

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

OA 612/93 : Date of order 21.10.94

K.P. Agarwal : Applicant

v/s

Union of India & Others : Respondents

Mr. K.S. Sharma : Counsel for the applicant

Mr. V.S. Gurjar : Counsel for the respondents

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Hon'ble Mr. Gopal Krishna, Member (Judicial)

Hon'ble Mr. O.P. Sharma, Member (Administrative)

PER HON'BLE MR. O.P.SHARMA, MEMBER (ADMINISTRATIVE)

Shri K.P. Agarwal in this application u/s 19 of the Administrative Tribunals Act, 1985, has prayed that the charge sheet dated 16.2.83 (Annexure A-3) be declared illegal and without jurisdiction and the penalty order dated 27.3.91 (Annexure A-2) and Appellate order dated 26.7.93 (Annexure A-1) may be quashed being illegal.

2. The applicant's case is that vide Annexure A-3 dated 16.2.83, a charge sheet under Rule 14 of the CCS(CCA) Rules were issued to him in which the charge framed against him was that while working as Office Assistant in the Office of the SDO Phones (Central) Jaipur during June, 1981, he had approached one Shri Bal Krishan Soni and without any authority had demanded an amount of Rs. 7000/- as an illegal amount for installing a telephone at his shop and subsequently facilitated the wrongful shifting of telephone no. 68838 from the premises of one Shri Govind Geryani to the premises of Shri Bal Krishan Soni after receiving Rs. 5000/- from Shri Soni and thereby contravened provisions of Rule 3 of the CCS(Conduct) Rules. In the statement of imputations, it was stated that the applicant had approached Shri Soni informing him that he would get him a telephone within no time in case he was prepared to spend an amount of Rs. 5000/-. Considering the urgency of his requirement, Shri Soni agreed to

pay Rs. 5000/- but the applicant enhanced the demand for illegal amount and informed Shri Soni that he will have to spend Rs. 7000/- for getting a telephone on priority basis. Shri Soni agreed to pay Rs. 5000/- and Rs. 2000/- after the telephone was installed. The applicant had no authority to collect the said illegal amount from Shri Soni. Shri Soni expressed his "innocence" regarding the amount being paid as illegal amount, thinking it to be lawful and justified amount demanded by a person working in the Telephones Department. Shifting of the telephone was got done with the help of other employees of the Department. On the applicant's denying the charge, an enquiry was held. The Enquiry Officer vide his report Annexure A-8 held the charge against the applicant as not proved. The Disciplinary Authority, Divisional Engineer Phones (JP), however, vide order dated 26.7.83 (Annexure A-2) disagreed with the Enquiry Officer and holding the charge against the applicant as proved but taking a lenient view of the matter, imposed upon the applicant the penalty of stoppage of next increment for four years without cumulative effect.

3. The applicant is aggrieved by the penalty order on various grounds. One of the grounds is that the charge sheet issued to him by the Divisional Engineer Phones, Jaipur was without jurisdiction, as the said officer was not competent to issue such charge sheet to the applicant. He has relied upon the Judgement of Hon'ble Rajasthan High Court (Hanuman Sahai Vs. Union of India) and also certain judgements of this Tribunal to underscore this point. Coming to the merits of the case, he has drawn our attention to the fact that Shri Soni who had paid Rs. 5000/- to the applicant had not complained against the applicant that any amount was demanded by him as illegal gratification. The amount was paid by Shri Soni to the applicant for converting his General category telephone into QMT category. Subsequently it was realised by the applicant that the amount payable for

OT telephone was Rs. 8000/- and therefore a further amount of Rs. 2000/- was payable, besides the initial amount of Rs. 1000/- which was paid for booking General category telephone. Thereupon, the applicant returned the amount to Shri Soni. This payment was not in connection with the illegal shifting of telephone of One Shri Govind Garyani to the premises to Shri Soni. No evidence was produced during the enquiry to justify the inference that any misconduct had been conducted by the applicant. In these circumstances, the Disciplinary Authority was not justified in disagreeing with the Enquiry Officer and coming to the conclusion that the charge against the applicant had been proved.

4. During the arguments the learned counsel for the applicant stated that the applicant's challenge was not merely to the jurisdiction of Disciplinary Authority to issue the charge sheet but also to the entire disciplinary proceedings which were founded on the charge sheet issued without jurisdiction. He has stated that there was nothing in the rules or Annexures R-1 and R-2 filed by the respondents to suggest that the Divisional Engineer Phones was the Authority Competent to issue the charge sheet or to the applicant to impose penalty upon him. As to the merits of the case, he has reiterated the averment in the application and, particularly, stressed the fact that Shri Soni from whom an amount of Rs. 5000/- was taken by the applicant has not given any statement alleging that the applicant had collected this amount for the purpose of shifting of Shri Garyani's telephone or by way of illegal gratification.

5. The respondents in their reply have stated that the applicant in the first instance accepted an amount of Rs. 5000/- from Shri Soni and an amount of Rs. 2000/- was to be charged after the installation of the phone. The amount of Rs. 5000/- was paid to the applicant before installation of the phone. The telephone of Shri Garyani was shifted to the premises of Shri Soni. The shifting was later on cancelled and the telephone was reinstalled at the original premises from where it was shifted.

This fact, according to the respondents shows that the telephone no. 68838 was shifted illegally at the behest of the applicant. They have added that there is no provision of change of category "by deposition" in the manner as described by the applicant. They have further stated that in the facts and circumstances of the case, the Disciplinary Authority has taken action as per Rule 15(2) of the CCS(CCA) Rules and the Tribunal cannot enter into the appreciation of evidence as sought by the applicant. They have also denied that the authority which issued the charge sheet had no jurisdiction to issue it or that the disciplinary proceedings were finalised by the Disciplinary Authority without jurisdiction.

6. During the arguments, the learned counsel for the respondents produced before us the Posts & Telegraphs Manual Volume III to suggest that the Divisional Engineer Phones was competent to issue the charge sheet and to impose penalty to all Group 'C' staff, who were not otherwise covered separately. This contention of the learned counsel for the respondents has, however, been repelled by the learned counsel for the applicant by stating that the provisions to which our attention has been drawn pertain to the Office Chief Record Clerks.

7. We have heard the learned counsel for the parties and have gone through the records and the judgements cited before us.

8. We may first deal with the question relating to the jurisdiction. On a careful perusal of the application, we find that the applicant has challenged only the jurisdiction of the concerned authority to issue the charge sheet to him and there is no challenge therein to any subsequent proceedings or to the order of penalty on the ground that the Disciplinary Authority had no jurisdiction to pass such orders. We need not go into the question whether the Divisional Engineer Telephones was

specifically empowered to issue charge sheet to the applicant, Suffice it to say that he was <sup>a</sup> higher supervisory authority of the applicant. In their judgement in the case of Registrar of Co-operative Societies, Madras & Another Vs. F.X. Fernando (1994) 27 ATC 188, the Hon'ble Supreme Court deal with the question whether charge sheet should also be issued by the authority, who has appointed a Government servant, and who is competent to impose penalty of dismissal or removal from service on Government servant. The Hon'ble Supreme Court held that in the absence of the rule any superior authority who can be held to be the controlling authority of the Government servant concerned can initiate proceedings on the basis of which penalty is imposed. The Hon'ble Supreme Court referred to another judgement of theirs in the case of State of M.P. Vs. Shardul Singh (1970) 1 SCC 108 in which they had held that the guarantee under Article 311(1) does not include within itself a further guarantee that the disciplinary proceedings resulting in dismissal or removal of a civil servant should also be initiated and conducted by the authorities mentioned in that Article. An important observation of the Hon'ble Supreme Court in their judgements in P.V. Srinivas Sastry Vs. Comptoller and Auditor General (1993) 1 SCC 419, also referred to in their judgement in Registrar of Cooperative Societies case, is that initiation of a departmental proceeding *per se* does not visit the officer concerned with any evil consequences. Since the charge-sheet in this case was issued by a higher supervisory authority of the applicant, inquiry was held and thereafter penalty was imposed, we reject the challenge to the issue of charge-sheet on the ground of jurisdiction.

9. Now, we come to the merits of the case. No doubt, the Enquiry Officer has held charge against the applicant as not established. However, the Disciplinary Authority had disagreed

with the Enquiry Officer and has given detailed reasons for disagreement and for holding the charge against the applicant as proved. The reasons given by the Disciplinary Authority for disagreeing with the Enquiry Officer are on the basis of evidence adduced during the enquiry. The findings of the Disciplinary Authority are not in any way unrelated to the evidence led during the enquiry and therefore, these cannot be said to be perverse. This Tribunal does not function as a Appellate Authority. Its function is that of judicial review under which it can examine whether the process of making a decision was correct and not the correctness of the decision itself, as held by the Hon'ble Supreme Court in H.B. Gandhi, Excise & Taxation Officer cum Assessing Authority Karnal and Others Vs. M/s Gopinath & Stores & Others 1992 Supp (2) SCC 312. If the process of arriving at a decision is correct, this Tribunal will not substitute its own decision for that of a authority who took the decision. Therefore, this Tribunal cannot reappreciate the evidence and come to its own conclusion whether the charge against the applicant was correctly held as established or not.

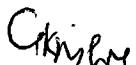
10. We have gone through the report of the Enquiry Officer and the order of the Disciplinary Authority and we find that it is an admitted fact that the applicant did take an amount of Rs. 5000/- from Shri Soni which he returned subsequently. Regardless of whether the amount was paid for shifting of telephone of One Shri Garyani or for payment of the enhanced amount for converting General category telephone into OYT telephone, the applicant was not empowered to accept any amount from a private party in connection with work with the Telephones Department. Also, as stated by the respondents there is no provision of change of category by following the procedure as described by the applicant. Thus the charge has been held as proved against the applicant by the Disciplinary Authority on

the basis of evidence which is ~~admittedly~~ relevant. In his order, the Disciplinary Authority has taken a lenient view in the matter. The charge against the applicant was of accepting a sum of Rs. 5000/- from a private party in an illegal manner which was held as proved. We do not understand how the Disciplinary Authority has taken a lenient view in the matter and has imposed upon the applicant a penalty which is merely a minor penalty. Anyhow, we do not see any reason to interfere with the orders of the Disciplinary Authority and Appellate Authority.

11. In the result, the application is dismissed with no order as to costs.

  
(O.P.SHARMA)

MEMBER(A)

  
(GOPAL KRISHNA)  
MEMBER(J)