

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No. 46/2013

Dated this Thursday the 28th November, 2019

CORAM: R. VIJAYKUMAR, MEMBER (A)
RAVINDER KAUR, MEMBER (J)

T.N. Singh, aged 55 years
Working as Assistant Engineer
26537, Darpan Telephone
Exchange, Chakala, Andheri
East, Mumbai and residing at
E/115, Shiv Shakti Apartment,
Opp. Triveni Nagar, Kurar
Village, Malad East,
Mumbai - 400 097. *Applicant*
(By Advocate Shri Ramesh Ramamurthy)

VERSUS

1. Chairman and Managing
Director, Mahanagar
Telephone Exchange Limited
Jeevan Bharati, Tower I,
124, Connaught Circle,
New Delhi - 110 001.

2. General Manager West-II
Mahanagar Telephone
Exchange Limited,
Goregaon Telephone
Exchange Building, 3rd fl.
S.V. Road, Goregaon West,
Mumbai - 400 062. *Respondents*
(By Advocate Shri Vishal Shirke, proxy counsel
for Shri S.V. Marne)

ORDER

Per: Ravinder Kaur, MEMBER (J)

The present OA has been filed by the
applicant under Section 19 of the Administrative

Tribunals Act, 1985 seeking the following reliefs:-

"8(a) That this Hon'ble Tribunal be pleased to quash and set aside the impugned order dated 18.09.2012 (Annexure A-1), passed by the Respondent No.1 and the order dated 26.03.2008 (Annexure A-2) passed by the respondent No.2.

(b) That this Hon'ble Tribunal be pleased to direct the respondents to restore the applicant back to his original position prior to passing of the order dated 09.04.2009 by the respondent No.1 and also post him in the same post which he was holding prior to the date i.e. SDE and pay him the emoluments attached to the said post of SDE for the entire period and also fix his pay in the said post of SDE for the entire period and pay him the arrears arising out of difference in the emolument between the said post of SDE and the current post held by the applicant.

(c) That such other and further order or orders be passed as the facts and circumstances of the case may require.

(d) That cost of this original application be provided for.

2. The facts are that while the applicant was working as SDE in MTNL, Mumbai, Goregaon Telephone Exchange, he was served with chargesheet dated 14.09.2007 (Annexure A-3) alongwith statement of imputations of misconduct proposing action against him under Rule 27 of MTNL Conduct Discipline & Appeal Rules, 1998 for minor penalty. As per the same, the allegations against the applicant are to the following effect:-

"2. WHILE functioning as such on 27.02.07 some cables were exposed by MMRDA near Patel Aluminum Company on

the Western Express Highway. Ten Primary cables of different sixes, 1200 to 2400 pairs, averaging a length from 12 to 15 meters were exposed. On seeing this, the Area DE, Mr. Koshy requested the MMRDA contractor not to allow anybody to touch MTNL cables and if anyone tries to do so the matter may be informed to Mr. Sharma, SDE of the Area on phone No.20550007. At about 11.45 a.m. On 28.02.2007 Mr. Sharma got a call from the contractor that about eight number of MTNL Staff were cutting the cables. Mr. Sharma, SDE, along with his staff reached the spot and found that cables were already cut and loaded on a private truck. Mr. Sharma escorted them to the Telephone Exchange Building, Goregaon. Then the ANC staff dumped the cable in the yard maintained by them. In the meantime the Area DE spoke to ANC (W-2). He told that he was not aware of the incident but will confirm the availability of estimate for recovery and other details. After getting the clarification that estimate was not available for this work from DE(ANC) (W2) the same matter was reported to DGM(GGN) and also, through DGM, to GM(W2) on 02.03.2007. Since the whole episode has taken place with malafide intention by the same unit staff, which delayed authorized recovery in S.V. Road, and in this case with absence of proper authority to recover the materials.

3. WHILE functioning as such during the above period, said Shri T.N. Singh concealed the facts and gave wrong and misguiding information regarding his absence from Head Quarters, (i.e. Mumbai) while on leave from 23.02.2007 to 01.03.2007 and stated that he was not knowing Shyam Bihari Singh and Chhotelal Mama and never spoke with them on phone. The CDR of his Garuda Mobile No.20558444 establishes that he was very much in Mumbai and has spoken with the above people several times, He further stated that even after his refusal, these people along with cable construction staff recovered the cable but were caught by the DE and SDE concerned which shows his malafides intention in unauthorised cable recovery."

In response to the above, the applicant vide letter dated 06.10.2007 (Annex A-5) demanded certain documents. The contention of the applicant is that he was not supplied with these documents which has caused serious prejudice to him.

3. Vide letter dated 27.12.2007 (Annexure A-6) the applicant submitted his reply to the aforesaid Charge Memorandum denying all the charges levelled against him and sought personal hearing.

4. It is the claim of the applicant that during the relevant period he was on leave from 23.02.2007 to 01.03.2007. The respondent No.2/Disciplinary Authority vide letter dated 26.03.2008 recorded the finding that there was no oral or written evidence showing the involvement of the applicant in the case of unauthorised cable recovery. However, he also recorded that the fact of presence of the applicant in Mumbai during the relevant period was concealed which was treated as a serious issue and he was issued warning.

5. Thereafter the applicant received show cause notice dated 24.09.2008 (Annexure A-7) issued by respondent No.1 under Rule 33 of the MTNL Conduct and Discipline and Appeal Rules, 1998 disagreeing with the order dated 26.03.2008 passed by respondent No.2. The applicant was asked to submit his representation as to why the penalty should not be imposed. The reply dated 18.10.2008

(Annexure A-8) was submitted by the applicant claiming that since he was on leave during the relevant period, therefore his presence at the time of incident was not possible and he was in no manner connected with the alleged incident. Vide order dated 09.04.2009, the respondent No.1 imposed penalty of reduction by two stages in the time scale of pay for a period of two years without cumulative effect. The applicant challenged the order of the Appellate Authority vide OA No.434/2009 on 20.07.2009 before this Bench of the Tribunal which was disposed of vide order dated 16.03.2012 setting aside the aforesaid order. The respondent NO.1 was granted liberty to proceed afresh, if deemed fit as per the directions given in the judgment.

6. The applicant was thereafter issued fresh Memorandum dated 04.07.2012 (Annexure A-10) seeking to review the order passed by the Disciplinary Authority with the following major observations indicating the involvement of the applicant in unauthorised cable recovery:

“(i) The Charged Officer concealed the facts and gave wrong and misleading information regarding his absence from Head Quarter, i.e., Mumbai while on leave from 23.02.2007 to 01.03.2007.

(ii) As per statement of Shri Krishnaraj Yadav, Mobile No.9869356180, supervisor of C.R.Traders approved company in W-II area for supply of labour that on 27.02.2007 at 20.00 hrs., charged officer had phoned him and asked for labours to recover cables near Patel Aluminum Company, but he refused to give labours because it was not his site. This has been confirmed from CDR of charged officer's Mobile No.20558444.

(iii) The Charged Officer has accepted in his statement that on 27.02.2007 evening Shri Chhotelal (Krishnaraj Yadav), Shri Shyam Bihari Singh and Shri Phool chand, telephoned him several times regarding recovery of cables near Patel Aluminum and Cable construction staff (ANC-GGN) came in night at site but went back and on 28.02.2007 morning (The day of incidence) phoned again him and even after his refusal, these people recovered the cables.

(iv) The charged officer has failed to intimate the incident to his superiors. He should have given the telephonic intimation to his superiors for unauthorised recovery of cables. This act of Charged Officer clearly shows that his intention was not genuine."

7. Alongwith the Memorandum, the applicant was also furnished the statement of one Shri Krishnaraj Yadav and two statements of the applicant recorded by the vigilance, one in Hindi language and one in English language. However, the applicant has denied that he made any statement in Hindi language and that the same is not bearing his signature. The copy of the Memorandum alongwith these three statements are collectively Annexure A-10. He filed reply dated 06.08.2012 to the aforesaid Memorandum. Thereafter vide order dated 18.09.2012 the impugned order Annexure A-2 imposing penalty of

withholding of one increment for two years without cumulative effect was issued by respondent No.1.

8. The applicant has challenged the aforesaid order on the following grounds:

(i) The respondent No.1 has not considered the submissions made by the applicant nor even discussed them in the impugned order.

(ii) The facts are wrongly stated in the impugned order and based on erroneous conclusion, the respondent No.1 has imposed penalty on the applicant.

(iii) It is wrongly mentioned in the order that the Charged Officer did not ask for any documents in his reply dated 29.07.2012 nor did he ask for the CDR details, whereas before filing reply to the chargesheet Memorandum, he had requested the Disciplinary Authority vide letter dated 06.10.2007 for supply of documents which included the CDR of his mobile phone but the same were not supplied.

(iv) The respondent No.1 while passing the impugned order relied upon additional material which was not part of the chargesheet. Certain statements of witnesses

which were not proved in any inquiry were relied upon and on the basis of such statements the case of the applicant was improperly rejected by respondent No.1.

(v) The reliance of the CDR of mobile phone of the applicant by respondent No.1 to the effect that there was contact between the applicant and one Krishnaraj Yadav on mobile phone has been challenged on the ground that no evidence has been produced that it is the applicant who had answered the phone calls received from Krishnaraj Yadav.

(vi) The order of disagreement issued by respondent No.1 is without justification and reasoning.

(vii) The applicant had given only one statement to the vigilance on 02.04.2017 and second statement recorded in Hindi was not his voluntary statement.

(viii) vide impugned order dated 09.04.2009 the applicant has already undergone the penalty of reduction of pay by two stages for two years without cumulative effect and imposing the similar penalty for second time vitiates the impugned order.

(iv) The show cause notice issued by

respondent No.1 was received on 04.10.2008 i.e. after the expiry of period of six months from the date of order of the Disciplinary Authority dated 26.03.2008 and as such the same is time barred. Consequently, any penalty imposed in pursuance to the same is bad in law.

9. The respondents have filed detailed affidavit in reply whereby it is stated that the chargesheet dated 14.09.2007 issued to the applicant was based on the fact emanating of incident of cable theft whereby the statement of Shri Krishna Raj Yadav and the applicant himself as well as the CDR details were relied upon in support of the allegations in the chargesheet.

10. It is further stated that during the personal hearing with GM(W-II), MTNL on 07.03.2008 as well as in his representation dated 18.10.2008 made against the chargesheet dated 24.09.2008, he admitted the fact that though he was on leave from 23.02.2007 to 01.03.2007, he was very much available in Mumbai on 27/28.02.2007 when the case of unauthorised recovery of exposed cable took place. He also admitted that he received

several phone calls regarding recovery of exposed cables and the factum of cables being stolen but did not take any action since he was on leave. He admitted that he had made incorrect statement to the effect that he had gone to attend the marriage in his family at his native place and was not present in Mumbai during the said incident in order to avoid interrogation by vigilance team. It is stated that in view of the reply dated 18.10.2008 to the Memorandum dated 24.09.2008 and his statement dated 02.04.2007 to the vigilance officer as well as the CDR, it is established that he was concealing the fact that he was present at Mumbai during the period 27/28.02.2007 and that no document was required at this stage to be given to the applicant since he was required to submit his explanation based on fact and truth.

11. Regarding Non supply of documents to the applicant alongwith chargesheet, it is stated that since the chargesheet was issued under Rule 27 of the MTNL, CD&A Rules, 1998, there was no need to supply any documents. It is stated that he was given personal hearing by the Disciplinary Authority on 07.03.2008 during

which he did not raise any grievance. Further the applicant vide his representation dated 18.02.2008 did not raise issue of any prejudice being caused to him due to non-supply of any documents. The representation of the applicant dated 27.12.2007 also does not raise any grievance of non-supply of documents.

12. It is stated that no new material was relied upon in the disciplinary proceedings and after considering entire case, the evidence on record, findings of Disciplinary Authority and representation from the applicant, the Reviewing Authority in exercise of power under Rule 33 read with Rule 23(e) imposed minor penalty of reduction by two stages in the time scale for a period of two years without cumulative effect with immediate effect. This order dated 09.04.2009 was withdrawn vide order dated 28.06.2012 in terms of directions of this Tribunal issued in OA No.434/2009 vide order dated 16.03.2012. Consequently, the applicant was issued fresh Memorandum dated 04.07.2012 alongwith relevant documents mentioned in the chargesheet dated 14.09.2007. Thereafter vide order dated 18.09.2012 the penalty of withholding of one increment for two years

without cumulative effect was imposed upon the applicant on his clear admission of concealment and other undisputed facts of the case i.e. evidence available as per CDR technical details, with statement of the applicant and statement of Shri Krishnaraj Yadav which are part of the chargesheet dated 14.09.2007. It is stated that all the contentions raised by the applicant in earlier OA have been dealt with by this Tribunal and held to be valid. Therefore, applicant cannot be allowed to re-agitate the same.

13. The respondents have also relied upon the statement of the applicant dated 02.04.2007 made before DE, MTNL, Mumbai. It is stated that the statement dated 02.04.2007 was made voluntarily by the applicant before the vigilance officers in the presence of Shri J.A. Siwal, DE (ANC) GGN, MTNL, Mumbai, the applicant's Controlling Officer and therefore the applicant cannot claim that he was forced to make any such statement. Further that the CDR record and the reply of the applicant dated 18.10.2008 clearly establishes that he was very much in Mumbai on 27/28.02.2007 and had spoken to Shri Shyam Bihar Singh and Shri Chotelal i.e

Shri Krishnaraj Yadav several times, but in his statement dated 02.04.2007 recorded in English, he concealed this fact. Whereas in his statement recorded in Hindi language, he has admitted the fact that in the evening of 27.02.2007 Shri Chhotelal and Shri Phool Chand spoke to him several times and he also called them on phone and told them not to recover the cable and on next day i.e. 28.02.2007 he again received the telephone calls to the similar effect but they did not listen to him.

14. The applicant has filed rejoinder reiterating the averments made in the OA.

15. We have heard Shri Ramesh Ramamurthy, learned counsel for the applicant and Shri Vishal Shirke, proxy counsel for Shri S.V. Marne, learned counsel for the respondents and perused the pleadings and material available on record.

16. The applicant faced departmental proceedings for minor penalty involving charges as referred at para 2 of this judgment. The issue for consideration is as to whether the applicant concealed the material fact of his presence in Mumbai on 27/28.02.2007 when the case of unauthorised recovery of exposed cable

took place. Admittedly, the Disciplinary Authority vide order dated 26.03.2008 held that it is proved on record that applicant was present in Mumbai during the relevant period but he concealed this fact and consequently, he was issued warning. However, the respondent No.1 did not agree with the findings of Disciplinary Authority and issued show-cause notice dated 24.09.2008 to the applicant under Rule 33 of the MTNL Conduct and Discipline and Appeal Rules, 1998. After giving opportunity to the applicant to file representation, respondent No.1 vide order dated 09.04.2009 imposed penalty of reduction by two stages in the time scale of pay for a period of two years without cumulative effect. This order was challenged by the applicant before this Bench of the Tribunal vide OA No.434/2009 and was set aside vide order dated 16.03.2012. However, the respondent No.1 was granted liberty to proceed afresh, if deemed fit as per the directions given in the judgment. Thereafter, the applicant was served with fresh Memorandum dated 04.07.2012 (Annexure A-10) by respondent No.1. Alongwith the Memorandum, the applicant was provided the relevant documents which were

relied upon in the chargesheet dated 14.09.2007 (Annexure A-3). The applicant filed his representation dated 06.08.2012 (Annexure A-11) to the aforesaid memorandum. After considering the statement of the applicant and the relevant material on record including the CDR details of his Garuda Mobile No.20558444 showing several calls made to the Mobile No.9869356180 belonging to Kirshnaraj Yadav (the contractor) during the period 22.02.2007 to 01.03.2007, the respondent No.1 opined that the applicant had concealed the fact of his presence at Mumbai during the aforesaid period and that he also came in contact with the contractor Shri Krishnaraj Yadav during this period. The applicant was imposed penalty of withholding of one increment for two years without cumulative effect.

17. We have perused the entire material available on record carefully. The applicant has placed on record letter dated 06.10.2007 (Annexure A-5) whereby he demanded personal file containing the note and sanction order of his Earned Leave from 23.02.2007 to 01.03.2007, CDR of Garuda Mobile No.20558444 and his statement given to the vigilance officer. This

application was duly received in the office of the respondents but despite the same the applicant was not provided any documents. However, the applicant has not explained as to how non-supply of these documents has caused any prejudice to him particularly in view of the fact that the Garuda Mobile No.20558444 belongs to him and he himself had given statement to the vigilance officer on 02.04.2007 which he has admitted during the course of inquiry. No doubt, in his reply dated 27.12.2007 the applicant has not expressed any prejudice caused to him on account of non-supply of the documents. It is categorically mentioned in Annexure A-2 by the respondent No.1 - Disciplinary Authority that during the course of personal hearing on 07.03.2008, the applicant had not asked for any documents. Moreover, this issue has already been set at rest after the applicant challenged the order of the Reviewing Authority dated 09.04.2009 whereby the applicant was imposed penalty of withholding of one increment for two years without cumulative effect, vide OA No.434/2009 which was allowed vide order dated 16.03.2012. The Reviewing Authority was granted liberty to

proceed afresh if deemed it fit, in accordance with Rules. The Reviewing Authority issued fresh Memorandum dated 04.07.2012 (Annexure A-10) alongwith relevant documents. Even otherwise in our opinion, non-supply of the documents at the earlier stages did not cause any prejudice to him as per the facts and circumstances of the case.

18. The applicant states that the statement given by him before the Vigilance Officer is a relevant document as action was being taken against him on the basis of this statement regarding his proceeding on earned leave and going out of Mumbai. Due to non-supply of the said statement, he was prevented from putting up proper defence. However, learned counsel for the respondents has drawn our attention to the fact that during his personal hearing with Respondent No.2 on 07.03.2008 as well as in his representation dated 18.10.2008 made against the chargesheet, the applicant accepted in writing that although he was on leave from 23.02.2007 to 01.03.2007, he was very much available in Mumbai on 27.02.2007 and 28.02.2007 when the case of unauthorised recovery of exposed cable took place. He also

admitted therein that he had received several phone calls regarding recovery of exposed cable and the factum of cable being stolen but he did not take any action despite the knowledge of the incident since he was on leave.

19. The applicant has further admitted therein that on 27.02.2007, some officials of both external maintenance unit of Goregaon and SDE(ANC) Goregaon Unit had contacted him and informed about some cables which were exposed at Western Express Highway and about the need to recover and deposit the same in the office to avoid being stolen. He admitted that he had given written information about his absence from Mumbai during the relevant period only due to panic and instinct of self defence. Apart from his admission, the statement of Shri Krishnaraj Yadav, supervisor of C.R. Traders Company in W-II area for supply of labour also corroborated this fact. The contention of the applicant that he had received a telephone call from Shri Krishnaraj Yadav on landline number which was attended by his family members in his absence and noted down his telephone number and later on he himself made call to Shri Krishnaraj Yadav and was informed by him that

some staff of Goregaon, ANC unit had requested for labours for recovery of exposed cables does not inspire any credence as he has not furnished any evidence to the effect that it is Shri Krishnaraj Yadav who had called him at his landline Number and in response to the same, the applicant made a call. The statement of Krishnaraj Yadav before the vigilance department clearly shows that it is the applicant who gave called him from his mobile on 27.02.2007. Thus the reasons why applicant called him are entirely known to him. Shri Krishnaraj Yadav in his statement has categorically stated that the applicant had also asked to recover cables near Patel Company but he refused as it was not his site. There is no reason why Shri Krishnaraj Yadav would make false statement against the applicant. The presence of the applicant at Mumbai on 27.02.2007 at 8.00 pm has thus been proved from the CDR as well as his own admission.

20. However he made false statement before the Vigilance Officer on 02.04.2007 to the effect that he had left headquarters i.e Mumbai on 22.02.2007 and returned on 01.03.2007 at midnight which is contrary to the statement

made before the respondent No.2 during the course of personal hearing and in his representation/reply dated 18.10.2008. All these facts lead to the inference that he knowingly concealed the fact that he was present at Mumbai on 27/28.02.2007 when the incident of recovery of exposed cable took place. His defence that in his absence from Mumbai on 27 & 28th February, 2007, the phone calls were attended by his family members is also belied by his own reply dated 18.10.2008 and the statement dated 02.04.2007.

21. In these circumstances, the averment that the applicant was not supplied with the relevant documents is of no consequence. It is an open and shut case based on the true facts which were only within the knowledge of the applicant and revealed during the course of personal hearing and reply dated 18.10.2008. In these circumstances, we find no infirmity or flaw in the impugned orders dated 26.03.2008 and 18.09.2012.

22. The applicant has claimed in this OA that vide impugned order dated 09.04.2009, he has already undergone the penalty of reduction of pay by two stages for two years without

cumulative effect and therefore imposing the similar benefit for second time vitiates the impugned order. However, this contention of the applicant has been categorically denied by the respondents in their reply.

23. In view of above discussion, the Original Application is without merits and deserves to be dismissed.

24. The original Application is accordingly dismissed. No order as to costs.

(Ravinder Kaur)
Member (J)

(R. Vijaykumar)
Member (A)

ma.

JD
10/12/19

