(1992) 08 NCDRC CK 0083

In the National Consumer Disputes Redressal Commission

DISTRICT MANAGER, PATNA TELEPHONES, PATNA — APPELLANT

Vs

BIHAR STATE SUBORDINATE SERVICES BOARD — RESPONDENT

Date of Decision : 03-08-1992

Acts Referred:

Citation : 1992 0 CPC 633 : 1992 2 CPJ 464 : 1992 2 CPR 429 : 1993 1 CLT 219

Hon'ble Judges : V.Balakrishna Eradi , Y.Krishan , B.S.Yadav J.

Final Decision : Appeal allowed

Judgement

1. ON 16th March, 1990 Shri J.S. Mehta, the former Secretary of the Respondent Board applied on the prescribed form to the Appellant District Manager-Telephones, Patna to shift the telephone No. 32465 (new No. 232465) from his residence of to the residence of Shri Suresh Chandra Prasad. This request for shifting became necessary because Shri J.S. Mehta, had been transferred. The telephone was actually shifted to the residence of Shri Suresh Chandra Prasad, the new incumbent of the post of the Secretary of the Board only on 13th April, 1991 i.e. after the expiry of more than one year. (A request for shifting was sent in the form of a letter on 15.2.1990).

2. THE respondent Board sent as many as seventeen reminders between 7th March, 1990 and 1st April, 1991 for the transfer of telephone. THE respondent alleges that it had also requested the Appellant Telephone Department on 7.5.90 to keep the telephone " closed under shift" so that the respondent Board did not have to pay the bills for the telephone which continued to be used un-authorisedly from the old location. No action was taken by the Appellant-District Manager Telephones on these communications. It is only after the respondent filed a complaint before the State Commission on 27th of November, 1990 that the telephone Department started action for shifting. Before the State Commission the Appellant - District Manager Telephones took the plea that application in the proper form for shifting the telephone was filed only on 16th March, 1990. Since certain dues were outstanding for payment on account of telephone bills by the Board, the respondent Board was required to clear the bills

first before shifting the telephone. The respondent-Board paid the outstanding amount on 31st of May, 1990. Thereafter the Appellant-District Manager issued Advice Note on 6th June, 1990 for shifting of Telephone. Compliance was not found possible till April 1991 as shifting was not feasible on technical grounds.

The State Commission after considering the evidence, came to the conclusion that the Appellant-District Manager Telephones treated the request of the respondent-Board for shifting telephone in a most casual, nay non-chalant manner, that the telephone was neither shifter nor "closed under shift" in spite of written request to that effect and was allowed to be used unauthorisedly at the old location. It is also observed that the Appellant-District Manager Telephones failed to inform the respondent in writing that the shift was not technically feasible and did not produce the register required to be maintained regarding nonfeasible works. In fact, the State Commission observed that no specific reason was pointed out District Manager Telephones (DMT) as to why. In view of telephones functioning in the new area it was not feasible to shift this telephone as requested by the subscriber. The State Commission, therefore, held that all the bills relating to this telephone between 15th february, 1990 when the letter for shifting was sent and 13th April, 1991 when the telephone was actually shifted do not relate to the use of telephone by the complainant and the payment thereof made by it should be refunded by the Appellant-Telephone Department. It also awarded compensation of Rs. 10,000/- to the respondent- Board for the inconvenience caused due to the inordinate delay in shifting of the telephone in spite of as many as seventeen reminders.

3. THE State Commission has also observed that the unauthorised use/misuse of the telephone No. 32465 was done with the connivance of the Telephone Department functionaries. The Appellant has come in appeal against the Order of State Commission dated 13th of August, 1991 in Complaint Case No. 49 of 1990.

4. THE Appellant has submitted that in the application for shifting dated 16th March, 1990 the respondent had mentioned that in case of non-feasibility or delay in shifting, the said telephone should remain in operation, obviously at the old location. Since the photo copy of this application was not clear, the Appellant was required to produce the original application before this Commission and for this purpose the case was adjourned twice. From the perusal of the original application form dated 16th March, 1990 for shifting which was produced before us. It is clear that the Respondent-Board had requested that the telephone in question should continue to remain in operation if there was likely to be delay in shifting of the said telephone. THE Counsel for the respondent-Board could not explain as to how such an application had been submitted allowing the telephone to continue to remain in operation at the old location when the officer, at whose residence the telephone had been installed, had been transferred and in consequence of which the transferred officer''s telephone was required to be shifted to the residence of the new incumbent of the post. He also could not explain as to whether any action had been taken by the respondent-Board

against the officer concerned for submitting such an application for shifting which allowed him to continue to retain the telephone at his residence unauthorisedly. Further, the respondent-Board continued to make payment of the telephone bills received either monthly or bi-monthly even though the telephone had not been shifted and it continued to be unauthorisedly used at the previous location. If the respondent-Board had not paid the bills, the telephone would have been disconnected for nonpayment of bills and the question of refund of the amount of the telephone bills for the period from February, 1990 to 13th of April, 1991 would not have arisen. The Appellant-District Manager Telephones had failed to take action on the seventeen reminders received by him for shifting of the telephone. He also failed to send a communication to the respondent-Board about the technical non-feasibility of the shift and did not produce the prescribed register of non-feasible works. The implication of these facts is that the unauthorised use or misuse of telephone in question was made possible at least partly by reason of inaction on the part of the Appellant-District Manager Telephones.

5. THE respondent-Board first facilitated such collusive action being committed by submitting an application requesting the Telephone Department that, in case of non-feasibility or delay in shifting, the said telephone should continue to be in operation at the old location till it was shifted to the new location. It also allowed collusive misuse of telephone by making payment of the telephone bills when the telephone was not in the use of the respondent-Board.

6. IN these circumstances it is not justs and fair to requires the Appellant-District Manager Telephones to refund the telephone bills paid for the period from February, 1990 to April, 1991. The rightful course for the respondent- Board was to consider the question of recovering the amount from the party who had been actually using the telephone during this period unauthorisedly and from the person who requested in the application for shifting that the telephone should be allowed to continue to function at the old location till it was shifted. It is also correct that the respondent-Board should have suffered some inconvenience due to this inordinate delay in shifting telephone. However, if it really suffered seriously due to non-shifting of telephone, it would not have handled the matter with the Appellant-District Manager Telephones in the manner in which it did not and also made payment for the telephone bills.

On the other hand the appellant-District Manager Telephones has not indicated as to what action he took from time to time on these seventeen reminders. Why the telephone was not "closed under shift" when so specifically requested, why written communication was not sent to the Opposite Party regarding technical non-feasibility of the shift? This leads to us a strong impression that the Government Departments and Public Sector Undertakings do not take action against their own employees when there is prima facie evidence of negligent action and of malpractice which cause avoidable loss to the exchequer. With the above observations, the Order of the State Commission is set aside and the

Appeal is allowed. There is no order as to costs. Appeal allowed.

