

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH ALLAHABAD

Dated: This 24th day of December 2019

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER – J

Original Application No. 330/01363/2016

Prakash Chandra Verma son of Late Bhoop Narain Verma, Resident of 118 Rajeev Nagar, Vinayakpur, Kanpur District Kanpur Nagar.

.....Applicant

By Advocate: Shri B.K Singh/Shri Ashutosh Shukla

Versus

1. Bharat Sanchar Nigam Ltd. through its Chairman cum Managing Director in (B.S.N.L) Corporate Office, New Delhi.
2. Chief General Manager Telecom (U.P East), Circle Lucknow.
3. Senior General Manager Telecom, Kanpur.
4. Account Officer (Pay/Cash/Pension/S.D.E. Tech. /WO) office of Senior General Manager Telecom, Kanpur.
5. Assistant General Manager (Admin) office of GMTD BSNL, Kanpur.

.....Respondents

By Advocate: Shri V.K. Pandey/Sri D.S. Shukla

O R D E R

1. The present Original Application has been filed by the applicant Prakash Chandra Verma seeking following reliefs:-

- "a) To allow this application and set aside the letter dated 16.08.2016 issued by the Account Officer (Pension), office of GMTD BSNL Kanpur (Annexure No.1 to the compilation No.1).*
- b) A direction may be given to the respondents to pay the amount of gratuity, leave encashment and commuted value of pension with the penal interest within a specific period of time.*
- c) to direct the respondents to decide and pass the speaking order in the light of circular dated 07th September, 1999 and in the light of final order passed by the competent authority dated 18.04.2015 on the pending application/fresh application.*

- d) ***To pass such other and further order which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.***
- e) ***Award the cost of the application to the applicant".***

2. Case of applicant Prakash Chandra Verma is that prior to two days of his retirement, a departmental enquiry was held against him wherein vide order dated 18.04.2015 (Annexure A-4) he was awarded punishment of deduction of 15% from the pension for two years which was not challenged by him and became final and at present no proceeding/disciplinary proceeding is pending against him. Despite his representations, the respondents have not disbursed his retiral benefits. It is further case of applicant that as per letter dated 16.8.2016 of A.O, Pension, the dues of applicant could not disbursed for want of vigilance clearance from A.G.M. (Admin.). That as per circular dated 07.09.1999 (Annexure A-7), only three categories for the necessity of the vigilance clearance has been given and since applicant has accepted the punishment order, the omission of respondents to pay him his retiral dues is illegal and arbitrary. Hence the present O.A. to quash the letter dated 16.8.2016 (Annexure No.1) and further direction to the respondents to pay the amount of gratuity, leave encashment and commuted value of pension with interest and to direct the respondents to pass a speaking order on the pending application.

3. In the counter affidavit, respondents have taken the following plea:-

- "6. ***That the contents of para 4.4 of the original application wrong, false hence denied. It is submitted that Shri P.C. Verma is holding outstanding amount of Rs.2576853.76 against diesel purchased by him through smart petrocard issued to him by account section of Department for operation of E/As in various Exchange//BTS under his subdivision during his service period***

as informed by accounts officer (cash) O/o General Manager Telecom District Kanpur vide his letter No. (II)231-AO(C)/11-12/Staff NOC/203 dated 18.11.2016 and (I) AO(C)/13-14/PC/DE/PCV Rtd. JTO/9 dated 16.09.2015. A photocopy of the letter dated (II)231-AO(C)/11-12/Staff NOC/203 dated 18.11.2016 and (I) AO(C)/13-14/PC/DE/PCV Rtd. JTO/9 dated 16.09.2015 is annexed herewith and is marked as Annexure No. CA-1.

Accordingly, Shri P.C Verma, JTO informed by his senior officer i.e. DE Phones Kedwai Nagar vide his letter No. SDE Phones/GTM/Smart Card Diesel at 16.09.2014 as well as by Assistant General Manager (Admin)GMTD Kanpur vide letter No. SDE Phones/GTM/Smart Card Diesel/August 10/25 at 12.09.2016 to get the outstanding amount adjusted enabling issue of No Dues Certificate by the under signed i.e. Assistant General Manager but Sri P.C. Verma Ex. JTO did not take any pursuance/action for adjustment of the outstanding amount".

4. However, in the rejoinder affidavit, applicant has denied the correctness of the allegation made in paragraph 6 of the counter affidavit by stating that the entire alleged allegation and controversy raised in present para has already been decided by the original authority as well as by the Appellate Authority. This issue was already the subject matter of the show cause notice and by a detail finding the same controversy has already been decided and the applicant has already been awarded the punishment. Once for the same charges he was awarded the punishment and now again he is being harassed by the department for the same charges is not permissible under the law.
5. I have heard and considered the arguments of learned counsel for the parties and gone through the material on record.

6. Applicant seeks release of gratuity etc., since his case being that no enquiry proceeding is pending against him and that the allegation of outstanding amount of purchased diesel was subject matter of the enquiry held against him wherein he was awarded the punishment and, therefore, he cannot be penalized again for the same charge which was the subject matter of enquiry proceeding.
7. On the other hand, the case of respondents is that applicant is holding outstanding amount of Rs.2576853.76 against diesel purchased by him through petrocard issued to him by the Accounts Section of the Department and despite being informed vide letter dated 16.09.2014 and 12.09.2016 issued by DE Phones and AGM (Admin) to get the outstanding amount adjusted to enable issuance of 'No Dues Certificate', applicant has not taken any action for the adjustment of the outstanding amount.
8. As per the impugned order dated 16.08.2016, the retiral benefits could not be disbursed for want of Disciplinary vigilance clearance and 'No Dues Certificate' from AGM (Admin). However, I may refer to the averment made in the counter affidavit wherein it has been stated that letter dated 12.09.2016 was written by AGM (Admin) to applicant to clear the outstanding amount to enable the office to issue the 'No Dues Certificate' by said AGM but that the applicant did not take any action for adjusting the outstanding amount. Applicant in his rejoinder affidavit says that this matter of outstanding amount was part of the departmental enquiry held against him wherein he was awarded the punishment which has become final and therefore, he cannot be again awarded punishment on the same charge.

9. Perusal of the chargesheet against the applicant mentions about the late submission of the diesel bills and therefore, the contention of the applicant that the outstanding amount alleged against him was part of the charge-sheet cannot be accepted. In any case, surprisingly applicant despite being directed by the officials of BSNL has not attended of the concerned officer to adjust the outstanding amount of diesel alleged against him or submit his reply that no such amount is outstanding against him.

10. In view of the aforementioned circumstances of the case, I am of the opinion that the O.A. is meritless and accordingly dismissed. However, applicant is at liberty to attend the office of AGM (Admin), GMTD, Kanpur and give his reply to the demand made by the AGM (Admin). In case, the applicant submits his reply aforementioned to the AGM (Admin), the said officer would dispose of the representation dated 02.06.2016 (Annexure A-5) by a reasoned and speaking order within 2 months from the date of submission of reply by the applicant with intimation to the applicant.

No order as to costs.

(RAKESH SAGAR JAIN)

Member (J)

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