

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 474 / 2002

Date of decision: 19.02.2004

CORAM:

Hon'ble Mr. J.K. Kaushik, Judicial Member
Hon'ble Mr. A.K. Bhandari, Administrative Member

M.S. Gulair S/o Shri Kishore Singh aged 62 years, R/O 2/587,
Jawahar Nagar Jaipur (Rajasthan).

...Applicant

(Rep. By Advocate Mr. Mahendra Shah, for the applicant)

V e r s u s


- (1) Union of India through Secretary, Ministry of Communication, Deptt. Of Telecommunication, Sanchar Bhawan, New Delhi - 110001.
- (2) The Asstt. Director General (Vigilance), Ministry of Communication, Department of Telecommunication, West Block 1st, Wing-2 Ground Floor R.K. Puram, Sector-1, New Delhi.
- (3) Central Vigilance Commissioner, Govt. of India, Satarkta Bhawan, Block-A, GPO Complex INA, New Delhi.

...Respondents

(Rep. By Advocate Mr. Tej Prakash Sharma, for the respondents)

O R D E R
PER MR. A.K. BHANDARI, ADM. MEMBER

This Original Application u/s 19 of the Administrative Tribunals Act, 1985 is filed against order dated 14.5.2002 (Annexure A/1) by which punishment of withholding of pension by 20% for a period of five years has been ordered in departmental action against the applicant.



2. Brief facts of the case are that the applicant, who retired as Divisional Engineer of the Department of Telecommunication, was served with a charge-sheet dated 15.4.98 alleging certain delinquencies of the tenure of his posting as Sub Divisional Officer, Durgapura Telephone Exchange, Jaipur, in the year 1994 to 1996. In all eight charges were leveled. The inquiry officer found two of these as proved, which read as under:

- i) He demanded illegal gratification of Rs. 1500/- from the subscriber for installation of Telephone No. 554303.
- ii) He falsely showed Telephone Nos. 554303 and 554304 as installed on 29.3.95 whereas they were actually installed only in the month of July, 1995.

The punishment was awarded for these charges only.

3. The charges were denied by the applicant and, therefore, a regular inquiry under Rule-14 of the CCS (CCA) Rules, 1965 was conducted. In course of inquiry OA 579/2000 was filed by the applicant before this Bench of the Tribunal alleging that inquiry officer Shri C.S. Bhanot was not conducting the inquiry in a fair manner. This OA was decided on 2.1.2001 staying the inquiry proceedings till respondents had considered his representation regarding change of inquiry officer. Thereafter, inquiry was conducted by Shri K.K. Kulshrestha.

4. Inquiry report was submitted on 11.6.2001 and it is stated by the applicant that without obtaining representation of the charged officer and appending it with the inquiry report, the inquiry report alone was sent to Central Vigilance Commission

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(CVC, for short) for their opinion in the matter. Thus, the CVC's advice spelling out suggested punishment is without consideration of charged officer's representation, which is violative of the established procedure. It is further stated that the disciplinary authority without applying his mind imposed penalty in a mechanical way as per CVC's advice, even though following this advice is not mandatory. Therefore, pre-determination on the part of authorities to impose penalty is alleged.

5. It is also alleged that the inquiry officer considered charge No. 1 as proved on the solitary statement of the complainant Shri Harsahai Sharma. Referring to his statement in course of inquiry (Ann. A/4) and the one given by him to the officer of the CBI (Ann. A/5) it is pointed out that the said demand of bribe was made when four persons including charged officer had gone to the complainant Harsahai Sharma's premises where telephones had to be installed. In the departmental inquiry (Ann. A/4), the complainant stated; "I identify CO who had also come to my place along with three more persons and they had told that money shall be charged for installation of telephone connection". But the persons actually demanding money has not been identified by the complainant. In the same statement it is stated; 'I did not make any complaint to any departmental officer about demand of money. I had filed complaint with CBI". The complaint was lodged with CBI before installation of

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telephone connection. Further, the complainant stated; "line had been erected in my place in March, 1995 but at this late stage I do not remember telephone instrument had also been provided". In para 4.7 of the application it is pointed out that the statements of none of the other three persons were recorded by the inquiry officer. The same were not recorded even by the officer of the CBI. That the complainant had not lodged any complaint to the departmental officers about demand of money. Thus, there is no corroboration of the complaint in the departmental inquiry as well as CBI inquiry. Therefore, this is a case of no evidence. The fact of non-corroboration was stated by the applicant in his representation, which never went to the CVC. Thus, CVC's advice is based only on the inquiry report.

6. In para 4.9 of the applicant it is stated that the said representation was not considered by the disciplinary authority while referring the matter to UPSC also because not a single averment of the representation has been taken into consideration by the UPSC while tendering advice. In these circumstances, the heavy penalty of 20% cut in monthly pension for a period of five years, amounting to total loss of Rs. 1,28,880/-, is arbitrary and based on mind made up to punish.

7. Same facts have been stated regarding charge No. 2 which pertains to falsely showing telephone Nos. 554303 and 554304 installed in March, 1995, whereas they were actually installed in July, 1995. In connection with this charge it is stated that the



telephone was not only installed but the department had raised bill of Rs. 1472/- for the period for which it is alleged that telephone was not installed. The complainant made complaint about this but he was not given any refund or at least these facts have not come on record of inquiry, which creates suspicion about its truth. It is held that the telephone was actually installed in July, 1995 but it is admitted by respondents that the charged officer was relieved on transfer in May, 1995. This also creates suspicion of premeditation to punish.

8. In grounds taken in para-5 of the application it is once again alleged that it is arbitrary and violative of Article-14 because the disciplinary authority had passed punishment order without application of mind. He has taken the punishment from the advice of the CVC, which was tendered without taking into account his representation, and UPSC's advice is also arbitrary inasmuch as in this none of the objections raised in his representation have been considered. This proves pre-determination of the disciplinary authority to impose penalty.

9. Regarding charge No. 2, it is stated that telephone Nos. 554303 and 554304 were to be installed at the same location but the applicant for telephone No. 554304 was Shri Janki Vallabh Sharma, a relative of complainant Harsahai Sharma. It is stated that CBI obtained affidavit of Shri Janki Vallabha Sharma to prove delay in installation of telephone but nowhere in this affidavit name of charge officer figures. It is not

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understood why no affidavit was obtained from Harsahai when the telephone connection applied by him was also a fact for inquiry. The complaint for the demand of bribe has been made to CBI but it is not understood why the CBI did not arrange an operation to trap the culprit or to collect more evidence to prove the allegation that installation was being delay to extract illegal gratification. Nor did CBI examine charged officer even though he remained posted as SDOT till May, 1995. In the grounds it is further stated that there are number of discrepancies and contradictions in the statements of witnesses examined by inquiry officer and the CBI of which the disciplinary authority has not taken due notice although they are elaborated upon in charge officer's representation. Regarding charge No. 2 it is alleged that the inquiry officer did not take into account the lengthy departmental procedure to be followed in the matter of installation of new telephones inasmuch as in it not the SDOP but the JTOs are directly concerned with laying of lines, providing of instruments and other field work. In a very lengthy description of what is done by the SDOP and a lot other is done by others has been given, but the blame for delay has been fixed on him alone. On the basis of this, the preponderance of probability arrived at by the disciplinary authority is misplaced. That the conclusions arrived at by him are without any consideration of the representation by UPSC or the disciplinary authority and that his representation was never referred to the CVC. Therefore, the punishment order is vindictive, arbitrary



and violative of prescribed procedure and natural justice. To find the charge of demanding bribe is also based on uncorroborated evidence of the complainant, and therefore this is a case of no evidence. It is also averred that in the long service of the department of 36 years, it is the only punishment awarded to him and that all along he has worked to the utmost satisfaction to the higher authorities at all the stations including Jaipur where he was working when fault has been found with him. In view of this, he has sought quashing and setting aside the punishment order dated 14.5.2002 (Ann. A/1).

10. The respondents have submitted an exhaustive reply while raising a preliminary objection also that the applicant did not avail of departmental remedy provided under the law.

11. On behalf of the respondents it is stated that the punishment awarded is only with regard to two charges, which are found proved by the inquiry officer, therefore, there is no vindictiveness. That there was nothing wrong in the inquiry held by Shri C.S. Bhanot, Deputy General Manager, Alwar Telecom District, but on insistence of the applicant the same was got done by Shri K.K. Kulshrestha, Assistant Director General (Departmental Inquiries), Department of Telecom, New Delhi, and that this decision was taken on 12.12.2000, much before the order of the Tribunal passed in OA 579/2000 on 2.1.2001 to consider his representation for the same. Regarding applicant's contention about the advice of the CVC and the UPSC, it is



stated that the advice of CVC is distinct from that of the UPSC, That the advice of the CVC is not statutory advice and that all the case papers were referred to the UPSC by the disciplinary authority. Even otherwise, the inquiry has been held strictly in conformity with the procedure prescribed in the statutory rules and there has been no violation of principles of natural justice or denial of reasonable opportunity to the charged officer at any stage of the proceedings. That the inquiry officer has painstakingly discussed the evidence on record and the submissions made by the charged officer in his written brief and has recorded cogent and well reasoned findings on each element of the charges. Even the complainant namely Shri Harsahai Sharma, whose statement is Ex.SW-14, was duly cross-examined by the charged officer. He also identified the charged officer as the one who demanded bribe. That the delay in installation of telephones has been amply proved on the basis of statements of Supervisor, Mechanics, Line Testing Staff and record examined by the Inquiry Officer. Thus, the inquiry officer's findings are based on concrete evidence. The allegation of non-application of mind by disciplinary authority is also vehemently denied. Those records amply prove that the telephones were installed in May/July, 1995 and not on 29.3.95 as shown on record by the charged officer. That the President found that there was a preponderance of probability that applicant demanded illegal gratification from the subscriber for installation of telephone No. 554303 and deliberately delayed its activation to extract it. That

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considering the circumstances in totality and on objective assessment of the entire case the President found the applicant guilty of grave misconduct in the matter of complaint of Shri Harsahai Sharma. Thus, the punishment pronounced in the matter is after a careful consideration of everything including the advice tendered by UPSC, and the OA deserves to be dismissed.

12. Regarding grounds, the submissions made in connection with the facts stated above are reiterated. It is alleged that the applicant is misleading and trying to confuse the issue rather than appreciating the correctness of the entire procedure. That he had been offered fullest opportunity to examine all documents including the additional documents he had demanded. He was given fullest opportunity to cross examine all the witnesses and that his representation was fully considered on all aspects before arriving at the decision of penalty which going by the gravity of the charges cannot be considered as excessive.

13. It is further stated that the applicant has not availed of the opportunity to file a petition for review of the order-dated 15.4.98 under Rule 29-A of CCS (CCA) Rules, 1965. In these circumstances, the applicant has approached the Tribunal premature without any valid cause of action and, therefore, he is not entitled to get any relief.

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14. In the reply certain case law have been quoted to show that the degree of proof required in criminal trials is different in departmental inquiries. That the powers of the Courts and Tribunals in the matter of departmental inquiries are very limited and generally confined to examination of correct compliance of rules and procedure followed in conduct of the inquiry and they should not go into the question of evidence unless it is blatantly lacking.

15. The applicant has filed rejoinder in which the contents of the reply filed by the respondents are generally denied while emphasizing the facts submitted on behalf of the applicant. However, emphasis is once again laid on the point of non-corroboration of complainant that bribe was demanded even though it was done in front of at least three other persons. That no complaint was made to departmental authorities and even if the same was made to CBI, the latter did not act upon it as per their procedure inasmuch as did not arrange an operation to catch him red-handed. In these circumstances, the charge of demanding bribe remains completely unsubstantiated. For charge No. 2 regarding delayed installation of the telephone also, the rejoinder generally rebuts the defence of the respondents.

16. Before proceeding further in the matter, we would like to point out that the scope of interference in findings of fact arrived at in a disciplinary proceedings by the enquiry officer is limited in

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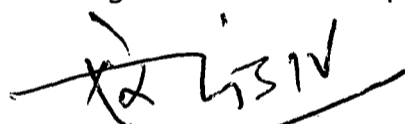
the sense that the Court cannot sit in appeal over those findings and assume the role of appellate authority but this does not mean that in no circumstance, the Court can interfere. The power of judicial review available to the High Court under the Constitution takes in stride the domestic enquiry as well and it can interfere with the conclusion reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man and the findings were perverse and made on the dictate of superior authority. Besides this the Tribunal cannot ordinarily interfere in the decisions arrived at but is required to examine the decision making process.

17. In the instant case, the CVC advice was not mandatory. However, admittedly the same was tendered on 13.07.2001 much before the date the charged officer was asked to make representation vide letter-dated 06.08.2001. In the CVC advice the facts enumerated in the representation of the applicant could not have been taken into consideration. However, the punishment awarded to the applicant is exactly as per the CVC's advice, the same is considered as one sided. This gives credence to the allegation of the applicant that disciplinary authority did not apply his mind while awarding punishment but rather went by the advice of CVC, which was not mandatory in any case. Thus there has been violation of the principle of natural justice and fair procedure has not been followed. In as

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much as the complete material especially the representation of the applicant was not before the CVC whose advice was followed. The inescapable conclusion is that the decision making process was faulty. In this view of the matter, we are of the firm opinion that the case should be remanded to the disciplinary authority to pass fresh order in accordance with law. We are refraining from examining the other grounds involved in the instant case.

18. In these circumstances, the Original Application is partly allowed and the impugned order dated 14.05.2002 (Annexure A/1) is hereby quashed. The competent authority is directed to pass a fresh order in accordance with law keeping in view our aforesaid observations within a period of three months from the date of receipt of a copy of this order. The order passed thereof shall regulate the consequential benefits. No order as to costs.


(A.K. Bhandari)
Adm. Member


(J.K. Kaushik)
Judl. Member

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