

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

No. M.A. 416 of 2012
M.A. 350/00125/2015
O.A. 399 of 2012
O.A. 423 of 2012
O.A. 672 of 2012
M.A. 236 of 2013
M.A. 350/00028/2016
O.A. 180 of 2013

Date of order: 7.12.2016

**Present : Hon'ble Justice Shri Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member**

GAYA PRASAD

VS.

UNION OF INDIA & ORS. (Telecom)

For the Applicant	In person
For the Respondents	Ms. R. Basu, Counsel Mr. S.K. Ghosh, Counsel

ORDER (Oral)

Per Mr. Justice Shri Vishnu Chandra Gupta, Judicial Member:

M.A. 416 of 2012 & M.A. 350/00125/2015;

In O.A. No. 399 of 2012 there are two Miscellaneous Application relating to this Original Application, one is Miscellaneous Application No. M.A. No. 350/00125/2015 which has been moved by the respondents for vacating the interim order has not yet been disposed of. There is also one more Miscellaneous Application having Miscellaneous Application No. 416 of 2012 which is an application for amendment in the Contempt Petition filed by the applicant of O.A. No. 399 of 2012 and numbered as CPC. No. 36 of 2012, the same has already been disposed of by order dated 8.3.2013. Hence, this Miscellaneous Application seeking amendment in the


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array of parties has become infructuous and is, accordingly disposed of being infructuous.

M.A. No. 125 of 2015:

This M.A. shall be disposed of along with the O.A. as the pleadings of O.A. No. 399 of 2012 are complete.

M.A. No. 236 of 2013:

This is an application filed by the applicant along with copy of the order passed by the Hon'ble High Court with a prayer that O.A. No. 180 of 2013 and O.A. No. 423 of 2012 be decided. As the cases are taken up today for hearing, hence this Miscellaneous Application has become infructuous and is accordingly dismissed.

M.A. No. 350/00028/2016:

The transfer application has already been decided and the O.A. No. 180 of 2013 has already been fixed for hearing today.

Hence, this Miscellaneous Application has also become infructuous and is accordingly disposed of.

O.A. No. 423 of 2012:

Heard the applicant in person and Ms. R. Basu and Mr. S.K. Ghosh, Ld. Counsel appearing for the respondents.

2. The short question for consideration before this Tribunal is whether the statement of imputation of misconduct or misbehaviour requires

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signature of the disciplinary authority/competent authority or not?

3. The brief fact of the case for deciding this controversy are that the applicant, Shri Gaya Prasad while working as Assistant Director [®], Radio Division, TEC, New Delhi was served with a memo under Rule 16 of the CCS (CCA) Rules, 1965 with an annexure of Statement of Imputation of Misconduct or Misbehaviour. It is not in dispute that this memo was received by the applicant but instead of giving the reply to the imputations he wrote to the disciplinary authority that the statement of imputation of misconduct is not signed. Hence, he requested to give a signed copy of imputation of misconduct. But the request was not accepted and it was stated that it is not at all required.

4. The applicant also made a complaint to the higher authorities but in spite of that the signed imputation of memo has not been furnished. He also made a request to the disciplinary authority that he has made a representation to the higher authorities in this regard and requested to defer the decision till the appeal is decided by the Chairman of Telecom Commission and Secretary (DOT) but the authority instead of giving the signed copy of the imputation and waiting for the decision passed the impugned order of punishment. For ready reference the memorandum of 15.10.2016 which is signed by Shri V.K. Shukla, Member (Services), Telecom Commission and the annexure which is unsigned is reproduced for ready reference:-

"
No. 8/57/2009-Vig.II
Government of India
Ministry of Communications & Information Technology
Department of Telecommunications

**Room No. 915,
 Sanchar Bhawan,
 20, Ashoka Road,
 New Delhi - 110 117**

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Dated the 15th October, 2009

MEMORANDUM

Shri Gaya Prasad, Assistant Director (R), Radio Division, Telecom Engineering Centre, New Delhi, is hereby informed that it is proposed to take action against him under Rule 16 of the CCS (CCA) Rules, 1965. A statement of the imputations of misconduct or misbehaviour on which action is proposed to be taken as mentioned above, is enclosed.

2. *Shri Gaya Prasad is hereby given an opportunity to make such representation as he may wish to make against the proposal.*
3. *If Shri Gaya Prasad fails to submit his representation within ten days of the receipt of this Memorandum, it will be presumed that he has no representation to make and orders will be liable to be passed against Shri Gaya Prasad ex parte.*
4. *The receipt of this Memorandum should be acknowledged by Shri Gaya Prasad.*

(V.K. Shukla)
Member (Services)
Telecom Commission

To

**Shri Gaya Prasad,
Asstt. Director (R), Radio Division,
Telecom Engineering Centre,
New Delhi**

(Through the DDG, TEC, New Delhi)."

“ANNEXURE”

**Statement of imputations of misconduct or misbehaviour on
which action is proposed to be taken against Shri Gaya Prasad,
Assistant Director (R), Radio Division, Telecom Engineering
Centre, New Delhi**

That Shri Gaya Prasad was working as Assistant Director (R), Radio Division, Telecom Engineering Centre, New Delhi, during the year 2007.

While working as above, the said Shri Gaya Prasad purchased a new car, i.e. Honda City Zx (Exi) 1.5 cl for the amount of Rs. 7,28,581/-.

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He sent an intimation to this effect in the Admn. Section (TEC), New Delhi on 24.7.2007 showing the source of income as " personal savings from salary."

Vide letter No. TBAD/PF.GP. 851/2005-TEC dated 17.8.2007, Sri Gaya Prasad was requested to furnish the photocopy of the savings bank as a proof that the car has been financed from the personal savings.

Vide letter No. TBAD/PF.GP. 851/2005-TEC dated 27.8.2007, the said Gaya Prasad was again requested to furnish the photocopy of the pass book.

Vide letter dated 3.9.2007, Shri Gaya Prasad provided the registration number of the car but did not provide the requisite information.

Finally, vide letter No. TBAD/PF.GP. 851/2005-TEC dated 8.10.2007, Sri Gaya Prasad was given one more opportunity to provide the requisite information but he has failed to provide the same.

In spite of repeated instruction to submit requisite information, the said Shri Gaya Prasad deliberately failed to provide the same and thereby committed misconduct.

Thus, by his above acts, Shri Gaya Prasad failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government Servant, thereby contravened the provisions of Rule 3(1)(i), (ii) and (iii) of CCS (Conduct) Rules, 1964."

5. The letter which the applicant has given to the authority in pursuance of the aforesaid memo on 30.10.2009 is also annexed as

Annexure "A-10":-

" (Through Sr. DDG TEC)

Dated: 30th Oct, 2009

To,

Member (Services),
Telecom Commission,
Sanchar Bhawan (DoT), ND

Ref: No. 8/57/2009-Vig. II dated 15th October, 2009

Sir,

In context of the above referred letter, it is submitted that a statement of the proposed imputations of misconduct i.e. Annexure enclosed with Memo No. 8/57/2009-Vig. II dated 15.10.2009 has neither been signed nor its details mentioned in the said memorandum.

You are therefore, requested to arrange a singed copy of detailed

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imputation i.e. Annexure so that adequate reply may be submitted.

Thanking you,

Yours faithfully,

(Gaya Prasad)
Assistant Director (TEC)
Staff No. GO-111040"

6. A letter dated 22.1.2010 is also reproduced for ready reference:-

Through DDG (C&T)

To

Dated: 22nd Jan, 2010

**The Member (Services),
Telecom Commission,
Department of Telecommunications,
Sanchar Bhawan, New Delhi**

Sub.: Unauthenticated/Unsigned proposal of imputation (Charge sheet) under rule 16 of CCS (CCA) Rule, 1965.

Ref.: 1-No. 8/57/2009-Vig.II dated : 11th Jan 2010.

Sir,

With reference to the above letter, I have already appealed to the Hon'ble Chairman of Telecom Commission & Secretary to DoT on 8.12.2009 in the matter of unauthenticated/unsigned & defective proposal of imputations (Charge sheet) endowed with intention of jealousy and harassment. When decision only my appeal is communicated me, I will comment on the above referred letter.

Yours faithfully,

(Gaya Prasad)
Asstt. Director (C&T)
TEC, New Delhi"



7.

The punishment order passed by the Disciplinary authority on 25.3.2010 is also extracted hereinbelow:-“

No. 8/57/2009-Vig.II
Government of India
Ministry of Communications
Department of Telecommunications

915, Sanchar Bhawan,
20, Ashoka Road,
New Delhi – 110 117

Dated the 25th March, 2010

ORDER

Shri Gaya Prasad, Assistant Director (R), Radio Division, TEC, New Delhi, was proceeded against under Rule 16 of the CCS (CCA) Rules, 1965 vide memo No. 8/57/2009-Vig.II dated 15.10.2009 for the following imputations:-

That Shri Gaya Prasad was working as Assistant Director (R), Radio Division, Telecom Engineering Centre, New Delhi, during the year 2007.

While working as above, the said Shri Gaya Prasad purchased a new car, i.e., Honda City Zx (Exi) 1.5 G1 for the amount of Rs. 7,28,581/- He sent an intimation to this effect in the Admn. Section (TEC), New Delhi on 24.7.2007 showing the source of income as "personal savings from salary".

Vide letter No. TBAD/PF.GP.851/2005-TEC dated 17.8.2007, Shri Gaya Prasad was requested to furnish the photocopy of the savings bank as a proof that the car has been financed from the personal savings.

Vide letter No. TBAD/PF.GP.851/2005-TEC dated 27.8.2007, the said Shri Gaya Prasad was again requested to furnish the photocopy of the pass book.

Vide letter dated 3.9.2007, Shri Gaya Prasad provided the registration number of the car but did not provide the requisite information.

Finally, vide letter No. TBAD/PF.GP.851/2005-TEC dated 8.10.2007, Shri Gaya Prasad was given one more opportunity to provide the requisite information but he has failed to provide the same.

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In spite of repeated instruction to submit requisite information, the said Shri Gaya Prasad deliberately failed to provide the same and thereby committed misconduct.

Thus, by his above acts, Shri Gaya Prasad failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government Servant, thereby contravened the provisions of Rule 3(1)(i), (ii) and (iii) of CCS (Conduct) Rules, 1964.

2. *The Charged Officer (CO) acknowledged the receipt of the said memorandum of charge vide his letter dated 30.10.2009 wherein he requested to provide him a signed copy of imputations. Vide letter dated 11.11.2009 he was informed that as per Govt. of India instructions, annexures to memo need not be signed by disciplinary authority and he was advised to submit his representation in response to the said memorandum of charges immediately. Vide letter dated 13.11.2009, the CO, Shri Gaya Prasad, disagreed with the fact that the imputation of misconduct enclosed with the said memorandum of charges need not be signed by competent authority/disciplinary authority and brought to the notice that if signed copy of imputation is not provided, then the detail of imputations can be modified/tampered/exchanged with other imputations at any stage as some ITS officers have been harassing him since August, 2007 by contemplating frivolous and forged imputations despite his appropriate submission two year ago. In the light of the above, he again requested to arrange the signed imputations annexed with the memo and a copy of instructions/rules in this regard to submit his representation. A copy of Govt. of India's instructions restricting disciplinary authority to sign annexure to memo has been provided to the CO vide letter dated 18.11.2009. The CO vide his letter dated 27.11.2009 instead of submitting his representation, he reiterated to provide him signed copy of imputation. His letter dated 27.11.2009 was examined and a memorandum dated 2.12.2009 issued to the CO giving final opportunity to him to make representation, if any, within seven days of the receipt of this memorandum otherwise it would be presumed that he has no representation to make and further necessary action in the matter is liable to be taken ex-parte. In response to memo dated 2.12.2009, he forwarded a copy of letter dated 27.11.2009 and informed that he has appealed to the Chairman of Telecom Commission & Secretary, DOT on 8.8.2009. Appeal made by the CO has been considered by the competent authority. Ample opportunities have been given to the CO to submit his representation in response to the memorandum of charge but he failed to do so. The CO was given last and final opportunity to submit his representation within seven days vide memorandum dated 11.1.2010, but the CO has not submitted his representation for which it was presumed that the CO has no reply or proof to be produced before the competent authority to nullify the charge. As there was no response from the charged officer, the Disciplinary authority took ex-parte decision to hold the charge against the charged officer as proved.*

3. *The Disciplinary Authority has carefully considered the records of the case and all other facts and circumstances relevant to this case. Considering the circumstances in totality and on an objective assessment of the entire case, I, S.C. Misra, Member (Services),*



Telecom Commission, the competent disciplinary authority accordingly hereby order that the penalty of reduction to a lower stage in the time scale of pay by one stage for a period of three years, without cumulative effect and not adversely affecting his pension, be imposed on the said Sri Gaya Prasad, with immediate effect.

4. The receipt of this Order shall be acknowledged by Shri Gaya Prasad.

(S.C. Misra)
Member (Services)
Telecom Commission

Shri Gaya Prasad,
Assistant Director (R),
Radio Division, TEC,
New Delhi.

(Through the Sr. DDG, TEC, New Delhi)."

Wherein the penalty of reduction to a lower stage in the time scale of pay by one stage for a period of three years, without cumulative effect and not adversely affecting his pension was imposed, against which an appeal was preferred which is also dismissed on 27.2.2012. Aggrieved by these orders the present O.A. has been filed.

8. Reply has been filed alleging that there is no provision to sign the imputation of misconduct. Hence it was not necessary upon the disciplinary authority to sign the same. It was further contended that memo along with whom the imputation of charges were annexed was duly signed by the competent authority/DA.

9. Rejoinder has been filed reiterating the earlier fact narrated in the O.A.

10. We have heard the applicant in person and the Id. Counsel for the respondents and we are of the opinion that both the sides are acting in hyper-technical manner. The applicant is also taking a hyper-technical



ground that imputation has not been signed though the covering letter by which the imputation of charges has been furnished was duly signed. The copy of the same has been furnished to the applicant along with the memo though the possibility of changing the document cannot be ruled out but at the same time, it is the ego of the disciplinary authority that instead of seeking a signed copy of the imputation, the disciplinary authority did not sign and did not furnish the same. No provision or rule has been shown to us which authorizes the Disciplinary Authority to serve on CO an unsigned statement of imputation. Both the sides became adamant on their stand. The applicant did not prefer any reply against the imputation and approached the higher authority complaining the action of the disciplinary authority and asked for deferment of the proceedings conducted by the disciplinary authority. The disciplinary authority without waiting for the decision or instead of furnishing the signed copy decided the matter exparte without taking any defence of the applicant. The applicant was consequently punished as he did not prefer to file any reply in absence of any signed imputation. The appellate authority also while passing a detailed order stating therein that in spite of the opportunity given to the applicant, he did not prefer to file any reply. Hence, the appeal was dismissed.

11. Having considered all the facts and circumstances narrated above and keeping in view that the penalty has been imposed without considering the defence which ought to have been filed by the applicant, punishment order should not be allowed to sustain. We think that principle of natural justice demands that one more opportunity should have been given to applicant. Hence, we dispose of this petition finally by passing the following orders:-

A handwritten signature in black ink, appearing to be a stylized 'S' or a similar character, is positioned at the bottom of the page.

(i) *That the impugned order of punishment dated 25.3.2010 as well as the order passed in appeal by the appellate authority dated 27.2.2012 is set aside.*

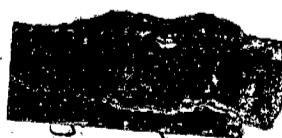
(ii) *The applicant is directed to file his reply against the imputation of charges which has already been furnished to him and also extracted hereinabove in this order within a period of one month from today.*

(iii) *The disciplinary authority thereafter considering the reply submitted by the applicant and will dispose of the matter within two months thereafter in accordance with law after giving an opportunity of being heard to the applicant.*

(iv) *In case, any adverse order is passed against the applicant, the applicant would be at liberty to take legal recourse available to him under the law and rules.*

(v) *In case, the applicant fails to file any reply in terms of the aforesaid order, the disciplinary authority is free to take legal recourse as is available under the law.*

12. In view of the above, the O.A. is finally disposed of. There shall be no order as to costs.



(Jaya Das Gupta)
Administrative Member



(Vishnu Chandra Gupta)
Judicial Member