

THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET

APPLICATION NO.: _____

Applicant(s)

Respondent (s)

Advocate for Applicant (s)

Advocate for Respondent (s)

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

24.01.2008

MA 289/2007 (OA No.366/2003)

Mr. Manish Kumar Sharma, Proxy counsel for
Mr. S.P. Sharma, Counsel for applicant.
Ms. Kavita Khinchi, Proxy counsel for
Mr. T.P. Sharma, Counsel for respondents.

This MA No. 289/2007 has been moved by the
applicant for restoration of this case, which was
dismissed in default on 12.11.2007. In view of the
averments made in the MA, OA is taken up for hearing.

We have heard the learned counsel for the
parties.

Since the applicant has not availed statutory
remedy by way of appeal, we are of the considered
view that this is a case where applicant at the first
instance should avail statutory remedy. Accordingly, the
case is remitted back to the Appellate Authority.

For the reasons dictated separately, the OA is
disposed of.


(R.R. BHANDARI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 24th day of January, 2008

ORIGINAL APPLICATION NO. 366/2003

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR.R.R.BHANDARI, ADMINISTRATIVE MEMBER

Atar Singh
s/o Dharam Singh,
Assistant Engineer (Dismissed),
Department of Telecom,
presently residing at
B-104, Nandpuri,
Hawa Sarak,
Jaipur

.. Applicant

(By Advocate: Shri Manish Kumar Sharma, proxy counsel
for Shri S.P.Sharma)

Versus

1. Union of India
through Secretary,
Ministry of Telecommunication,
Department of Telecommunication,
New Delhi.
2. Telecom., Department of Tele Communication,
Government of India,
New Delhi through its Member Services,
West Block-1,
Wing-2, Ground Floor,
R.K.Puram, New Delhi.
3. Chief General Manager (Maintenance),
Northern Telecom Region,
New Delhi.

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.. Respondents

(By Advocate: Ms. Kavita Khinchi, proxy counsel for
Shri Tej Prakash Sharma)

O R D E R (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

1. Set aside the order dated 04.09.02 as well as the order dated 24.11.92 and reinstate the petitioner with all consequential benefits.
2. Direct the respondent to grant all consequential benefits with interest @ 18%
3. Any other appropriate order or direction, which the Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case may also be passed in favour of humble applicant.

2. Briefly stated, facts of the case are that the applicant while working as SDE, M/W Maintenance, Sikar was issued a memorandum dated 9.1.1996 regarding misappropriation of Government money amounting to Rs. 30865.10 and also that he manipulated quantities in concern cash memos, falsified stock register by showing receipt and issue of inflated quantities of items in respect of bills regarding local purchase. From the material placed on record, it is also evident that on a complaint of DET (Microwave maintenance), Jaipur an FIR was also registered against the applicant under Section 409, 467, 471, 477 IPC and 13(2) read with 13(1)(i)(c) of PC Act, 1988 on 19.8.92. The said FIR ~~was~~ culminated into conviction of the applicant by the Trial Court and the applicant

was found guilty of indulging in forgery by interpolation and falsification of vouchers and misappropriation of Government money. On the basis of conviction of the applicant by the Special Judge, CBI, Jaipur dated 4th April, 2000, the applicant was dismissed from service vide order dated 4.9.2002 (Ann.A1). It is this order which is under challenge in this OA. The applicant has also challenged another order dated 24.11.1992 (Ann.A3) whereby the applicant was permitted to deposit the outstanding amount failing which the same shall be recovered from his salary. In this OA the applicant has neither challenged initiation of disciplinary proceedings nor we are concerned with that aspect. The grievance of the applicant is that the appeal against his conviction by the Special Judge is pending before the Hon'ble High Court. It is further pleaded that once the applicant has resorted to departmental proceedings, it was not incumbent upon them to exercise power under Rule 19 of the CCS (CCA) Rules, 1965 to dismiss the applicant from service. It is further pleaded that against the amount of Rs. 30865.10, the department has recovered an amount of Rs.75,537/-.. The applicant has also pleaded that penalty of dismissal is too harsh.

3. Notice of this application was given to the respondents. The respondents have filed reply. In the

reply, the respondents have categorically stated that, the applicant has challenged the impugned order dated 4.9.2002 without availing the efficacious remedies provided under the Administrative Tribunals Act as well as rules prevailing in the subject matter as no appeal/revision has been filed before the competent authority. Therefore, in view of the provisions contained under Section 20 of the Administrative Tribunal Act, 1985, the OA is liable to be dismissed on this ground. According to the respondents, the competent authority has not committed any irregularity in passing the impugned order Ann.A1 as the applicant was sentenced under Section 109 by awarding rigorous imprisonment and a fine of Rs. 5000/-. Further the applicant has also been sentenced under Section 471 IPC to undergo a rigorous imprisonment of one year with fine of Rs. 1000 and also the applicant was awarded 2 years' rigorous imprisonment under Section 13(2) of the Anti Corruption Act, 1988 alongwith a fine of Rs. 1000. According to the respondents, the appellate authority of the applicant is the President.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

5. ~~Without~~ going into the merits of the case and the fact that the applicant has not availed of the statutory remedy as available under the rules by

filings appeal before the President, the OA is not maintainable in view of the law laid down by the Hon'ble Apex Court in the case of S.S.Rathore vs. State of M.P., AIR 1990 SC 10. Since the matter was pending before this Tribunal as the applicant was pursuing the remedy, we are of the view that it is a case where the applicant can be directed to file appeal before the competent authority, who will entertain the same without raising any objection regarding limitation.

6. Accordingly, without entering into merits and in the facts and circumstances of the case, we are of the view that the applicant shall file an appeal before the appropriate authority alongwith copy of this order within 15 days from the date of receipt of copy of this order thereby raising all permissible pleas. The Appellate Authority is directed to dispose of the same by passing speaking and reasoned order as far as possible within a period of two months from the date of receipt of such appeal.

7. At this stage we wish to observe that when the impugned order dated 4.9.2002 was passed, the applicant was about 57 years of age and even if the relief is granted to the applicant, he cannot be reinstated in service. Since the applicant had rendered a long service with the department and the

fact that the applicant has been convicted by the Special Judgment for the offence regarding indulging in forgery by interpolation and falsification of vouchers and misappropriate of government money, as such, it may not be desirable for the respondents to reinstate the applicant, so long as the said finding is not set aside by the higher Court, but certainly the punishment of dismissal from service is harsh penalty and the applicant and his family will be deprived of the pensionary benefits. It is borne out from the record that the loss caused to the department has also been recovered by the respondents. Under these circumstances, the appropriate authority may consider awarding a lesser penalty by substituting the penalty of dismissal from service to that of compulsory retirement so that applicant can get pensionary benefits. The Appellate authority may also take this fact into consideration while disposing appeal of the applicant.

8. With these observations, the OA is disposed of with no order as to costs.

R.R.Bhandari

(R.R.BHANDARI)

Admv. Member

M.L.Chauhan

(M.L.CHAUHAN)

Judl.Member

R/