

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

**Original Application No.108/2020
Dated the 6th day of March, 2020**

CORAM:

Hon'ble Shri M.C.Verma, Member (J)

Shri Suhas Gopal Kamble,
Aged : 49 years (DOB being 17.06.1970),
Son of Late Shri Gopal Krishna Kamble,
Presently serving as General Manager (OP),
In the O/o PGTMD, BSNL,
Ahmedabad Telecom District, Gulbhai Tekra,
Bharat Sanchar Nigam Limited
& presently residing at No.401,
4th Floor, Sai Sharan Building, Sarkhej Road,
Vasna, Ahmedabad – 380 007.

... Applicant

[By Advocate : Shri M. S. Rao]

Versus

- 1 Bharat Sanchar Nigam Limited,
(To be represented through its
Chairman & Managing Director,
Ground Floor, Eastern Court Building,
Janpath, New Delhi – 110 001.
- 2 Shri Pravin Kumar Purwar,
Chairman & Managing Director,
Bharat Sanchar Nigam Limited,
BSNL Hqrs, Ground Floor,
Eastern Court Building, Janpath,
New Delhi – 110 001.
- 3 The Chief General Manager,
Bharat Sanchar Nigam Limited,
Gujarat Telecom Circle,
Telecom Building, Navrangpura,
Ahmedabad – 380 009.
- 4 Shri Ashok Kumar Upadhyay,
(Inquiring Authority),
Principal General Manager Telecom District(PGMTD),

Rajkot Telecom District,
Bharat Sanchar Nigam Limited,
Loha Nagar Road, Rajkot – 360 002. .. **Respondents**

ORDER (ORAL)

1. The matter is at motion hearing stage. Applicant having pleaded in instant OA that departmental proceedings initiated and the criminal case against the applicant are based on identical and similar set of facts has assailed the act of appointment of the Inquiring Officer and of fixing the date of hearing in departmental proceedings by Inquiring Officer.

2. Heard. Learned counsel Shri M.S.Rao, Advocate, while pressing the OA and placing reliance on decision dated 30th March 1999 passed by Hon'ble Supreme Court in case titled **M Paul Anthorny Vs. Bharat Gold Mines Limited**, in CA No.1906 of 1999 and stating that departmental proceedings and the criminal case against the applicant are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature, which involves complicated questions of law and fact, urged that the Disciplinary Authority ought not to have appointed the Inquiring Office and the Inquiry Officer ought not to have issue the Impugned orders dated 02.03.2020 listing the departmental proceedings for hearing. He contended that said act of the Disciplinary Authority and of Inquiry Officer are illegal & are liable to be quashed. He urged to issue notice to the respondents and to stay the departmental proceedings till conclusion of the criminal case.

3. In **M. Paul Anthorny's** case (cited supra) and relied upon by the applicant the principles laid down, mutates mutandis are (i) *Departmental proceedings and proceedings*

in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately (ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case (iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will fence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet. (iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed and (v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.

4. The pleadings, as has been set out in the OA reflect that applicant while working as General Manager, BSNL, Ratnagiri, Maharashtra was booked by the CBI, ACB, Mumbai in criminal case and an FIR, dated 29.03.2016 under Section 120B of the IPC and under Sections 7, 12 & 13(2) r/w Section 13(1) (a) of the Prevention of Corruption Act, 1988 was registered against him. Charge-sheet dated 20.11.2017 yielded from said FIR is pending before the Learned Special

Judge CBI at Ratnagiri and as informed Charge has not yet been framed by Learned Special Judge CBI at Ratnagiri. That that charge memorandum, dated 02.08.2019 alleging very same allegations against the applicant, as had been levelled against him by the CBI/ACB, was issued by Disciplinary Authority and a major penalty departmental disciplinary enquiry under Rule 36 of BSNL, CDA Rules 2006 has been initiated.

5. The pleading further reflects that vide Order No.15-19/MH/2019/VM-VI dated 10.01.2020 (**Annexure A/1**) Shri Ashok Kumar Upadhyay, PGMTD, Rajkot, Gujarat Telecom Circle has been appointed as Inquiring Authority to inquire into the charges framed against the applicant and the Inquiring Authority, fixing the date and time of Inquiry and instructing the applicant to remain present on said date at given address has passed order bearing No. VIG/Rajkot/Inquiry/Shri Suhas Gopal Kamble/2020-21/4 dated 02.03.2020 (**Annexure A/2**) and also has sent copy of the charge sheet with his communication letter No. VIG/Rajkot/Inquiry/Shri Suhas Gopal Kamble/2020-21/3 dated 02.03.2020 (**Annexure A/3**) to the applicant instructed him to submit the name, designation, email and contact mobile number of his defence assistance and the list of defence documents. Applicant in instant OA has prayed for quashing and setting aside of orders enshrined in Annexure A/1, Annexure A/2 & Annexure A/3.

6. The sole questions formulated for consideration by the applicant in his OA is as follows:-

“Whether it is legal, valid and proper for the Respondent No.2 herein being the applicant’s Disciplinary Authority to proceed to nominate IO/PO in pursuance of the departmental Charge Memorandum dated 02.08.2019 when the applicant herein in response to the said charge memorandum has contended in his representation dated 09.09.2019 inter alia that the allegations levelled against him in the aforesaid Charge Memorandum and also in the criminal case against him arising

out of the Criminal Charge Sheet dated 20.11.2017 are the same and are based on the very same set of facts, documents and the witnesses.”

7. In a recent judgment dated 06.12.2019 passed in CA No.8782 of 2019 in case titled **The State of Bihar & Ors v/s Phulpari Kumari** Hon'ble Supreme Court upheld the punishment of dismissal from service of the respondent of that case, who was found guilty of demanding and accepting illegal gratification in departmental proceedings which has concluded during pendency of criminal trial for the offence of demanding and accepting illegal gratification and wherein the criminal trial was still pending when order of dismissal from service was passed. Hon'ble Supreme Court reiterated the settled proposition of Law that standard of proof as required in a criminal trial is not the same as is in a departmental inquiry. Strict rules of evidence are to be followed by the criminal court and the guilt of the accused has to be proved beyond reasonable doubt but in departmental proceeding, on the other hand, preponderance of probabilities is the test adopted in finding the delinquent guilty of the charge. In said case Hon'ble Supreme court also laid down that interference of court pursuant to departmental inquiry can only be in cases of no evidence.

8. Having considered the submission made at Bar and taking note of pleadings attention of learned counsel was drawn to above quoted judgment in **Phulpari Kumari's** case and learned counsel urged that in the facts and circumstances of instant O.A., it would be in interest of justice to issue notice and to adjudicate the O.A., after giving opportunity to the respondents to appear and contest.

9. It is trite law that departmental proceedings and proceedings in criminal case can proceed simultaneously and

there is no bar in their being conducted simultaneously, though separately. Taking cue from **Phulpari Kumari's** case (cited supra) it can also be said that during pendency of criminal trial, departmental inquiry may also proceed, may be concluded and delinquent employee may be punished provided the evidence surfaced on record during inquiry are of the nature to indicate and establish the guilt of the employee. When inquiry proceedings can proceed. the question arises how without appointment of Inquiry Officer and without giving instructions to the delinquent employee to appear before the Inquiry officer, inquiry proceedings can proceed.

10. Taking note of entirety, I do not find any ground, much less prima facie to interfere. In result, the O.A., being devoid of merits deserve dismissal and accordingly is dismissed in limine.

(M C Verma)
Member(J)

Abp-mehta