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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

OA.813/99

dt.22-3-2000

Between

K. Hari Prasad

: Applicant

and

1. Chief General Manager
Telecommunications
AP Circle, Abids
Hyderabad

2. General Manager
Telecommunications
Telecom District Manager
Tirupati

3. Telecom District Manager
Dept. of Telecommunications
Tirupati

: Respondents

Counsel for the applicant

: V. Venkateswara Rao
Advocate

Counsel for the respondents

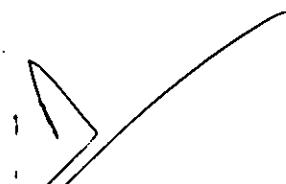
: B. Narasimha Sarma
Sr. CGSC

Coram

Hon. Mr. R. Rangarajan, Member (Admn.)

Hon. Mr. B.S. Jai Parameshwar, Member (Judl.)

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OA.813/99

Dated : 22.3.2000

Order

Oral order (per Hon. Mr. R. Rangarajan, Member (Admn.)

Heard Mr. V. Venkateswara rao for the applicant and Mr. B. Narasimha Sharma for the respondents.

1. The applicant in this OA while working as Cashier was issued with a charge memo bearing No.TAT/ST/12/1/3 Dated 26.8.1985 (Annex.I). There are seven Articles of charges included in the charge sheet. The Articles of charges included in the charge sheet reads as follows:

Article I :

That the said Shri K. Hari Prasad while working as Cashier in the office of DET Tirupati during the period from 1975 to 15.5.1980 has posted or allowed to be posted the incomplete vouchers and also made payments in cash of amounts over Rs.100/- in contravention of Rule 234 (i) of P&T FHB Vol.I and note 2 below Rule 116 of P&T FHB Vol.III.

Thus the said Shri K. Hari Prasad while working in the said office has violated Rule 3 of CCS (Conduct) Rules, 1964 by showing lack of integrity, lack of devotion to duty, conduct unbecoming of a Government servant.

Article II

That during the aforesaid period and while functioning in the aforesaid office, the said Shri K. Hari Prasad has passed the money on the advance receipts by cash instead of by cheque and without obtaining acquittance of the parties receiving actual payments on the vouchers in contravention of Rule 43 of FHB Vol.I and Note 2 below Rule 116 of P&T FHB Vol.III.

Thus the said Shri K. Hari Prasad while working in the said office has violated Rule 3 of CCS (Conduct) Rules 1964 by showing lack of integrity, lack of devotion to duty conduct unbecoming of a Government servant.

Article III

That during the aforesaid period and while functioning in the aforesaid office, the said Shri K. Hari Prasad has credited Rs.12.10 in respect of money order received from Smt. Usharani, Sweeper, Kamalapuram while the money order No.3441 was actually for Rs.18.10 which was originally charged in Vr. No.528 dtd.10.12.79 and thus credited Rs.6/- short in the Government accounts in contravention of Rule 4 of P&T FHB Vol.I.

By the above act Shri K. Hari Prasad in the said office has exhibited lack of devotion to duty, has not shown integrity and acted in a manner unbecoming of a Government Servant and contravened Rule 3 (1) (i) (ii) and (iii) of CCS (Conduct) Rules, 1964.

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Article IV

That during the aforesaid period and while functioning in the aforesaid office, the said Shri K. Hari Prasad has falsified the accounts by showing that the TA Bill for Rs.35.30 of Shri P. Narayana Reddy, Technician, for the month of May, 79 has been paid by MO against voucher No.168/8.11.79 while it has been shown as paid locally at the window in rough cash book. Such payment has been denied by Shri Narayana Reddy, Technician.

By the above act the said Shri K. Hari Prasad while working in the said office has exhibited lack of devotion to duty, has not shown integrity and acted in manner unbecoming of a Government servant and contravened Rule 3 (1) (i) (ii) and (iii) of CCS (Conduct) Rules, 1964.

Article V

That during the aforesaid period and while functioning in the aforesaid office, the said Shri K. Hari Prasad mis-represented the facts to Shri Madhava naidu and obtained his signatures second time for non-genuine purpose on the bill for the rent of building of DET Office Tirupati for the month of April, 1980 though the rent for the month of April, 1980 had already been acknowledged by Shri Madhava naidu and also that the voucher was actually missing.

By the above act the said Shri K. Hari Prasad while working in the said office has exhibited lack of devotion to duty, has not shown integrity and acted in a manner unbecoming of a Government servant and contravened Rule 3(1)(i) (ii) and (iii) of CCS (Conduct) Rules, 1964.

Article VI

That during the aforesaid period and while functioning in the aforesaid office, the said Shri K. Hari Prasad has not maintained out of Account Payments Register and Demand Draft registers to facilitate proper accounting and check of money collected in respect of out of account recoveries and also did not make suitable entries in the Cash Book regarding the cash held by him daily in respect of out of account recoveries and thus violated Rule 559 and Appendix 29 of P&T FHB Vol.I.

By the above act the said Shri K. Hari Prasad while working in the said office has exhibited lack of devotion to duty, has not shown integrity and acted in a manner unbecoming of a Government servant and contravened Rule 3 (1)(i)(ii) and of CCS (Conduct) Rules, 1964.

Article VII

That during the aforesaid period and while functioning in the aforesaid office, the said Shri K. Hari Prasad has shown invoice No.4093 of Royal Furnishing Co., for Rs.4509.44 as paid in cash vide Vr.No.142 dated 7.4.80 taking the Invoice as voucher and without obtaining any receipt, at the time of actual payment; that the party vide its letter dated 6.1.81 has denied receipt of the above payment; that the said Shri K. Hari Prasad has not verified the identity of the receiver at the time of actual payment and has made the payment in cash instated of by cheque, even when the amount was over Rs.100/-, in violation of the departmental rules.

Thus by his above acts the said Shri K. Hari Prasad committed grave misconduct, exhibited lack of absolute integrity, failed to maintain devotion to duty and acted in a manner unbecoming of a Government servant, thereby

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contravening the provisions of Rule 3(1)(i)(ii) and (iii) of CCS (Conduct) Rules, 1964.

2. The applicant submitted his representation to the charges leveled against him and an inquiry was conducted. The inquiry report is enclosed at page 18 of the OA. One Sri A. Subba Rao, Senior Superintendent, Telegraph Traffic, Kurnool, was appointed as Inquiry officer by the Director, Telecommunications, Tirupati. A copy of the inquiry report was given to the applicant as can be seen from the order No.E-30-198/Disc. Dated 22.11.91 (Annex.IV). The applicant submitted his representation against the inquiry report by his representation dated 12.12.1991 (Annex.V). The applicant was imposed a penalty by proceedings dated 24.1.1992 (Annex.VI). He was issued with a charge sheet for major penalty. The penalty awarded to him was a minor penalty of withholding two increments with effect from 1.6.92 for a period of two years with cumulative effect in the pay scale of Rs.1400-2300. Against that the applicant filed an appeal dated 9.3.92 which is enclosed as Annex.-VII. That appeal was disposed of by order No.TAH/ST/26-4/KHP dated 30.3.93 (Annex.VIII) confirming the punishment awarded to him by the Disciplinary authority.

3. At this stage the applicant filed OA.1341/94 on the file of this Bench which was disposed on 31.7.1997. In that order the contention of the applicant which was not suitably replied by the Appellate authority has been indicated in page 3 of the judgement. The above said OA was disposed of remitting the case back to the Appellate authority for issuing an appeal order in the light of the contentions raised in the memo by the applicant taking note of all the contentions in the order dated 31.7.97. The Appellate authority by proceedings No.GMT/TRP/KHP dated 19.12.98 (Annex.X) once again reviewed the punishment and passed the appeal order confirming once again the earlier order passed by him.

4. This OA is filed to set aside the impugned order No.X/TDM/Disc/91-92 dated 24.1.1992 issued by the respondent No.3 imposing the penalty of withholding two increments for a period of two years with cumulative effect with effect from 1.6.92 as confirmed by the second respondent by proceedings





No.GMTD/TRP/KHP dated 19.12.98 and for a consequential direction to pay arrears of pay and allowances, promotion etc.

5. The main contention of the applicant is detailed as below:

- a) The applicant expressed bias on the Inquiry Officer in conducting inquiry proceedings. That was not taken note of and inquiry officer himself has not rejected that bias. Hence, the inquiry report has to be set aside and further proceedings should be initiated if necessary and on that view charge sheet itself is liable to be set aside.
- b) The Principles of Natural Justice was not followed in the inquiry proceedings. The applicant submits that he has raised number of points during the course of inquiry and all those points were rejected by the inquiry officer as stated by him in the inquiry report. As the principles of Natural Justice are not followed the punishment order has to be set aside. For this he relied on the judgement of the Apex Court reported in 1974 (1) SLR 427 (S. Parthasarathy vs. State of Andhra Pradesh).
- c) The inquiry officer was a Senior Scale Officer when he was nominated as Inquiry Officer but he became Junior Administrative Grade Officer designated as TDM. The charge sheet was issued by the Director who is also in the same grade. Hence, conduct of the inquiry by an officer of equivalent rank to that of the officer who issued the charge sheet cannot be acceptable as the said officer will not go against the views expressed by the Director who issued the charge sheet.
- d) There is no misconduct involved in this case as the applicant was careless in discharging his duties and that cannot be misconduct. Hence, the charge sheet has to be set aside.
- e) No relevant record was produced by fixing a suitable time and date and were produced as and when it was possible by the respondents and on that score the charge sheet is liable to be set aside.

6. We have considered the above view points. At the outset it has to be said that the applicant has submitted himself to the inquiry. When he submits that number of irregularities were committed by violating the principles of Natural

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Justice and not providing necessary documents, he could have agitated then and there either by approaching the respondents authorities and in case the respondent authorities refuse to see the point in his case he could have approached judicial forum. He did not do that. He submitted to the inquiry and submitted his remarks to the inquiry report. Hence, at this stage challenging the inquiry proceedings as violative on various grounds may not be proper. Inspite of that we thought it fit to examine the points as above.

7. The applicant submits that the principles of Natural Justice has been violated and that records were not produced to him by fixing time and date. The bias on the inquiry officer has been rejected which is unwarranted and which is against rules. The applicant relies on the reported judgement in Parthasarathy's case. In that the following observations were made:

"There must be a real likelihood of bias and that means there must be a substantial possibility of bias. The court will have to judge of the matter as a reasonable man would judge of any matter in the conduct of his own business."

8. The applicant submitted a representation alleging bias against the inquiry officer. He also submitted that the said bias was disposed of by the inquiry officer. But the record states otherwise. In the proceedings of the Appellate authority dated 19.12.98 it has been clearly stated that " as a matter of fact the bias petition dated 14.2.87 of Sri K. Hariprasad against the Inquiry Officer was disposed of by DOT/ND vide letter No.15-4/87-Vig.III dated 27.4.87 and not by the Inquiry Officer himself."

9. This clearly shows that the applicant was not aware of the full position. The reported judgement only states that the bias petition has to be disposed of taking into account all the points made properly without leaving out any of the points mentioned in the bias petition. No further meaning can be given to the observations of the Apex Court in the reported judgement. We have no material to come to the conclusion that DOT would not have considered the various points and passed the order. There is no material available that the DOT has not applied his mind in the passing of order in the bias petition. Hence, the applicant cannot now submit because of bias his case has to be allowed. If his bias petition was

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rejected he could have approached a judicial forum. He did not do that. Hence, this contention is rejected.

10. The principles of Natural Justice have to be decided on the basis of the material available on record. No one can just observe that the principles of Natural Justice are not observed on the presumptive grounds. In the present case the applicant was given documents for perusal in stages. It does not mean that principles of Natural justice were not followed. The applicant had seen the documents and submitted his version after perusal of the document. It cannot be stated that the respondents failed to produce the documents before him. Hence this contention is of no consequence in this OA.

11. The applicant submitted that in the inquiry report the inquiry officer rejected number of points raised. He relies on the para-8 of the inquiry report wherein it is stated that the objection raised by the applicant has been overruled by the inquiry officer and that his objection should have been disposed of in accordance with Rule 35 of CCS (CCA) Rules, 1965. During the conduct of inquiry number of points arose for consideration. It is for the inquiry officer to decide whether such objections have to be accepted or to be overruled. Rule 35 of CCS (CCA) Rule, 1965 has no relevance in that connection. It only means that in case any clarification is required from the rule point of view then the direction given in Rule 35 should be followed during the conduct of inquiry. The inquiry officer is at liberty to dispose of the petition on the basis of the material available or he is at liberty to pass on that petition for higher authority for suitable reply. In the present case the objection raised by the applicant was within the competence of the inquiry officer and was overruled.

12. The representation submitted by the applicant on the basis of the inquiry report does not categorically state what are the objections raised and what he expected to be out of the objections raised and why he did not accept the findings of the inquiry officer as per the objections raised. In the absence of that at this late stage it is not permissible for the applicant to raise that contention. If the applicant is aggrieved he is at liberty to approach the Disciplinary authority and



submit a representation; but it is not known why no such action had been taken by the applicant? Hence, we do not consider that the contention of the applicant that the principle of Natural justice is not followed is relevant for consideration in this OA.

13. The last contention of the applicant that the inquiry officer when appointed was senior Scale officer but he had become Junior Administrative Grade Officer, equivalent rank of the Director, who issued the charge sheet and hence he should not have acted as inquiry officer. We do not consider it as appropriate contention for allowing this OA.

14. A reply has already been given by the Appellate authority in the appeal order dated 19.12.98. The order given by the Appellate authority reads as follows:

"As per para (II) under Rule 14 of CCS (CCA) Rules, 1965 Inquiry Officers to be senior in rank to the Officers enquired against. The Committee on subordinate legislation (fourth Lok Sabha) have recently examined the question of appointment of Inquiry Officers to inquiry into the charges leveled against delinquent officers under CCS (CCA) Rules, 1965. The Committee has observed that the inquiries should be conducted by an Officer who is sufficiently senior to the officer whose conduct is being inquired into as inquiry by a junior Officer can not command confidence which is deserves. Thus it can be seen, no where it is mentioned that the Disciplinary authority and Inquiry Officer should not be of same rank. This is also to mention that this case has been completed complying with the procedure laid down in the CCS (CCA) Rules, 1965."

This view was taken by us also in judgement OA.584/99 (A. Narayana Vs. Chief General Manager) decided on 14.3.2000. Hence, this contention is also overruled.

15. The Courts or Tribunals cannot interfere with the inquiry proceedings or punishment. If the proceedings are over and if there is some evidence available before the Department it can award some punishment on the basis of the inquiry. ^{that}
In the present case we are very much convinced that there was evidence for punishing the applicant suitably. But it is to be stated that the respondent authorities have acted very fairly.

16. Because of the long time period involved in the disposal of the case of the applicant, that the charge sheet was issued in 1984 and it was finalised in 1992 the punishment order has to be withdrawn. We do not consider this contention as an abuse of the applicant

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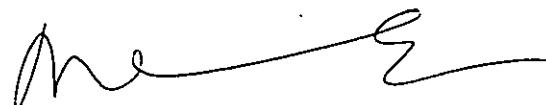
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appropriate submission. No doubt the time taken is very long. If the applicant is aggrieved by the long time taken for disposal of the inquiry he should have approached either for cancellation of charge sheet or other remedies which he thinks fit in this case. But he did not do that. Now at the late stage when the proceedings are over and when he is awarded with the punishment he requests for canceling the charge sheet because of the long time taken in disposal of the inquiry. This cannot be accepted and hence has to be rejected. However, as stated earlier ~~by~~ the respondents have acted very fairly. Because of the long time involved in finalizing the disciplinary proceedings the respondents have awarded the punishment by changing major to minor penalty. Even though the charge sheet was issued for major penalty the applicant was issued with a minor penalty. That itself shows that the respondents have acted realizing delay in completion of disciplinary proceedings.

16. Considering the above points we are of the convinced opinion that the applicant cannot get any relief. Hence, the OA is to be dismissed and it is dismissed. No costs.

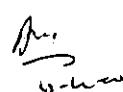

(B.S. Jai Parameshwar)
Member(Judl.)

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(R. Rangarajan)
Member(Admn)

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Dated : 22 March, 2000
Dictated in Open Court



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH,
HYDERABAD.

~~STATE AND COUNTY COURT~~

TYPED BY
COMPILED BY

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APPROVED BY

COPY TO

1. HDHNJ THE HON'BLE MR. JUSTICE D.H. NASIR
VICE-CHAIRMAN

2. HRRN (ADMN) MEMBER. THE HON'BLE MR.R.RANGARAJAN
MEMBER (ADMN) ✓

3. HBSJP. M. (JUDL) ✓

4. D.R. (ADMN) THE HON'BLE MR.B.S.JAI PARAMESHW
MEMBER (JUDL) ✓

5. SPARE ✓

6. ADVOCATE

7. STANDING COUNSEL DATE OF ORDER 22/3/2000

DATE OF ORDER 22/3/2000

~~MA/REF/DE, NO~~

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S.A. NO. 813199

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

C. P. CLOSED

R.A. ~~CLOSED~~

DISPOSED OF WITH DIRECTIONS

DISMISSED (

DISMISSED AS WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS

