed that the Presenting Officer did not/ could not serve summons to the witnesses though notice was given in advance. The Presenting Officer also did not seek adjournment prior to the date of hearing fixed by the Inquiry Officer. Even the currency notes i.e. the bribe money, have not been produced/ listed as documents. The undersigned considers that the individuals who had made the complaint of alleged bribery against Shri B. Chengalva Rao should have been produced during the inquiry and the inquiry cannot be said to be fair in the absence of these witnesses. Therefore, in exercise of the powers vested under Rule 15(1) of the CCS(CCA) Rules, 1965, the undersigned hereby directs that further inquiry from the stage of examining witnesses, who could not be produced earlier, should be conducted and the findings of the Inquiry Officer submitted."

The learned counsel for the a-pplicant, Shri G. K. Masand urged that the entire action of the respondents are arbitrary, illegal and required to be quashed and set aside and to stay the disciplinary proceedings initiated against the applicant pursuant to the order passed by the respondents referred to above. In this connection, the learned counsel for the applicant urged that the charge-sheet was issued against the applicant in the year 1991 and there was a deliberate delay on the part of the Presenting Officer who was appointed by the respondents. The said enquiry was delayed by the respondents and therefore, the delayed tactics adopted by the respondents in arriving at the conclusion of the disciplinary proceedings is clearly illegal and bad in law. Further, though the Enquiry Officer completed the enquiry way back in 1994 a-and submitted his report to the disciplinary

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authority, and the applicant also submitted the defence brief to the Enquiry Officer, the disciplinary authority ought to have taken into consideration the list of witnesses who were examined by the Enquiry Officer at the time of hearing and ought to have exonerated the applicant from the alleged charges. Therefore, the order passed by the respondent no. 2 on 14.02.1995 is clearly with the malafide intention and in order to harass the applicant. Though under the rules, re-enquiry is not permissible, the re-enquiry was started as per the direction given by the disciplinary authority, and the respondent no. 4 and 2 deliberately delayed the case of the applicant to complete the disciplinary proceedings with clear intention to harass the applicant and the representation made by the applicant has also not been considered, etc. The respondents illegally and arbitrarily held up the efficiency bar which was due to the applicant in the month of May 1990 and the said benefit was not given to the applicant with clear intention by delaying the disciplinary case of the applicant.

3. On the other hand, the learned counsel for the respondents, Shri V.S. Masurkar, denied the very contention of the applicant and submitted that since the applicant was trapped while accepting bribe of Rs. 1,000/- on 11.12.1989, he was suspended w.e.f. 20.12.1989. The S.P. report was received on 29.10.1990. The Competent Authority revoked the order of suspension on 03.12.1990. The Competent Authority received an advice from C.V.C. on 08.05.1991 and a major charge-sheet was issued to the applicant on 19.08.1991. Thereafter, the competent authority appointed C.D.I. as Inquiry Officer vide order dated 09.12.1991. The Enquiry Officer was changed vide order dated 10.08.1993. So far as

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the further hearing of the case was concerned, the final hearing is alleged to have taken place on 03.03.1997, thereby, there was no delay on the part of the respondents in processing the enquiry. Delay if any, was beyond the control of the competent authority because the SP's report was received after 10 months and C.V.C. advice was received after 7 months, therefore, their action is strictly in accordance with the law.

4. Both the parties rely upon Rule 15(1) of C.C.S. C.C.A. Rules, which reads as below :-

"The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be."

5. In the instant case, it is clear from the order issued by the respondents vide dated 14.02.1995 that since the Presenting Officer did not serve summons to the witnesses already named and did not seek adjournment prior to the hearing of the case and also not presented the currency notes for verification, therefore, the competent authority thought fit that those evidences are relevant for adjudicating the matter and accordingly, directed the Enquiry Officer for further enquiry in terms of Rule 15(1) of the CCS (CCA) Rules, 1965, from the stage of examining witnesses, who could not be produced earlier and the same should be conducted in accordance with the rules. In our view, there is no infirmity in the said order and it is in accordance with Rule 15(1) of the CCS (CCA) Rules, 1965, because it is the prerogative of the Disciplinary Authority to see that justice is done. Admittedly, the witnesses have not been examined


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for want of summons to the witnesses. Therefore, we do not find any illegality/infirmity in the order passed by the respondents. The learned counsel for the applicant, Shri G. K. Masand, vehemently urged that in case the Disciplinary Authority is not in agreement with the findings of the Enquiry Officer, he should have recorded its reasons, which he did not do so. According to us, that stage has not yet come in this case because admittedly, the relevant witnesses cited in the charges have not been examined, therefore, he directed the enquiry officer to examine the same if it is feasible and then arrive at a conclusion. It is true that the Supreme Court has held that the Courts/Tribunal should not interfere in the disciplinary proceedings prior to finalisation of the same. The truth in the charges will have to be found out in the first instance. Ofcourse, the Tribunal should be very careful in granting interim relief in disciplinary proceedings. The respondents in the reply stated that last sitting was held on 03.03.1996 and if all the contentions of the applicants are replied, then it may jeopardize the interest of the Government in on going disciplinary proceedings. However, considering the time involved in this proceedings, the enquiry officer was supposed to comply with the direction of the Disciplinary Authority and should not have taken time in coming to the conclusion. As stated earlier, the action of the respondents in directing further enquiry is strictly in accordance with C.C.S(C.C.A) Rules and there is no illegality or malafide intention in the action of the respondents. However, since the matter is prolonged for a reasonable period of time, it is but natural that the enquiry should be expedited at the earliest. Nowhere it is stated that the final hearing was over so far as the further enquiry is concerned. On reading of the

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reply of the respondents, it pre-supposes that the enquiry is almost complete and only the findings are required to be given by the Enquiry Officer. In that event of the matter, considering the facts and circumstances of the case, we hereby direct the respondents to complete the enquiry within a period of three months from the date of receipt of a copy of this order and on receipt of the enquiry report, the Disciplinary Authority shall give his findings within a period of two months thereafter.

6. The O.A. is disposed of with the above directions. There will be no order as to costs.


(M.R. KOLHATKAR)
MEMBER (A).


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

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