

(60)

INTHE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH

AT HYDERABAD.

OA No. 457/92

Date of Order: 4-7-95

Between:

A.Ayyalu.

.. Applicant.

and

1. The Union of India,  
rep. by Director General,  
Telecom, New Delhi.
2. The Telecom District Engineer,  
Nellore.
3. The Sub Divisional Officer,  
Telecom, Nellore.

.. Respondents.

For the Applicant: Mr. J.V.Lakshmana Rao, Advocate.

For the Respondents: Mr.N.R.Devraj, Sr.CGSC.

CORAM:

THE HON'BLE MR.JUSTICE V.NEELADRI RAO : VICE-CHAIRMAN

THE HON'BLE MR. A.B. GORTHY : MEMBER (ADMN)

O.A.No. 457/92

O R D E R

I As per the Hon'ble Justice Sri V.N. Rao, Vice Chairman I

Heard the counsel for both the parties.

2. Charge Memo. dt.30.12.83 was issued to the applicant who was working as Lineman in the office of R-3. It comprises of four charges. The Inquiry Officer held that all the four charges were proved and the Disciplinary Authority (DA for short) accepted the report of the Inquiry Officer, imposed punishment of reducing the pay of the applicant to the minimum of pay scale for five years. The same was set aside by the Appellate Authority (AA for short) and by order dt. 14.5.86 de novo enquiry was ordered. In the said enquiry, the Inquiry Officer held that Charge No.II alone was proved, and the other three charges were not proved. But the DA held that all the four charges were proved and imposed punishment by reducing pay of the applicant to the minimum of pay scale for four years. The AA by Memo. No.X-1/AA/90-91/2, dt.10.5.91 confirmed finding of the DA in regard to charges I and II and held that the charges III and IV were not proved and reduced the punishment of reducing the pay of the applicant to the minimum of pay scale for two years. It is challenged in this O.A.

3. Charges I and II are as under:-

"Article I: That the said Sri A. Ayyalu while functioning as LM Phones, Nellore during the period from July, '83 to August, 83 has verbally attacked Sri Venkateswara Rao, S.I.Phones, Nellore on 8.7.83 and used abusive and unparliamentary language and has thus violated Rule 3(1)(iii) of CCS (Conduct) Rules, 1964.

Article II: That during the aforesaid period and while functioning in the aforesaid office, the said Sri A. Ayyalu, IM Phones, Nellore has violated Rule 7(i) of CCS (Conduct) Rules, 1964 by participating in the demonstration on 1-8-83 in front of office of DET Nellore along with casual mazdoors."

4. Sri S. Venkateswara Rao, S.I. Phones deposed in regard to Charge-I to the effect that the applicant herein ~~is~~ verbally attacked him. The applicant denied the same. The Inquiry Officer held that the charge is not proved by observing that the version of Sri Venkateswara Rao's ~~affirmation~~ was not corroborated. The DA held that in view of the circumstances ~~there~~ <sup>here</sup> would not have any corroboration and hence the version of Sri Venkateswara Rao, SI, Phones can be believed. The AA agreed with the said finding of the DA.

5. The learned counsel for the applicant submitted that even the complaint from Sri Venkateswara Rao was not marked during the enquiry, and hence the Inquiry Officer was right in holding that for want of corroboration the version of Sri Venkateswara Rao cannot be believed.

6. It is now well settled that the DA is not bound by the findings given in favour of ~~this~~ <sup>or against</sup> delinquent employee. It is open to him to differ from the said findings if the circumstances warrant. It is not open to the Tribunal/High Court exercising the jurisdiction under Art. 226 to interfere with the finding when there is some evidence in support of the said findings. The Tribunal/High Court does not ~~seek an~~ <sup>ask an</sup> appeal, and hence the evidence is not reappreciated by the Tribunal/High Court. When on the appreciation of the evidence, the DA held that the version of Sri Venkareswara Rao can be believed and when the same cannot be held as ~~corroborative~~ <sup>convincing</sup> we do not find any reason to differ from the finding given by the DA in regard to Charge-I which was affirmed by the applicant <sup>appellate authority</sup>.

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7. The applicant stated as under in the written statement filed by him with reference to Charge No.II, before the enquiry was commenced and after Charge Memo was given, "It was casual that I present there near the gate as I am on medical leave and I never participated or lead the party." The Inquiry Officer observed as under in regard to the said charge:

"Although in his brief the SPS pleaded that he was on sick leave and on his personal work came to the gate of the divisional office, as submitted by the Presenting Officer in his brief, he was un-mistakebly identified by all the three witnesses in a row that he was present, leading the demonstration and risen slogans. The charge of his participating in the demonstration on 1.8.83 by unrecognised union in front of % DET Nellore is proved."

8. It is stated for the respondents that the applicant neither deposed nor examined in support of his defence in regard to Charge No.II.

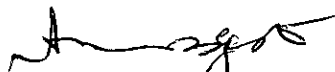
9. The Learned counsel for the applicant submitted that the applicant had undergone fistula operation in the middle of July, 1983 and hence he had gone there on 1.8.83 to enquire about his medical bills, and he had not held the demonstration. The point which arises for consideration is as to whether after undergoing operation the applicant would have shouted slogans as spoken to by the witnesses of the Department.

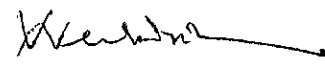
10. As the necessary documents are available with the Department itself, we feel it a case to remit the matter to the AA to consider the defence of the applicant in regard to Charge No.II in the light of the documents and the period about the date of operation of the applicant/of his treatment.

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If after consideration of the same, the AA is going to come to the conclusion that Charge-II is proved then there is no need to alter the order in regard to the punishment. But, if the AA is going to come to the conclusion that Charge-II is not proved, then it is for the AA to consider as to whether the punishment as per Memo. dt. 10.5.91 requires modification, and if so necessary modified order has to be passed by him. The AA has to dispose of the same expeditiously and preferably by the end of October, 1995.

11. The O.A. is ordered accordingly. No costs. //

  
( A.B. Gorthi )  
Member (A)

  
( V. Neeladri Rao )  
Vice Chairman

Dated 4th July, 1995  
Open Court Dictation

  
Deputy Registrar(J)CC

kmv

To

1. The Director General, Union of India,  
Telecom, New Delhi.
2. The Telecom District Engineer, Nellore.
3. The Sub Divisional Officer, Telecom,  
Nellore.
4. One copy to Mr.J.V.Lakshmana Rao, Advocate, CAT.Hyd.
5. One copy to Mr.N.R.Devraj, Sr.CGSC.CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR. JUSTICE V. NEELADRI RAO  
VICE CHAIRMAN

A N D

THE HON'BLE MR. <sup>A. B. Goythi</sup> ~~R. RANGARAJAN~~ (M (ADMN))

DATED 4/7 1995.

ORDER/JUDGMENT:

M.A./R.A./C.A.No.

OA.No. <sup>in</sup> 457/92

TA.No. (W.P.)

Admitted and Interim directions  
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected.

No. order as to costs.

*No spare copy*

