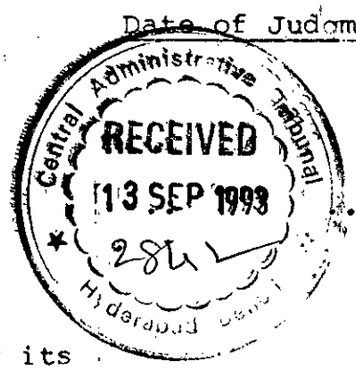
OA 1136/93

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: HYDERABAD BENCH ::

AT HYDERABAD

O.A.No.106/89. Date of Judgment: 4-2-92



Between:

Gamidi Venkateswara Rao .. Applicant

Vs.

1. Union of India, rep. by its Secretary, Telecommunications Department, Min. of Communications, Sanchar Bhavan, New Delhi-110 001.

2. The General Manager, Telecommunications, Triveni Complex, Hyderabad-500 001

3. Divisional Engineer, Telecommunications, Mahaboobnagar.

4. Divisional Engineer, Telephones, Seven Star Liquor Buildings, Labbipet, Vijayawada-520 010, Krishna District. .. .. Respondents

For the applicant : Shri V.S.R. Anjaneyulu, Advocate.

For the respondents : Shri N.R. Deva Raj, Addl. Standing Counsel for Central Government

CORAM:

HON'BLE SHRI R. BALASUBRAMANIAN, MEMBER (ADMN.)

HON'BLE SHRI C.J. ROY, MEMBER (JUDL.)

X JUDGEMENT OF THE BENCH AS PER HON'BLE SHRI C.J.ROY, M(J) X

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This application is filed under section 19 of the Administrative Tribunals Act, 1985 seeking a direction to call for the records and quash the orders bearing No. 1-137/83/Vig/III dated 10-12-1984 passed by the 1st respondent and confirmed by proceedings dt. 22-2-1988 by 4th respondent, and for other reliefs.

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averred that the applicant is not entitled to any relief and desired the application be dismissed.

5. The applicant filed material papers (1 to 28) viz. Charge Sheet dt. 5.11.1982, Order of dismissal dt. 6-5-83, Order dt. 22-2-1988 of the Divisional Engineer, Trunks, Vijayawada-1 wherein the applicant was informed that the Review petition was rejected by the Hon'ble President of India, among other papers.

6. We heard heard Shri N.R.Devaraj, learned counsel for respondents. Shri T.V.S.Prabhakar, proxy counsel for Shri V.S.R.Anjaneyulu, learned counsel for applicant also subsequently appeared in the matter, and perused the records carefully. We are proposing to dispose-of the application on the legal contentions raised by the learned counsel for applicant before going into merits of the case. The Hon'ble Supreme Court of India in X Union of India and others Vs. Ramzan Khan X 1990(4) SC 456 Judgments Today para-15 & 18 X held as under:-

"Para-15: Deletion of the second opportunity from the scheme of Art.311(2) of the Constitution has nothing to do with providing of a copy of the report to the delinquent in the matter of making his representation. Even-though the second stage of the inquiry in Art.311(2) has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the Inquiry Officer holding that the charges or some of the charges are established and holding the delinquent guilty of such charges. For doing away with the effect of the enquiry report or to meet the recommendations of the Inquiry Officer in the matter of imposition of punishment, furnishing a copy of thereport becomes necessary and to have the proceeding completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. While by law application of natural justice could be totally ruled out or truncated, nothing has been done here which could be taken as keeping natural justice out of the proceedings and the series of pronouncements of this Court making rules of

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The applicant states that an appeal was preferred against the orders of punishment to the Director of Telecommunications, Hyderabad and that the said appellate authority reduced the punishment to the compulsory retirement from dismissal. The applicant also states that he had filed a Revision Petition to the Hon'ble Member (Admn.), Posts and Telegraphs Board, New Delhi and that the said authority modified the penalty to the reduction of 3 stages in the time scale for a period of one year with cumulative effected with a direction to reinstate the applicant. It is stated that aggrieved by the orders supra, he had preferred an Appeal and Review Petition to the Hon'ble President of India, and that the same were rejected. The applicant alleges that the order is contrary to the princiles laid down in the decided cases, and that the disciplinary action was initiated with malafide intention.

4. The respondents filed reply statement justifying their action against the applicant in initiating disciplinary proceedings for his unauthorised abasence. The respondents also state that the transfer of applicant was in the interest of service. The respondents deny the allegations made by the applicant that he was not allowed to take extracts of the documents relied upon. The respondents state that the charges against the applicant were adequately established in the enquiry and therefore the disciplinary authority accepted the findings of the Inquiry Officer and awarded the punishment of dismissal from service against the applicant. The respondents deny the allegation that third respondent had accepted the findings of the InquiryOfficer without applying his independent mind. The respondents no where denied that the applicant was furnished with the inquiry report before imposing the penalty, providing him an opportunity to represent against it. The respondents

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aforesaid principles in the rulings, it would follow that proceedings dt. 10.12.1984 bearing No.1-137/83/Vig./III passed by 1st respondent and confirmed in Review Petition filed by the applicant on 13-6-1985 as per proceedings dt. 22.2.19[illegible] bearingNo.X/DISC/DETKS VJ/87-88/116 are illegal and contrary to the provisons of natural justice and accordingly quashed.

9. This order, passed by us, however, will not preclude the respondents (disciplinary authority) from proceeding with the enquiry from the stage of receipt of the enquiry officer's report. Since the enquiry officer's report has already been made available to the applicant, the question of furnishing it once again does not arise. If the disciplinary authority proposes to continue with the enquiry, he shall give reasonable opportunity to the applicant to represent against the enquiry report, and only thereafter proceed with the enquiry and complete the same. Nothing said herein would affect the decision of the disciplinary authority. At the same time, we hasten to add, that this order of the Tribunal is not a direction to necessarily continue the disciplinary proceeding. That is entirely left to the discretion of the disciplinary authority.

10. With the above directions, the application is disposed-of with no order as to costs.

CERTIFIED TO BE TRUE COPY

[signature]

Court Officer
Central Administrative Tribunal
Hyderabad Bench
Hyderabad

Copy to:-

1. Secretary, Telecommunications, Department, Ministry of Communications, Sancher Bhavan, New Delhi-110 001.
2. The General Manager, Telecommunications, Triveni Complex, Hyderabad-500 001.

natural justice applicable to such an inquiry are not affected by the 42nd amendment. We, therefore, come to the conclusion that supply of a copy of the inquiry report along with recommendations, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof. The Forty Second Amendment has not brought about any change in this position."

In the same Ruling at para-18, Their Lordships observed that -

"Para-18: We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter."

7. Based on the above principles, this Tribunal in a case filed by one Sri K.Nagarajan, in O.A.No.301 of 1988 against the Divisional Commercial Superintendent, South Central Railway, Vijayawada and others, allowed the application by Judgment dt. 8-3-1991. On this a Review Petition was filed in R.P.No.66 of 1991 but the said R.P. was also dismissed on 24-12-1991.

8. In the instant case, it is an admitted fact that the report of enquiry officer was furnished to the applicant herein along with the punishment order dt. 6-5-1983, and in the result, the applicant was not provided an opportunity to make a representation against it. This action amounts to violation of rules of natural justice. Applying the

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3. Divisional Engineer, Telecommunications, Mahaboobnagar.

4. Divisional Engineer, Telephones, Seven Star Liquour Buildings, Labbipet, Vijayawada-520 010, Krishna Dist.,

5. One copy to Shri. V.S. Anjaneyulu, advocate, CAT, Hyd.

6. One copy to Shri. N.R.Devraj, Addl. CGSC, CAT, Hyd-bad.

7. One spare copy.

Rsm/-

COPY OF:

DEPARTMENT OF TELECOMMUNICATIONS.
OFFICE OF THE TELECOM. DISTRICT MANAGER: VIJAYAWADA - 520050.
MEMO.NO. IT/ST-18-III/105, dated at Vj - 50, dt. 21-6-1989.

In accordance with the orders of the Chief General Manager Telecommunications, A.P.Circle, Hyderabad, vide Lr.No.TA/SCE/13-2/87-88, dt.28-1-1988, the Telecom. District Manager, Vijayawada, is pleased to promote Sri G.Venkateswara Rao, Telephone Operator, Vijayawada, to the next higher scale of pay under one time bound promotion scheme in the scale of Rs.1400 to 2300 with effect from 22-07-1995 after completion of 16 yrs. qualifying service in the cadre of Telephone Operator.

Option for pay fixation if any may be exercised within one month of receipt of this memo. as per the instruction contained in OM No.xx K.7/1/80-Estt.P.I., dt.26-2-81 from the Ministry of Home Affairs.

Sd/- Divisional Engineer (Admn)
O/o. Telecom. District Manager.
Vijayawada.

//true copy//

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From:

Gamidi.Venkateswara Rao,
@ G.V.Rao, I,
C/O. A.E.TKs, C.T.X.,
VIJAYAWADA - 1.

To "Through Proper Channel"

The G.M.Telecom,
7 Bar Liquor Buildings,
VIJAYAWADA - 10.

Sir,

Sub:- Requesting for revision of decision - O.T.B.P of G.Venkateswara Rao P.S.O - Reg.

Ref:- 1) G.M.Telecom, Lr.No.VJ/ST/-18-IV/124, dated.22-4-'93. With reference of my letter, dated 26-3-'93.
2) CAT O.A.No.106/89 - Date of Judgement 4-2-'92.

With respectfully I am submitting few lines to your kind notice of your Lr.No.Cited I above "speaking that the O.T.B.P of mine is in order. In this regard I wish to inform that I joined in Telecom Department as T.O on 16-2-'67 and further have completed 16Years of service by the year of 1983: So, I am eligible to O.T.B.P orders since, 1983.

— So, Once again K am requesting you Sir to go through my records with references II cited above and pass the O.T.B.P orders with all consequentional reliefs since 1983 following the orders (decision) of D.O.T. N.D.

Requesting early action, with detailed information from your end.

Thanking you Sir,

Yours faithfully,

Dated: 3rd May, 1993,

Station: VIJAYAWADA.

Gamidi Venkateswara Rao
(GAMIDI.VENKATESWARA RAO)

Note:- Forwarding to G.M.Telecom,
A.E.TKs, Lr.No.E 9A/93-94/U, VJ, Dt.5-5-'93.