

Date of order: 30.6.2000

OA No.86/99

S.N.Gupta S/o Shri Gajanand Gupta, aged about 33 years, now a days working in the office of GMTD, Jaipur.

.. Applicant

Versus

1. Union of India through the Secretary to the Government of India, Department of Telecommunication, Sanchar Bhawan, Sansad Marg, New Delhi.
2. Chief General Manager Telecom, Rajasthan Circle, Jaipur-7.
3. General Manager, Telecom, District Jaipur.
4. The Principal, R.T.T.C., Opp. Door Darshan, Ahemdabad.
5. Shri K.K.Arora, Sub Divisional Officer, Telegraph, Sriganganagar.

.. Respondents

Applicant present in person

Mr. Hemant Gupta, proxy counsel to Mr. M.Rafiq, counsel for the respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

Per Hon'ble Mr. N.P.Nawani, Administrative Member

In this Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant seeks quashing of the impugned orders dated 28.9.1998 (Ann.A1) and dated 4.7.1997 (Ann.A8) and also that the chargesheet dated 24.1.1997 (Ann.A4) may also be quashed and set aside.

2. The basic controversy in this case relates to penalty of withholding of one increment for a period of one year without cumulative effect imposed on the applicant for having failed to inform the fact of his arrest and being kept in judicial custody at Central Jail, Jaipur from 26.8.1994 to 24.10.1994 and by suppressing this material information

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having violated Rule 3 of the CCS (Conduct) Rules, 1964 (for short Rules of 1964). The applicant has also challenged the order dated 28.9.1998 (Ann.A1) by which his appeal was rejected. The prayer for quashing of the chargesheet has become irrelevant in view of the completion of departmental proceedings and imposition of the penalty.

3. The submission of the applicant essentially is that he had informed the authorities of his having been kept in the judicial custody and in support he has filed a copy of his letter dated 14.11.1995 to JTO I/C, Telegraph Office, Sriganaganagar (Ann.A5). He has also raised the question of competence of the Sub-Divisional Officer (Telegraph) Sriganaganagar in issuing the chargesheet dated 7.1.1997 (Ann.A4) and has also alleged malafide on the part of Shri K.K.Arora, the Sub-Divisional Officer (for short SDO), who had issued the said chargesheet.

4. A reply has been filed by the respondents contesting the averments made by the applicant. It has, essentially, been contended that the applicant had violated the provisions of the Government of India decision No.2 under Rule 3 of the Rules of 1964 by not intimating the material information as his being kept in judicial custody from 26.8.1994 to 24.10.1994 and he has correctly been punished for violation of such mandatory provisions. The allegation made by the applicant against respondent No.5, Shri K.K.Arora, SDO (T) have been denied as being totally false and baseless. Respondent No.5 has also filed an affidavit in which he has emphatically denied any mala-fide intentions on his part vis-a-vis the applicant and has stated that on the contrary, he took a very lenient view of the misconduct of the applicant and imposed the minimum penalty on the applicant. A rejoinder has been filed by the applicant, reiterating the averments made by him.

5. We have heard the applicant, who appeared in person, the counsel for the respondents and have carefully perused the material on record.

6. As far as the competence of the SDO (Telegraph) Sriganaganagar is concerned, it is now well settled legal position that a chargesheet does not become illegal just

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because it has been signed by an officer other than the Disciplinary Authority. In any case, we find that the chargesheet and the order imposing the penalty has been signed by the same officer i.e. SDO (Telegraph) Sriganganagar and the applicant has not been able to establish that the SDO (Telegraph) was not the Disciplinary Authority in his case. He has also not been able to substantiate the allegations of mala-fide made against Shri K.K.Arora, the SDO (Telegraph), Sriganganagar. We are, therefore, not able to accept these two contentions put forward by the applicant.

7. As regards the main charge i.e. failure of the applicant to inform the authorities about his having been kept in the judicial custody in Jaipur Central Jail from 26.8.1994 to 24.10.1994, the rule position is very clear. As per decision No.2 of the Government of India (GI, MHA letter No.39/59/54-Estt(A) dated 25.2.1955) under Rule 3 of the Rules of 1964, it is provided that it shall be the duty of a Government servant, who may be arrested for any reasons, to intimate the fact of his arrest and the circumstances connected therewith, to his official superior promptly even though he might have subsequently been released on bail and that failure on the part of any Government servant to so inform will be regarded as suppression of material information, rendering him liable to disciplinary action on this ground alone. It is not disputed that the applicant remained in judicial custody in Central Jail, Jaipur from 26.8.1994 to 24.10.1994. It appears that this fact was intimated to the authorities by the Superintendent, Central Jail, Jaipur only on 20.10.1995 and only thereafter the Department proceeded to take action against the applicant. The applicant has not challenged the Rule 3 and the decisions of the Government of India under the said Rule and, therefore, all we have to determine is whether the defence taken by the applicant that he had informed the authorities vide Ann.A5 satisfies the mandatory provisions under Rule 3 and the decisions thereunder. The first thing that we notice is that the applicant was taken into custody w.e.f. 26.8.1994 and he writes a letter (described as his 'application') only on 14.11.1995. Therefore, there is apparently a violation of the rules that the fact of arrest shall be intimated to the official superior promptly (emphasis supplied). Secondly, the so called 'application' dated 14.11.1995 can in way be

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described as the intimation to the superiors as required under the Rules. It will be useful to reproduce the said letter:

"To,

The J.T.O.I/C,
Telegraph Officer,
Sriganganagar.

Sub: Information about conviction and arrest.

Sir,

I came to know that a case was registered by Jaipur Police when I was living at Jaipur. The trial of that case is in a court of law as I attended after recovery of health. The fact which I came to know is "My wife was working to earn her livelihood due to my mental illness. The police unnecessarily involved me.

Kindly keep in record I will intimate you the final position of case held by Court of Law.

Thanking you,

Dated: 14.11.95
recd.at 10.30 hrs.
sd/-

Yours faithfully,

(S.N.Gupta) .
TA TO"

It will be clear from the above, that the said letter written by the applicant after a gap of more than one year after he was taken into judicial custody is not only not "prompt" as required under the decision No.2 under Rule 3 of the Rules of 1964 but was so worded that it can, in no way, be described as the intimation being given by the applicant about his arrest and detention in judicial custody.

8. In view of above discussions, the facts and circumstances of the case and the legal position, we are not able to persuade ourselves to interfere with the order issued by the respondents in this case.

9. The OA is, accordingly, dismissed with no order as to costs.

(N.P.NAWANI)

Adm. Member

(S.K. AGARWAL)

Judicial Member