

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,  
CIRCUIT CAMP : INDORE

Original Application No.35 of 2002

Indore, this the 14th day of November, 2003

Hon'ble Shri M.P.Singh - Vice Chairman  
Hon'ble Shri G.Shanthappa - Judicial Member

Radha Charan Sharma, aged about 40 years,  
S/o Shri Ram Goptal Sharma, Telephone Operator,  
Telecom (since compulsorily retired), R/o 1116/3,  
Kivi Colony, Rau, Indore (MP)

- APPLICANT

(By Advocate - Shri A.K.Mishra)

Versus

1. Union of India, through its Secretary,  
Department of Telecommunication, New Delhi.
2. Chief General Manager, Telecom, M.P.Circle,  
Bhopal (M.P.).
3. General Manager, Telecom, Indore (M.P.).
4. Deputy General Manager, Telecom Department,  
Indore (M.P.).
5. Divisional Engineer, Telephones (Administration),  
Indore (M.P.)

- RESPONDENTS

(By Advocate - Shri K.N.Pethia)

O R D E R

By M.P.Singh, Vice Chairman-

The applicant in this Original Application has sought a direction to set aside the orders dated 25.8.2000 (Annexure-A-10) and 1.2.2001 (Annexure-A-11). He has also sought a direction to command the respondents to reinstate the applicant and consider any other punishment.

2. The applicant, who was appointed as Telephone Operator on 11.8.1982 submitted a certificate from the Joint Director, Medical Education, Madhya Pradesh on 16.1.1990 for permission to treatment of his daughter Kumari Pratibha Sharma at K.E.M.Hospital, Bombay for heart surgery. A cheque for Rs.15000/- was issued in favour of K.E.M.Hospital, Bombay through the applicant. Instead of depositing the cheque to K.E.M.Hospital, Bombay, the applicant by altering the name of the payee, substituted his own name and encashed the said cheque in his own account at Canara Bank. A charge-sheet under

rule 14 of the CCS(CCA) Rules, 1965 was issued to the applicant for submitting a false medical claim for huge amount between 3.8.1990 to 13.1.1993. A departmental enquiry was conducted against the applicant. On completion of the enquiry charges were proved. Thereafter, the disciplinary authority has imposed the penalty of removal from service. The applicant preferred an appeal. The appellate authority upheld the order of the disciplinary authority. The applicant thereafter had filed O.A.No.31 of 1998 in this Tribunal which was decided on 19.4.2000, and the Tribunal has given the following directions-

"We do not think that mistake in non-compliance of procedure, if any would have prejudiced the interest of the applicant. We also do not think that it is a case of no evidence. However, based on facts and circumstances of the case as also the submission of the learned counsel for the applicant, we feel that the case requires reconsideration by the authorities to decide whether a lesser penalty will meet the ends of justice. We also find that the applicant has not availed of the opportunity of revision petition. In the circumstances, we direct the applicant to submit a revision petition along with a copy of this order to the competent revising authority within 15 days by speed post ....."

Accordingly, the applicant submitted a revision-petition to the Chief General Manager, Telecom which was decided on 25.8.2000 (Annexure-A-10) by rejecting the same. Thereafter the applicant submitted a mercy petition to the President of India, and vide order dated 1.2.2001 (Annexure-A-11) the penalty of removal was modified to that of compulsory retirement. In the meantime the applicant filed MA No.1706/2000 and the same was dismissed vide order dated 6.7.2001 as the punishment was already modified to that of compulsory retirement. Thereafter, the applicant moved the Hon'ble High Court in WP No.2139/2001 which was dismissed as having been withdrawn, vide order dated 12.10.2001.

3. The learned counsel for the applicant has submitted that the Tribunal has passed the direction to reduce the penalty of removal from service. However, despite

the direction of the Tribunal, the respondents have not reduced the penalty and have not reinstated the applicant.

4. On the other hand, the learned counsel for the respondents has submitted that this O.A. is hit by the principle of <sup>&</sup> ~~res~~ <sup>est</sup> ~~judicata~~ as the applicant has already filed an OA for quashing the penalty imposed by the disciplinary authority and as confirmed by the appellate & revisional authorities. The Tribunal in its order dated 19.4.2000 in OA 31/1998 has already considered the case on merits and has observed that it is not a case of no evidence. The Tribunal has further directed the respondents to consider lesser punishment and the applicant has been directed to file a revision-petition. Thereafter, the applicant has also filed a <sup>Merely</sup> ~~fresh~~ petition and the competent authority has modified the penalty from removal to compulsory retirement. Thus, the case has already been finalised and it does not require further consideration by the Tribunal.


5. We find that the applicant has already filed OA 31/98 for quashing the order of removal from service. This has been adjudicated by the Tribunal by its order dated 19.4.2000. In para 7 of the order the Tribunal has observed that non-compliance of procedure, if any, would not have prejudiced the interest of the applicant. The Tribunal has also further observed that it is not a case of no evidence. The Tribunal has directed the respondents to reconsider the matter whether a lesser punishment would meet the ends of justice, and accordingly the penalty of removal has been modified to that of compulsory retirement by the President.

6. It is a well settled proposition of law that the Tribunal cannot <sup>re-examine the evidence on</sup> ~~sit over the decision of the administrative~~ <sup>with</sup> ~~authorities~~ and it also cannot decide about the quantum of punishment unless it **shocks** the conscience of the Tribunal or Court. In this case keeping in view the gravity of the

charge, we are of the considered view that the punishment imposed is commensurate with the gravity of the misconduct committed by the applicant and we do not find any ground to interfere with the same.

7. According, the Original Application is dismissed, however, without any order as to costs.

  
(G. Shanthappa)  
Judicial Member

  
(M.P. Singh)  
Vice Chairman

rkv.


cc sent  
at Indore

पृष्ठंकन सं. अ. / क. .... दि. ....

पंक्ति सं. ....

- (1) सचिव, न्यायिक सेवा, न्यायिक सेवा, न्यायिक सेवा
- (2) न्यायिक सेवा, न्यायिक सेवा, न्यायिक सेवा AK Mishra, Adm
- (3) न्यायिक सेवा, न्यायिक सेवा, न्यायिक सेवा K N Pethia, Adm
- (4) न्यायिक सेवा, न्यायिक सेवा, न्यायिक सेवा

सूचना एवं आवश्यक कार्यवाही हेतु

  
17.11.03