

(20)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA 1306/94.

Dt. of Order:24-10-94.

S.P.Khasim Peeran

...Applicant

Vs.

1. The Advisor/Human Resources Development,
Department of Telecom, New Delhi-110 001.
2. The Asst.Engineer, Trunks, Nizamabad.
3. The Telecom Dist. Engineer, Nizamabad.

...Respondents

Counsel for the Applicant : Shri P.Rathaiah

Counsel for the Respondents : Shri K.Bhaskara Rao, Addl.CGSC

CORAM:

THE HON'BLE SHRI A.V.HARIDASAN : MEMBER (J)

THE HON'BLE SHRI R.RANGARAJAN : MEMBER (A)

...2.

DA 1306/94.

Dt. of Order: 24-10-94.

(Order passed by Hon'ble Shri A.V. Haridasan,
Member (A)).

* * *

(21)

The challenge in this application filed under section 19 of the A.T. Act, 1985, is against the order of the Respondent No. 2 dt. 27-1-94 imposing on the applicant ^{the} penalty of withholding the increment with cumulative effect for a period of two years and the order dt. 2-3-94 of the Respondent No. 3 rejecting his appeal. The facts in brief are as follows :-

2. The applicant, who was a Telephone Operator was issued with the memorandum of charges alleging that he had connected Bombay phone No. 494374 to a local ~~xx~~ subscriber of Nizamabad without a trunk ticket. The applicant submitted a representation ~~on~~ on receipt of the memorandum. Under Rule 16 of the CCS(CCA) Rules, 1965, the Disciplinary Authority by its order dt. 27-1-94 held the applicant guilty of ^{the} misconduct and imposed on him ^{a penalty of} with holding of ^{the} ~~xx~~ increment due as on 1-10-94 for a period of 2 years with cumulative effect

The appeal filed against this was rejected by the Appellate Authority by its order dt. 2-3-94. The case of the applicant is that he never admitted the alleged mis-conduct and that the imposition of penalty of with holding of increment for two years with cumulative effect without holding enquiry under Rule 16(1)(A) is ^{illegal} that therefore the orders of Disciplinary Authority as well as the Appellate Authority are unsustainable in law. Sri Bhaskar Rao, learned standing

counsel for the Respondents have taken notice on behalf of the Respondents. We have heard learned counsel for both parties. As the point involved in this case is quite simple, the counsel for either side agreed that this application may be disposed of with appropriate directions/ at the admission stage itself. From the averments made in the impugned order, it is evident that the applicant has admitted to have connected the call without a Trunk call Ticket. The learned counsel for the applicant states at the bar that the applicant ~~has admitted~~ had admitted only to have connected the Bombay line. A Telephone Operator is expected to connect a Trunk Call only on issuance of a Trunk Ticket, ~~there is no case for the applicant. Further~~ A copy of the explanation submitted by the applicant to the Disciplinary Authority has not been placed in the material papers to make out that the applicant had ^{or had} not admitted the allegations contained in the notice in toto. Further it is seen from the impugned order that the penalty of withholding of increment for two years with cumulative effect ^{has been} awarded to the applicant without holding an enquiry. Sub Rule 1(A) of the Rule-16 of CCS(CCA) Rules reads as follows :-

"If in a case it is proposed, after considering representation made by the Govt. Servant, under Clause (A) of that sub-rule, to withhold increments and such withholding effects in the amount of pension payable to the Govt. Servant for a period of 3 years or withholding of increments with cumulative effect for any period an enquiry shall be held as envisaged in

in sub rule 3 to 23 of rule 14
before making any order of the
Govt. Servant (Emphasis supplied)

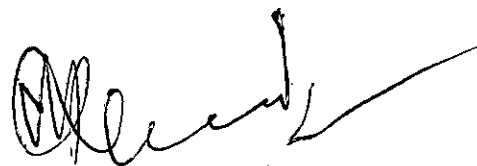
It is obvious from the above provision that if a penalty of
with holding of increment for any period with cumulative
effect is to be imposed, it can be be done after holding an
enquiry ~~xxx~~ envisaged in sub-rule-3 to 23 of Rule 14 of CCS
(CCA) Rules.

3. Shri Bhaskar Rao, learned standing counsel for the
Respondents argued that the applicant should have brought this
provision to the notice of the Appellate Authority and if that
had been done, the Appellate Authority could have considered
the same and passed an appropriate order. An authority compe-
tent to dispose of an appeal is expected to know the legal
provisions and the statutory duties expected to be performed
by the Appellate Authority. According to Rule-27 of CCS(CCA)
Rules, the Appellate Authority should also see whether the
penalty is proportionate or disproportionate with the gravity
of the misconduct committed by the applicant whether the order
was passed in accordance with the Rules. This aspect was not
considered by the Appellate Authority. The provisions of 16(1)
(a) of CCS(CCA) Rules should not have escaped the notice of the
Appellate Authority. Under these circumstances, the learned
counsel for the Respondents states that the Appellate Authority
may be given another opportunity to consider these aspects. The
learned counsel for the applicant also submits that the applica-
would be satisfied if the Appellate Authority is directed to
dispose of the applicant's representation in the light of the
above mentioned provision.

4. In the result the order of Appellate Authority dt. 2-3-94 is set aside and the Respondent No.3 is directed to consider the question of penalty in the light of the above observations as also in the light of the provisions contained in Rule 16(1)(a) of CCS(CCA) Rules and to pass appropriate orders within a period of two months from the date of communication of a copy of this order. No order as to costs.



(R. RANGARAJAN)
Member (A)



(A.V. HARIDASAN)
Member (J)

Dt. 24th October, 1994.
Dictated in Open Court.

4 1
Deputy Registrar (Judl.)
2/12/94

avl/

Copy to:-

1. The Advisor/Human Resources Development, Department of Telecom, New Delhi-001.
2. The Asst. Engineer, Trunks, Nizamabad.
3. The Telecom Dist. Engineer, Nizamabad.
4. One copy to Sri. P. Rathaiah, advocate, CAT, Hyd.
5. One copy to Sri. K. Bhaskar Rao, Addl. CGSC, CAT, Hyd.
6. One copy to Library, CAT, Hyd.
7. One spare copy.

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MA - 1306/94

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR.A.V.HARIDASAN : MEMBER(D)

AND

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

DATED: 24/10/94

ORDER/JUDGMENT.

M.A/R.P/C.D.No.

O.A.NO.

T.A.NO.

Admitted and Interim Directions
issued.

Allowed.

Disposed of with Direction.

Dismissed.

Dismissed as withdrawn

Dismissed for default

Rejected/Ordered

No order as to costs.

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