

(23)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

G.A. 1280/95.

Dt. of Decision : 26-04-96.

Between

Gudala Suryanarayana

: Applicant.

AND

1. The Sub-Divisional Engineer(Phones)
Sanchar Bhavan, Rajahmundry.

2. The Divl. Engineer, Telephones
(Maintenance), Rajahmundry.

3. The General Manager,
Telecommunications,
East Godavari Telecom District,
Rajahmundry.

: Respondents.

Counsel for the Applicant

: Mr. S. Ramakrishna Rao

Counsel for the Respondents

: Mr. K. Ramulu, Addl.CGSC.

CORAM:

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

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O.A. 1280/95.

Dt. of Decision : 26-04-96.

JUDGEMENT

Oral Order (Per Hon'ble Shri R. Rangarajan, Member (Admn.) X

The applicant in this OA while working as Wireman under R-1 was issued with a memo dated 19-10-95 (Annexure-A-II) asking for his explanation for connecting a subscriber who did not have STD facilities to the number of another subscriber who had STD connection. The applicant submitted his explanation dated 20-10-95 (Annexure A-III) denying happening of such incidence. In view of the explanation given which was considered unsatisfactory he was issued with a charge-sheet No.X-1/R-16/Disc/GS.WM TD/95-96/4 dated 24th October 1995 (Annexure A-IV) under rule 16 of the CCS (CCA) Rules. Subsequently he was also issued with a transfer order No.E-25/WM/Trfs/84-96/103 dated 24-10-95 (Annexure A-I) transferring him to Amalapuram from Rajahmundry. The above said transfer is impugned in this OA.

2. The main contention of the applicant for impugning the transfer order is as follows:-

1) The applicant submits that he is not the only person who was available in the Test Dest/Main Distribution Frame at Rajahmundry on the day in question. There were other Wiremen also and hence holding him only responsible for irregular connection is not correct.

2) The applicant was issued with a charge-sheet and on the same day he was transferred from Rajahmundry to Amalapuram. The above act shows that the respondents are prejudiced against him which resulted in his transfer and hence it is a case of colourable exercise of power.

3) He was not given any opportunity to explain his conduct and hence the transfer is irregular. When an opportunity was given to the applicant to substantiate his case so as to clear him of the allegations the applicant failed to give any satisfactory reply. Having failed to do so he cannot now ~~agitate~~ stating that no opportunity was given to him to explain his case thereby ~~denying~~ ^{denying} him justice. As he failed to give any satisfactory reply when he was asked to explain his conduct there is no reason to uphold the contention of the applicant that the principle of natural justice was not extended to him.

3. There is no doubt that the applicant was issued with a charge-sheet but that does not prevent the authorities to transfer him if his presence at Rajahmundry is going to cause lot of public complaints. It is a well-known fact that there are complaints from public in regard to the inflated telephone bills. One of the reasons for such complaints appear to be that the Lineman/Wireman and other staff do make irregular connection thereby the public is put to dis-advantage by making them to bear the inflated bills. The respondents in their reply had clearly stated that the JTO on duty verified the wiring on the MDF and found wedging the phone No. 71172 at the MDF. It is also stated in the reply that on the day in question he was the only Wireman available in the wireman duty room. This averments in the reply has not been controverted by the applicant by filing rejoinder. Hence it has to be held that the applicant was the only person available on the MDF on the day in question and he gave irregular connection as stated by the JTO. Though the applicant states in the OA that some Wireman were also available in the duty room, he could have clearly stated who

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who was

who was the wireman ~~who was~~ with him on the MDF when the reported incidence took place. No name of the person reported to be with him in the Test Dest/MDF is given in the OA. If he is not responsible and the averments made in this connection in the reply is incorrect he could have substantiated his case by filing a suitable rejoinder indicating the name of person/ persons who were available on the MDF alongwith him on the day in question when the incidence took place and could have also pin pointed the person who would have done this mischief.

4. The applicant has history of making irregular connection even earlier. One of the other JTOs have also complained against him in this connection. He has been taken up earlier also for mis-using of his position to give illegal/ irregular connection. When such a past history is available that he is a mischief monger the JTO who recorded the present incidence cannot be alleged to have made irresponsible statement. In the background of the past behaviour of the applicant it had to be held that the applicant is responsible for the mis-use of his position as a wireman to give irregular connection.

5. From the above appreciation of the facts it is established fully on the basis of the facts on record that the applicant is fully responsible for giving the irregular connection. There is no need for conducting any further enquiry in this connection for the purpose of his transfer. When a prima-facie case is established and such a behaviour of the applicant is going to cause lot of public agitation/ public complaints, public utility department cannot be a dumb spectator of the incidence. It has to take action and persons responsible for such irregular actions had to be severely dealt with. The transfer is not a punitive action and especially

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under the present circumstances the transfer of the applicant is not at all punitive. Hence I do not consider that it is a fit case for interference.

6. The applicant relied on the reported case 1995 (31) ATC 246 of CAT, Ahmedabad to state that if a transfer is a case of colourable exercise it has to be set aside. As I said earlier that the present transfer of the applicant is not punitive action and if he is not going to be transferred there will be lot of public complaints. Tribunal cannot be ignorant of such happenings which is reported day in and day out in papers. His transfer has to be considered as an administrative necessity to avoid public complaints and the respondents are well within their boundry in ordering this transfer.

7. The applicant also relies on the judgement of the Full Bench in Kamlesh Trivedi Vs. Indian Council of Agricultural Research and Another (1988 (7) ATC 253) to emphasis that when a mis-conduct is involved the applicant has to be taken up under the disciplinary appeal rules and in such cases the question of transfer does not arise as it is a punitive action. In the facts of this case I am convinced that the transfer is very essential. This transfer cannot be considered as a punitive action. Further the facts of this case and Kamlesh Trived's case are entirely different and hence no comparison can be drawn in this OA. The applicant appears to be habituated in giving illegal connection as revealed from his past history.



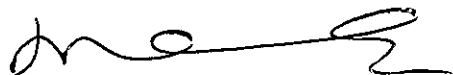
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8. Public utility services have to maintain dignity and has to be transparent in their action. Such is possible only if the employees in those departments behave responsibly. In this case there is no reason to believe that the applicant has not given irregular connection. If he had not given any such illegal connection he could have substantiated his case well in his reply dated 20-10-95 in response to the show cause notice. The very fact that he had no explanation to offer as indicated in the reply referred to above, ^{that} there is ~~a~~ reason to believe ^{that} he had given irregular/illegal connection.

9. In view of what is stated above, I am fully convinced the applicant has not made out a case against his transfer to Amalapuram and hence the transfer order has to ~~be~~ stand. Hence the OA is dismissed. No costs.



(R. Rangarajan)
Member (Admn.)

Dated : The 26th April 1996.
(Dictated in Open Court)

Antony
FSSB
JNOI

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Copy to:-

1. The Sub Divisional Engineer(Phones), Sanchar Bhavan, Rajahmundry.
2. The Divisional Engineer, Telephones(Maintenance), Rajahmundry.
3. The General Manager, Telecommunications, East Godavari Telecom District, Rajahmundry.
4. One copy to Sri. S.Ramakrishna Rao, advocate, CAT, Hyd.
5. One copy to Sri. K.Ramloo, Addl. CGSC, CAT, Hyd.
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

DATED: 26/4/96

~~ORDER~~ JUDGEMENT

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

B.A. NO.

IN

1280791

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDERS AS TO COSTS

No Spare Copy

