

(48)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
HYDERABAD.

O.A. No-366/89.
T.A. No.

198

DATE OF DECISION 5th July '93

Sk. Syed Ali

Petitioner

Shri C.Suryanarayana

Advocate for the
Petitioner(s)

Versus

The Supdt. I/c, CTO, Visakhapatnam-530001 & 3 others Respondent

Shri N.V.Ramana, Addl. CGSC

Advocate for the
Respondent(s)

CORAM

The Hon'ble Mr. A.B.Gorthi : Member(A).

The Hon'ble Mr. T.Chandrasekhara Reddy : Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgment ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgment ? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal. ✓
5. Remarks of Vice-Chairman on columns 1,2,4 (To be submitted to Hon'ble Vice-Chairman where he is not on the Bench.)

HTCR
M(J).

HABG
M(A).

(89)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.366/89.

Date of Judgement : 5-7-93

Sk. Syed Ali

.. Applicant

Vs.

1. The Supdt. I/c, CTO,
Visakhapatnam-530001.
2. The Sr. Supdt. Tele. Tfc.,
Visakhapatnam-530020.
3. The Director, Telecom.,
Visakhapatnam-530003.
4. The Member(Personnel),
Telecom. Board, (Reptg. U.O.I.
in his capacity as
Addl. Secy., to Govt.),
New Delhi-110001. .. Respondents

Counsel for the Applicant :: Shri C.Suryanarayana

Counsel for the Respondents:: Shri N.V.Ramana, Addl. CGSC

CORAM:

Hon'ble Shri A.B.Gorthi, Member(A)

Hon'ble Shri T.Chandrasekhara Reddy, Member(J)

[Judgement as per Hon'ble Shri A.B.Gorthi, Member(A)]

The applicant, while working as Telegraph Assistant at the CTO, Visakhapatnam, was served with a charge memo dt. 10.4.82 and was subjected to departmental proceedings which culminated in the award of a major penalty of reduction by one stage in scale of pay of Rs.975-1660 for a period of one year w.e.f. 1.12.86. Aggrieved by the penalty, he has filed this application under section 19 of the Administrative Tribunals Act, 1985 with a prayer that the penalty imposed upon him as confirmed by the appellate authority be set aside and that he be allowed all the consequential benefits.

2. The charges against the applicant were that on 31.8.81 he put through three calls comprising 15 units amounting to Rs.7.50 and failed to credit the same to the Government, that he violated the procedure of charging the calls as per meter readings and resorted to excess charging of two calls amounting to Rs.7.50.

Rs.17.20, that he thereby failed to maintain absolute integrity and devotion to duty and that he also failed to maintain the relevant records at STD PT. The applicant participated in the said enquiry and brought out several factors in support of his defence. He contended that there was heavy workload at the relevant time and that he had no intention of misappropriating any money and that he did not at any stage exhibit any carelessness in the discharge of his duties. It was also his contention that the digital display unit at the Telephone Exchange, Visakhapatnam was not functioning accurately as is confirmed vide annexure A-12 to the application. From the enquiry report it would be evident that the concerned disciplinary authority himself accepted that there were several mitigating circumstances in favour of the applicant. The disciplinary authority, however, instead of absolving the applicant found him guilty of the charges and awarded him the penalty.

3. We have heard Shri C.Suryanarayana, learned counsel for the applicant. His main contention was that the charges were rather frivolous and that the evidence at the enquiry would clearly show that the applicant was not to blame. Despite adequate evidence at the enquiry to prove the innocence of the applicant the disciplinary authority held him guilty of the charges. The next contention of Shri C.Suryanarayana is that the authority who initiated the disciplinary proceedings (Supdt. I/c, CTO) was competent only to award minor penalty to the applicant. It was, therefore, highly improper on his part to forward the enquiry report to the competent disciplinary authority recommending imposition of a major penalty. This he did without giving adequate notice to the applicant. Apart from this irregularity, Shri C.Suryanarayana contended that the alleged incident having taken place on 31.8.81 there was inordinate delay in the progressing of the disciplinary proceedings because the charge-sheet was issued only on 10.4.82, the enquiry report was finalised on 28.10.86 and the penalty was imposed on 29.11.86 and that the said delay would vitiate the disciplinary proceedings.

4. The respondents in their reply affidavit have stated that as soon as irregularities committed by the applicant were noticed he was served with a charge memo on 10.4.82. The enquiry was conducted on several days between 1982 and 1986 and that the respondents were not guilty of any inaction resulting in delay in the finalisation of the enquiry. When the enquiry was completed, a report of the same was submitted by the Inquiry Officer on 29.10.86. The ~~competent~~ authority who had initiated the disciplinary proceedings not being competent to award a major penalty had to submit the proceedings to the competent disciplinary for imposition of the major penalty. After the penalty was imposed, the applicant submitted an appeal which was considered in detail and disposed of by a reasoned order.

5. As regard the contention of the learned counsel for the applicant, that the enquiry brought out several factors which should have rightly absolved the applicant, we are not in a position to agree with the same. The learned counsel for the respondents has rightly contended that so long as there is sufficient evidence to prove the charges the Tribunal ought not to go into the question of the strength of the evidence. So long as the disciplinary authority's findings are based on the evidence adduced at the enquiry, we cannot find fault with the said findings. Undoubtedly, there are several mitigating factors in favour of the applicant and it was precisely because of such circumstances the disciplinary authority seems to have taken a lenient view of the matter in imposing the penalty of reduction by one stage in the pay scale for one year.

6. Shri C.Suryanarayana vehemently contended that the disciplinary proceedings having been initiated by an authority who was competent only to award a minor penalty, the said proceedings could not have ended with the imposition of a major penalty, that too, without prior notice to the applicant.

He has placed reliance on the judgement of the Hon'ble Supreme Court in the case of Narayan Misra Vs. State Orissa (1969 SLR 657) wherein it was held that where the disciplinary authority does not agree with the recommendation of the Inquiry Officer exonerating the accused, the disciplinary authority should give an opportunity to the accused officer before punishing him and that omission to do so would be against the principles of fairplay and natural justice. The said case will not really be of any assistance to the applicant's case. The Inquiry Officer found the applicant guilty of the first three articles of charge but held the 4th article of charge as not proved. The disciplinary authority slightly disagreed with the findings of the Inquiry Officer and held that all the four charges were proved. He, however, agreed that on the 4th charge which he felt was rather trivial, no serious view need be taken. In view of this it cannot be said that there was any such serious disagreement between the Inquiry Officer's report and the findings of the disciplinary authority as would warrant the giving of a prior notice to the applicant. Moreover, a perusal of the record would clearly indicate that at the very initial stage when the charge memos were served upon the applicant it was made clear to him that the proceedings intended to be taken against him were under Rule 14 of the CCS(CCA) Rules, 1965 i.e., for the imposition of a major penalty. The applicant was fully aware of this position as can be seen from the correspondence he had addressed to the Inquiry Officer in connection with the enquiry under Rule 14 of the CCS(CCA) Rules, 1965. It cannot, therefore, be said that the decision to impose a major penalty was taken behind the back of the applicant or that it was done without prior notice to him. As has been held by the Hon'ble Supreme Court in the case of the Chairman, Board of Mining Examination Vs. Ramjee (AIR 1977 SC 965) if fairness is shown by the decision maker to the man proceeded against, the form, features

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1. The Supdt., I/C, CTO, Visakhapatnam-001.
2. The Sr. Supdt Tele. Tfc., Visakhapatnam-020.
3. The Director, Telecom, Visakhapatnam-003.
4. The Member(Personnel), Telecom. Board,(Reptg. U.O.I. in his capacity as Addl. Secy.; to Govt.), New Delhi-001.
5. One copy to Sri. C.Suryanarayana, advocate, CAT, Hyd.
6. One copy to Sri. N.V.Ramana, Addl. CGSC, CAT, Hyd.
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and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. In the instant case, we are satisfied that the accused had sufficient notice of the fact that he was being proceeded against under Rule 14 of the CCS(CCA) Rules, 1965 for the imposition of a major penalty and was, therefore, aware of the same. The imposition of the said penalty by the disciplinary authority at the end of the enquiry without further notice to him has not resulted in any violation of the principles of fairplay and natural justice.

7. After conclusion of the arguments, the learned counsel for the applicant wanted to rely on the judgement of the Hon'ble Supreme Court in the case of Union of India & Others Vs. Mohd. Ramzan Khan (AIR 1991 SC 476). A perusal of the said judgement would make it clear that it can be taken help of only prospectively. In the instant case, there was no plea taken by the applicant that he was not served with a copy of the Inquiry Officer's report prior to the imposition of the penalty. Consequently, the respondents too had no opportunity to confirm or deny the same. In view of the same and in view of the clear language of the Hon'ble Supreme Court's judgement in the case of Union of India & Others Vs. Mohd. Ramzan Khan, we do not accept the plea of the learned counsel for the applicant.

8. For the aforesaid reasons we find no merit in the application and the same is dismissed. There shall be no order as to costs.

T - (Chandrasekhara Reddy)
(T.Chandrasekhara Reddy)
Member(J).

Dated: 5 May, 1993.

A.B.Gorthi
(A.B.Gorthi)
Member(A).

Dy. Registrar/Judicial Officer
8/7/93

Contd --- 6/---

5/5/93