

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

* * *

Date of Decision: 10-03-03

OA 462/2001

Jaipuriyal Meena, Junior Telecom Officer, Keshorai Patan, Distt. Bundi (Raj.).

... Applicant

Versus

1. Chairman cum Managing Director, Bharat Sanchar Nigam Limited, Sanchar Bhawan, New Delhi.
2. Chief General Manager Telecom, Rajasthan Telecom Circle, Jaipur.
3. Telecom District Manager, Sawai Madhopur (Raj.).
4. Sr. Accounts Officer (Revenue), BSNL, O/o Telecom District Manager, Sawai Madhopur.
5. Telecom District Engineer, BSNL, Bundi (Raj.).

... Respondents

CORAM:

HON'BLE MR.H.O.GUPTA, ADM. MEMBER

HON'BLE MR.M.L.CHAUHAN, JUDL MEMBER

For the Applicant

... Mr.K.L.Thawani

For the Respondents

... Ms.Shalini Sheorn, proxy
counsel for Mr.Bhanwar Bagri

O R D E R

PER HON'BLE MR.M.L.CHAUHAN, JUDL MEMBER

The present application has been filed against the order dated 28.8.2001 (Ann.A/1), issued by the Sr.Accounts Officer (Revenue), Sawai Madhopur, pursuant to the order passed by the Telecom District Manager, BSNL, Sawai Madhopur, whereby the applicant was held responsible for a sum of Rs.22117/- on account of accumulative charge against STD-PCO No.26197 (Now 26199) with further direction that the said amount be recovered in easy instalments @ Rs.1500/- p.m. from the pay of the applicant.

2. Few facts may now be noticed. The STD-PCO No.26197 in the Wazirpur, Gangapurcity, was sanctioned in favour of one of the subscribers. Pursuant to the decision taken by the department, the said Telephone Exchange was upgraded from 500 telephone connections to 1000 telephone connections. Due to the said upgradation, the telephone number of STD-PCO i.e. 26197, connected with the said Telephone Exchange, was changed to 26199 on 12.4.99. The applicant, who was working as Junior Telecom Officer, was Incharge of the said Telephone Exchange. The aforesaid subscriber holding STD-PCO No.26197/26199 failed to deposit the

fortnightly bill with the department as against the bill raised by the department from time to time w.e.f. 1.5.99. The case of the respondent department is that due to failure on the part of the applicant to inform the Accounts Wing of the department with regard to change of the telephone number, due to upgradation as above, the said subscriber continued with the STD-PCO connection with the changed telephone number. Due to act and omission on the part of the applicant, the Accounts Wing continued to raise the bills for the said STD-PCO with reference to the old number, which was not in existence. It was the duty of the applicant to disconnect the connection of the said STD-PCO upon failure to deposit the bill by the subscriber. Thus, the applicant deliberately, just to extend the illegal benefits, had allowed the said STD-PCO Booth to function with the changed telephone number without any bills to be raised by the department. A fact finding inquiry was also conducted by the department and the applicant was issued notices to explain his conduct in the matter vide letters dated 21.8.2000, 4.10.2000 & 2.12.2000, which have been annexed with the reply as Anns.R/1,R/2 & R/3 respectively. The applicant filed reply/explanation on 6.9.2001 and 1.1.2001, copies of which have also been placed on record as Anns.R/4 & R/5. Case of the applicant in nutshell, as apparent from these replies, is that no disconnection list was received from the Telecom District Manager, Sawai Madhopur. for disconnecting the telephone of STD-PCO No.26197 (26199). The disconnection list was however issued by the Sr.Accounts Officer O/o the Telecom District Manager, Sawai Madhopur, on 29.8.2000 and on receipt of the same it was seen that a large amount was outstanding agaisnt the STD-PCO No.26197 (26199). Thus, the STD-PCO No.26199 (earlier 26197) was disconnected by the applicant on 16.9.2000. It is further averred by the applicant that there is no rule under which a Jr.Telcom Officer i.e. the applicant is empowered to disconnect the telephone connection of a subscriber at his own accord and it was the duty of the Accounts Officer (Telephone Revenue) to keep vigilance over the timely credit of telephone bills and issue of disconnection list every month and to direct the Incharge of the Telephone Exchange to disconnect the telephone of the subscriber if the bill is not paid after warning. Thus, according to the applicant, there was no justification for passing the impugned order (Ann.A/1), whereby the applicant has been held liable for recovery of Rs.22117/- . It is on the basis of these allegations that the applicant has filed the present application praying thereby for quashing the impugned order (Ann.A/1).

3. The respondents have filed their reply controverting thereby the allegations levelled in the application and the case of the respondents is that due to act and omission on the part of the applicant the Accounts

Wing continued to raise the bills for STD-PCO with reference to old number, which was not in existence, and it was the duty of the applicant to inform the Accounts Wing with regard to change of the telephone numbers due to upgradation of the Telephone Exchange. The matter was examined by the department after conducting inquiry and considering the reply/explanation given by the applicant and the Telecom District Manager, Sawai Madhopur, ~~and~~ found the applicant guilty and accordingly the order dated 28.8.2001 (Ann.A/1) was issued. It is further averred that the applicant was guilty of extending the illegal benefits to the subscriber of the concerned STD-PCO and accordingly the recovery has been ordered against him. It is further submitted by the respondents that on account of gross negligence on the part of the applicant, being a JTO of Telephone Exchange Wazirpur, the department suffered a monetary loss amounting to Rs.22117/-. The applicant has also filed rejoinder reiterating the submissions made in the application.

4. We have heard the learned counsel for the parties and gone through the pleadings of this case.

5. The question which requires our consideration is whether the recovery made pursuant to Ann.A/1 is authorised by law. The respondents have placed reliance on Rule-106, 107 & 108 of the Posts & Telegraphs Manual in order to justify the recovery ordered against the applicant. Rule-106, 107 & 108 read as under :

"106. In the case of proceedings relating to recovery of pecuniary losses caused to the Government by negligence, or breach of orders by a Government servant, the penalty of recovery can be imposed only when it is established that the Government servant was responsible for a particular act or acts of negligence or breach of orders or rules and that such negligence or breach caused the loss.

107. In a case of loss caused to the Government, the competent disciplinary authority should correctly assess in a realistic manner the contributory negligence on the part of an officer and while determining any omission or lapses on the part of an officer, the bearing of such lapses on the loss considered and the extenuating circumstances in which the duties were performed by the officer shall be given due weight.

108. The maximum amount which may be recovered from a delinquent officer on account of the loss caused to the Department through his negligence should be 1/3rd of his pay spread over a period of 3 years. For this purpose, only the basic pay should be taken into account. In addition to the penalty of recovery, technically there is no bar to impose any other statutory penalty if the circumstances of the case justify it. The punishing authority should, however, bear in mind that when more than one penalty is imposed, one of which is recovery of pay of the whole or a part of the loss caused to Government, the net cumulative effect on the

Government servant should not be of such severity so as to make impossible for him to bear the strain."

According to these rules, the competent disciplinary authority should correctly assess in a realistic manner the contributory negligence on the part of the officer and such assessment should be made in a proceeding relating to recovery of pecuniary loss caused to the Government by negligence or breach of the order by the Government servant and it is only thereafter that the penalty of recovery can be imposed when it is established that the Government servant was responsible for a particular act or acts of negligence or breach of orders or rules and that such negligence or breach caused loss. Therefore, before any recovery can be made, it must be established that Government Officer was responsible for the loss caused to the Government due to his act of negligence or breach of rules and such negligence or breach of rules has caused loss. In the instant case, the applicant has disputed his liability as, according to him, no disconnection list was received by him from the Telecom District Manager, Sawai Madhopur, for disconnecting the telephone of STD-PCO No.26197/26199 and when the list was received on 29.8.2000, the telephone connection was disconnected immediately on 16.9.2000. It is further case of the applicant that it was the duty of the Accounts Officer (Telephone Revenue) to keep vigilance over the timely credit of telephone bills and issue disconnection list every month and there is no rule under which a JTO i.e. the applicant is empowered to disconnect the telephone connection of a subscriber at his own accord. A perusal of the impugned order (Ann.A/1) makes it clear that there is nothing to indicate as to how the applicant is liable for such lapse on the face of explanation given by him. Be that as it may, the question which requires our consideration is whether the impugned order could be passed and recovery ordered without holding the inquiry as contemplated under the rules and whether such an action on the part of the respondents is permissible under law. For deciding the question involved, we would first refer to the relevant procedure prescribed under Rule-11 & 16 of the CCS (CCA) Rules, which read as under :

"11. Penalties

The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely :-

Minor Penalties -

- (i)
- (ii)

(iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders;

(iii) (a)

(iv)"

"16. Procedure for imposing minor penalties

(1) Subject to the provisions of sub-rule (3) of Rule 15, no order imposing on a Government servant any of the penalties specified in clause (i) to (iv) of Rule 11 shall be made except after -

- (a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;
- (b) holding an inquiry in the manner laid down in sub-rules (3) to (23) of Rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;
- (c) taking the representation, if any, submitted by the Government servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;
- (d) recording a finding on each imputation of misconduct or misbehaviour; and
- (e) consulting the Commission where such consultation is necessary.

(1-A) Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the Government servant under clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (3) to (23) of Rule-14, before making any order imposing on the Government servant any such penalty.

- (2) The record of the proceedings in such cases shall include -
 - (i) a copy of the intimation to the Government servant of the proposal to take action against him;
 - (ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;
 - (iii) his representation, if any;
 - (iv) the evidence produced during the inquiry;
 - (v) the advise of the Commission, if any;
 - (vi) the findings on each imputation of misconduct or misbehaviour; and

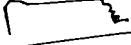
(vii) the orders on the case together with the reasons therefor."

Admittedly, such procedure has not been adopted by the respondents before passing the impugned order (Ann.A/1). It was obligatory on the part of the department to fix the responsibility by following legally recognised procedure before resorting to recovering the amount in question especially when the applicant has disputed his liability and also that he was not responsible for the loss in question. Thus, the action taken by the respondents in recovering the amount without holding inquiry as contemplated under rules, as reproduced above, is arbitrary and resultantly, the impugned order dated 28.8.2001 (Ann.A/1) is hereby quashed. It will, however, be open to the respondents to initiate appropriate proceedings against the applicant for realising the pecuniary loss partly or fully if caused by the applicant keeping in view the material on record in this OA. The respondents are directed to refund the amount, if any, recovered pursuant to the order dated 28.8.2001 (Ann.A/1) within one month from the date of receipt of this order. ~~and this order will not be considered in dealing with the present application.~~ The present application is allowed with the above directions/ observations.

No order as to costs.


(M.L. CHAUHAN)

MEMBER (J)


(H.O. GUPTA)

MEMBER (A)