

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 219/1999
~~P.A. No.~~

199X

DATE OF DECISION 23.05.2002

B. R. Chaudhary
_____ Petitioner

K. L. Thawani
_____ Advocate for the Petitioner (s)

Versus

U.O.I. & Ors.
_____ Respondent

R. L. Agarwal, Proxy counsel for
Bhanwar Bagri
_____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. M. P. Singh, Administrative Member.

The Hon'ble Mr. J. K. Kaushik, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *✓*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *2*

J. K. Kaushik
(J. K. KAUSHIK)
MEMBER (J)

M. P. Singh
(M. P. SINGH)
MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Decision : 23.5.2002

O.A. No. 219/1999.

B. R. Chaudhary s/o Moolaram aged about 51 years resident of House No. 1273, Nai Basti, Lohakhan, Ajmer and working as Junior Telecom Officer (In short J.T.O.) Incharge Departmental Telegraph Office (In short D.T.O.) Civil Lines, Ajmer.

... APPLICANT.

v e r s u s

1. Union of India through the Secretary to the Govt. of India, Department of Telecommunications, Ministry of Communications, New Delhi 110001.
2. Chief General Manager Telecommunications, Rajasthan Telecommunication Circle, Jaipur 302008.
3. General Manager, Telecom District, Ajmer 305001.
4. General Manager Telecom (West) Jodhpur (Raj) 342003.

... RESPONDENTS.

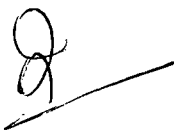
Shri K. L. Thawani, counsel for the applicant.
Shri R. L. Agarwal, adv. brief holder for
Shri Bhanwar Bagri counsel for the respondents.

CORAM

Hon'ble Mr. M. P. Singh, Administrative Member.
Hon'ble Mr. J. K. Kaushik, Judicial Member.

: O R D E R :
(per Hon'ble Mr. J. K. Kaushik)

Shri B. R. Chaudhary has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, for quashing the impugned order dated 29.08.1997 (Annexure A-1) and order



dated 02.01.1998 (Annexure A-2), by which a penalty of stoppage of one increment for a period of three years with cumulative effect on future increments have been imposed and have been upheld by the Appellate Authority.

2. The case of the applicant is that the applicant was issued a charge sheet vide memo dated 03.03.1991, in which the following charges were levelled against him :-

ARTICLE I


That the said Shri B. R. Choudhary while functioning as Asstt I/C DTO Nagaur during the period from 4.2.1983 to 13.6.1988 did not make in the relevant stock registers of the items of store and other articles purchased locally by him to the extent of Rs. 22,505.71. Thus by the aforesaid act, Shri B.R. Chaudhary committed a grave misconduct and failed to maintain absolute integrity and acted in manner unbecoming of a Govt. Servant thereby violating the provisions of Rule 3 (I) (i) and 3(i)(iii) of C.C.S. (Conduct) Rules, 1964.

ARTICLE II

That the said Shri B. R. Chaudhary while functioning as ASSTT I/o DTO Nagaur during the period from 4.2.1983 to 13.6.1988 incurred unauthorised expenditure without obtaining sanction from the competent authority and wilfully splitting up the payments in piecemeal to the extent indicated below :-

1. Rs. 2708.00 on its furniture.
2. Rs. 663.00 on binding charges.
3. Rs. 801.43 on medicines.
4. Rs. 723.00 on Hot & Cold weather charges.

Thus the aforesaid Shri B. R. Chaudhary did not follow the standards of financial propriety and acted against the principles laid down in rule 60 of FHB I.



By the aforesaid action, Shri B. R. Chaudhary failed to maintain absolute integrity and acted in a manner unbecoming of a Govt. servant thereby violating the provisions of the rule 3(1) (i) and 3(1) (iii) of CCS (Conduct) Rules, 1964.

ARTICLE III

That during period from 1.2.1983 to 13.6.1988 Shri B. R. Chaudhary while functioning as ASTT I/c DTO Nagaur incurred unrealistic and excessive expenditure as indicated below :-

1. Rs. 2206.15 on 32 electric bulbs and 5 starters.

2. Rs. 4101.00 on 224 tube rods and 14 chokes.

3. Rs. 1083.00 on canning of 140 chairs.

Rs. 1080.15 on purchase of 9 torches and 260 cells.

5. Rs. 849.25 on purchase of 3 lamps and 101 golas.

Thus by the aforesaid act, Shri B. R. Chaudhary incurred unrealistic and excessive expenditure which is also beyond the financial powers of ASSTT and thus he failed to maintain absolute integrity and acted in a manner becoming of a Govt. servant thereby violating the provisions of rule 3 (1) (i) and 3 (1) (iii) of the CCS (Conduct) Rules, 1964.


3. The applicant denied the aforesaid charges and an oral enquiry was ordered into the same. An Enquiry Report was submitted on 03.02.1997 and the charge no. 2 and 3 have been held to be proved/partly proved, on the basis of surmises and conjectures. The applicant submitted a representation against the findings of the Enquiry Officer vide letter dated 08.08.1997 (Annexure A-5). Thereafter, a penalty of stoppage of increment for a period of three years with cumulative effect



and future increments have been imposed vide order dated 29.08.1997 (Annexure A-1). The applicant submitted an appeal dated 15.09.1997 (Annexure A-6) and the same has been rejected vide letter dated 02.01.1998 (Annexure A-2).

4. The Original Application has been filed on multiple grounds e.g., matter related to the period from February 1983 to June 1988 and there was no reason to open the old files in which several dues and inspections were carried out and no issue was pointed out. The memo of charges makes mention of documents relied upon by the respondents but no document was produced during the enquiry, there has been violation of Rule 14 (15) of CCS (CCA) Rules 1965, additional record demanded by the applicant were not supplied, facts having held to be proved without any document in support thereof, belated action and the continuance of enquiry which has taken about 15 years and has affected the promotion of the applicant without any fault of the applicant, The Disciplinary Authority has passed a ^{de}non-speaking order. There was delay at every stage. The whole action has caused a heavy loss to the applicant etc., Hence this application.

5. The respondents have filed detailed reply to the OA and have contraverted the facts and grounds mentioned in the OA. The applicant has filed a



rejoinder contraverting the stand/contentions of the respondents taken in the reply in general.

6. We have heard the learned counsel for the parties and have carefully perused the record of the case.

7. Learned counsel for the applicant has drawn our attention towards Annexure III to the charge sheet at Page 27 of the paper book. The Annexure contends list of documents by which article of charges framed against the applicant are proposed to be sustained. The contents of the same are very relevant in this case and are extracted as under :-

ANNEXURE III

List of documents by which the articles of charges framed against Shri B. R. Chaudhary are proposed to be sustained.

1. Stock register No. 1 to 3 of DTO Nagaur in respect of non-recurring items.
2. Stock register No. 1 to 3 of DTO Nagaur in respect of recurring items.
3. Contingent vouchers of DTO Nagaur for the period from Feb. 83 to June 88 alongwith monthly enclosures (five bundles) inclusive of :-
 - (A) Contingent vouchers for the above mentioned period which have been entered in the concerned stock register (list enclosed as appandix-1)
 - (B) Contingent vouchers of DTO Nagaur for the period from Feb. 83 to June 88 for mentioned period expenditure.



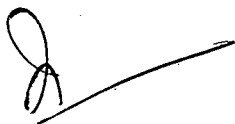
(C) Contingent vouchers of DTO Nagaur for the period from Feb. 83 to June 88 for the excessive expenditure as of article III (list enclosed as appendix-3).

4. Financial powers of ASstt (list enclosed as appendix -4).

8. The contentions of the applicant is that in the charge sheet, charges were framed against him on the basis of the documents which are to be listed in Annexure III to the charge sheet and it is presumed that in this case also the same exercise ought to have been done. However, none of the aforesaid document mentioned in Annexure III to the chare sheet has been produced in the enquiry.

9. It has been vehemently argued that as a matter of fact, there has been clear cut violation of the mandatory rules of procedure for imposing the major penalties in Rule 14 of CCS (CCA) Rules. The sub rule 14 and 15 are relevant in the present case and extract of the same is reproduced as under :-

(14) On the date fixed for the Inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the




Presenting Officer and may be cross-examined by or on behalf of the Government servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.

(15) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the Government servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Government servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary, in the interests of justice.


NOTE - New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally."

10. The contention of the learned counsel for the applicant is that the Enquiry Officer has not followed the above mandatory provisions inasmuch as neither the documents listed in support of the charges in Annexure A-3 to the charge sheet has been produced during the enquiry nor any witness was examined on behalf of the department. The question of any cross examination or re-examination of any witness did not arise at all. Not only this, even the case of the prosecution was not




opened and no evidence whatsoever was produced in support of the charges. The applicant was also not given an opportunity to inspect the documents listed in Annexure A-3 to the charge sheet in support of the charges. On the other hand, without their being any evidence in support of the charges, the Enquiry Officer permitted the Presenting Officer to produce new evidence. As per the rules, no new evidence shall be permitted or called for to fill up the gap in the evidence and such evidence may be called for only when there is any inherent lacuna or defect in the evidence which has been produced originally. In the present case since there is no evidence at all, the question of any inherent lacuna or defect in the evidence did not arise. But still the Enquiry Officer allowed the prosecution to produce new evidence and the charges No. 2 and 3 have been held as substantiated on the basis of the said new evidence alone.

11. As per the established procedure of the disciplinary proceedings, the charges are framed on the basis of certain evidence, may be on the basis of preliminary enquiry or other documents, statement of witnesses in the preliminary enquiry etc. It is that mandatory requirement of the rules that the Disciplinary Authority supplies to the delinquent employee a list of documents, by which article of charges framed against the delinquent




are proposed to be sustained and also a list of witnesses in support of the allegations made against the employees. The Disciplinary Authority is required to apply its mind to the prima facie material available for framing the charges. In the present case, the Disciplinary Authority must have applied his mind and have at least perused the documents which are listed in Annexure III. It seems that these documents have been deliberately withheld and the sequence of events shows that the Disciplinary Authority wanted to make a score and penalise the applicant at one pretext or the other. The mandatory rules have been given good bye and a peculiar enquiry has been allowed to be conducted. It is not the intention of the rule maker that once certain charges have been framed against an individual, they are required to be proved at any pretext, even by gathering certain irrelevant evidence from here and there. Now the question arises that if the listed documents in Annexure III to the charge sheet were not available at the time of framing of the charges itself, what inference could be drawn from the action of the authorities. Obviously it could either be said to be a case of no application of mind or initiating action with a closed mind with intention to victimise the applicant.

12. We have carefully examined the records. It has nowhere been shown that the records were not available at the time of framing of the charge




sheet and the same have been lost subsequently by the time, the same were required to be produced during the enquiry. Further even the evidence like cash book cannot present the clear picture in relation to the charges which belongs to the sanction of the purchases, purchase of various items, authorisation on the items, actual requirement of the items etc. In any case, since the mandatory provisions have been violated and there has been clear violation of the principle of natural justice as well as the denial of reasonable opportunity to the applicant, complete enquiry stands vitiated, therefore, the penalty order as well as the appellate order had no legs to stand and the same deserves to be quashed on account of the faulty decision making process.

13. Further it has also been argued by the learned counsel for the applicant that it is a case of no evidence also. Since the new evidence produced during the enquiry could not have been produced as per the mandatory rules, since no enquiry proceedings has at all been held as per sub rule 14 of Rules 14 of CCS (CCA) rules (Supra) and the provision of sub rule 15 of the said rule could not have been invoked at all. On this, learned counsel for the respondents has argued that no prejudice has been caused to the applicant with the action of the respondents. It is a strange




argument led on behalf of the respondents and we are not impressed with the same. In this case there was absolutely no evidence originally, and no enquiry was in fact conducted. Once there was no original evidence at all, there was no question of any inherent lacuna or defect in the evidence which has been produced originally, therefore, the complete proceedings and consequently impugned orders are not in conformity with the rules and suffers from perversity. After all the Disciplinary Authority is required to act reasonably and rationally. The foregoing discussions, reveal otherwise.

14. Last but not the least argument of the learned counsel for the applicant is regarding the inordinate delay in issuing of the charge sheet as well as the finalisation of the disciplinary proceedings. Incident relates to the period of 1983 to 1988, the charge sheet has been issued in the year 1991 and the enquiry has been finalised in the year 1997. The gap between the initial date of incident to the final date is about 14 years. The applicant was kept under hanging sword of fear and uncertainty for such a long period. There is no explanation to the inordinate delay or any plausible reason for prolonging the disciplinary proceedings against the applicant for such a long period on such a trifly matters and the complete proceedings deserves to be quashed on the ground of inordinate delay itself. We find force in this



contention of the applicant also and we are supported of this view as per the judgement in the case of State of Madhya Pradesh vs. Bani Singh and Anr. AIR 1990 SC 1308 and as a matter of fact, the disciplinary proceedings could have also been set aside on the ground of delay alone in the facts and circumstances of the case. Thus the impugned orders are not sustainable in law on the ground of unexplained and inordinate delay in initiating & finalising the disciplinary proceedings also. We do not find any necessity of dealing with the other grounds/contentions raised on behalf of the applicant in the Original Application.

15. In view of the circumspection of the facts and circumstances of this case, foregoing discussions especially the relevant rules and law laid down by Hon'ble the Supreme Court in the aforesaid judgement, we find much force in the Original Application and the same is hereby allowed. Impugned orders dated 29.08.1997 (Annexure A-1) and 02.01.1998 (Annexure A-2) are quashed and the applicant shall be entitled to all consequential benefits. However, there shall be no order as to costs.


(J. K. KAUSHIK)
MEMBER (J)


(M. P. SINGH)
MEMBER (A)