

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/972/2015

Date of Reserve:10.01.2020

Date of Order:28.02.2020

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Smt.Kanan Bala Routray, W/o. Late Dharanidhara Routray, aged about 62 years, Resident of Village-Baideswar, Post-Baideswar, Via-Kalapathara, Dist-Cuttack.

...Applicant

By the Advocate(s)-M/s.T.Rath

A.K.Mohanty

P.K.Kar

D.K.Mohanty

R.C.Jena

-VERSUS-

Union of India represented through:

1. The Secretary, Department of Telecommunications, Govt. Of India, Sanchar Bhavan, 20, Ashoka Road, New Delhi-110 001.
2. Chairman-cum-Managing Director, Bharat Sanchar Nigam Ltd., Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi-110 001.
3. The Chief General Manager, Bharat Sanchar Nigam Ltd., Orissa Circle, Bhubaneswar-751 001.
4. The General Manager Telecom District, Bharat Sanchar Nigam Ltd., Door Sanchar Nigam Ltd., Bhubaneswar-751 022.
5. Deputy General Manager (Admn.), Office of the GMTD, BSNL, Bhubaneswar.

...Respondents

By the Advocate(s)-Mr.G.R.Verma

Mr.K.C.Kanungo

ORDERPER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, the applicant has sought for the following reliefs:

- i) To quash the order dated 2.11.2015 (as per Annexure-A/14) for the same not being sustainable in law and not being a reasoned one as well as being contrary to the provision of Rule-43 of BSNL CDA Rules-2006 which protects the absorbed BSNL employees against the order of termination by BSNL authorities.
- ii) To consequently quash the IO report (as per Annexure-A/2), punishment order of the disciplinary authority dated 16.3.2007 (as per Annexure-A/3) and the orders of the appellate authority dated 8.6.2007 (as per Annexure-A/5) for being bad in law as the same were contrary to the well settled position of Rules and law.
- iii) To direct the respondents to disburse the full pay and allowances of the deceased Dharani Routray (husband of the applicant) from 16.3.2007 till the date of his death on 17.1.2009 with interest @ 9% per annum till the date of actual disbursement.
- iv) To direct the Respondents to sanction regular family pension and disburse death gratuity etc. i.e., all service benefits to the applicant as per law from 18.1.2009 onwards with interest @ 9% per month till the date of actual disbursement.
- v) To pass such other order(s)/direction(s) as may be deemed fit and proper in the bona fide interest of justice.
- vi) To order and direct that the cost of litigation be paid to the applicant by the respondents.

2. Brief background leading to filing of this O.A. runs thus: Applicant's husband Dharanidhar Routray was working as Senior Telecom Supervisor (STS) in the erstwhile Department of Telecom being appointed as Telephone Operator in the year 1973. After formation of BSNL with effect from 1.10.2000, applicant's husband was absorbed in the BSNL vide order dated 2.1.2002. While working as such, he was issued with a Memorandum of Charge dated 30.09.2002 in contemplation of disciplinary proceedings against

him under Rule-14 of CCS(CCA) Rules, 1965, inter alia, containing the following Article of Charge.

"That the said Shri Dharanidhar Routray, now working as STS, O/o. DET, Knurda had produced a false Matriculation Certificate in the office of the then DET, Berhampur (Gm), Orissa for the recruitment of Telephone Operator. The above-mentioned action of Shri Dharanidhar Routray violates the provision of Rule-2(1)(i) and (ii) of CCS(Conduct)Rules, 1964".

3. In the inquiry conducted, the IO submitted his report on 3.1.2007 holding the charge proved. Based on the report of the IO, the Disciplinary Authority imposed punishment of removal from service on the applicant's husband vide order dated 16.3.2007. Applicant's husband thereafter, submitted an appeal, which was rejected by the Appellate Authority vide order dated 8.6.2007. In the above backdrop, he submitted a review petition to Respondent No.3 on 12.7.2007 and while the matter stood as such, the husband of the applicant passed away on 17.1.2009. Thereafter, the present applicant being the wife of the deceased employee submitted an application dated 10.8.2009 (A/10) to Respondent No.3 for setting aside the orders of removal of her husband from service and to grant pension and other service benefits as per rules. Since it did not evoke any result, the applicant approached this Tribunal in O.A.No.260/001036 of 2014, which this Tribunal disposed of vide order dated 14.01.2015 as follows:

"Since it is the positive case of the applicant that her representation is still pending consideration before the Respondent No.3, without entering into the merit of the matter, we dispose of this OA at this admission stage with a direction to the Respondent No.3 to consider and dispose of the representation by a reasoned and speaking order and communicate the same to the applicant within a period of 60 days from the date of receipt of copy of this order. If, in the meantime, the representation or review petition has already been disposed of then the result thereof be communicated to the applicant within a period of four weeks from the date of receipt of a copy of this order".

4. Complying with the above direction, the Deputy General Manager (HR/A), O/o.CGM, BSNL, Odisha Circle, Bhubaneswar passed an order dated 01.11.2015 (A/14), the relevant part of which reads as under:

“The issues raised in your representation dated 10.08.2009 has been considered in the light of clarification received from DoT, New Delhi via their letter No.38-16/2015-Pen.(B) dated 8.10.2015. The case is examined and reviewed carefully and it is observed that late D.D.Routray has acquired the initial job in DOT fraudulently by submitting a false Matriculation certificate. Thus the applicant's initial appointment in DOT was a fraud for which he was removed from service and as such BSNL CDA Rules 43/Rule-37-A(24)(c) of CCS(Pension) Rules, 1972 is not applicable in the instant case. BSNL CDA Rule-43/Rule-37-A(24)(c) of CCS(Pension) Rules, 1972 protects an absorbed employee from forfeiting his retirement benefit for the service rendered under Government for subsequent misconduct after the absorption. This is not so in the case of late D.D.Routray as his initial appointment itself was fraudulently acquired and, therefore, BSNL CDA Rule-43/Rule-37-A(24)(c) of CCS(Pension) Rules, 1972 has no application in the present case.

In view of the above, your request made in the representation dated 10.8.2009 and review petition dated 12.7.2007 filed by late D.D.Routray stand regretted”.

Hence, this Application with the aforesaid reliefs.

5. The grounds urged by the applicant in support of her claims are as follows:

- i) The order of removal from service is bad in law inasmuch as the same has been passed in contravention of the provisions of Rule-43 of BSNL CDA Rules, 2006, as admittedly Respondent Nos. 3 and 4 did not consult the DoT authorities for review of the orders of removal before taking final decision of terminating the services of the applicant's husband.
- ii) The findings of the IO are perverse and not sustainable in law in view of the fact that not a single document was exhibited during the enquiry nor a single prosecution witness was presented by the PO during enquiry.
- iii) The burden lies on the prosecution to prove the charges whereas in the instant case it was not proved during enquiry that the applicant's husband had acquired the

initial job in the Department of Telecommunication fraudulently by submitting a false Matriculation Certificate.

- iv) Neither any authority from the Board of Secondary Education, Orissa nor the School Authority were examined during the inquiry to depose before the I. Regarding the genuineness of the Certificate.
- v) Since the applicant's husband had been absorbed in BSNL with effect from 1.10.2000, before removing him from service, it was mandatory on the part of the BSNL to adhere to the provision of Rule 43 of BSNL CDA Rules, 2006 for review of the orders of BSNL authorities by the authorities of Department of Telecom before it was issued.
- vi) Rule-43 of BSNL CDA Rules, 2006, provides that dismissal/removal of the absorbed employee from the service of BSNL after absorption for any subsequent misconduct shall not amount to forfeiture of his retirement benefits for the service rendered in the Central Government upto 30.9.2000.
- vii) The report of the IO is vitiated due to non-production of the additional documents requisitioned by the charged official during the inquiry.
- viii) The appellate authority failed to consider the averments made in the appeal in its proper perspective.
- ix) The PO has not produced any evidence on record to prove the charge .

6. Per contra, respondent Nos. 2 & 3 have filed their counter. In their counter, it has been submitted that the O.A. is barred by limitation and therefore, the same should be dismissed. On the merit of the matter, it has been pointed out that the husband of the applicant by producing a false High School Certificate shown to be issued by the Board of Secondary Education, Orissa, Cuttack, got appointed against a post of Telephone Operator under the DET, Berhampur, Ganjam on 9.7.1973. On receipt of a complaint from one Mayadhar Dalei by the CBI, Bhubaneswar that the applicant had produced a fake certificate in order to secure a job in the DoT and the matter having been forwarded to the Vigilance Officer, O/o.CGMT, Odisha Circle, a departmental

proceeding was initiated against the applicant. However, it has been submitted that in response to letters issued by the Vigilance Officer to the Secretary, Board of Secondary Education, Orissa, the latter asked the former to deposit Rs.25/- along with Xerox copy of the HSC Certificate of applicant's husband for the purpose of verification. The Board of Secondary Education, on receipt of the required fees and documents, the Board of Secondary Education vide letter No.3954 (CRR) 003/2002 dated 24.05.2002, intimated as follows:

"With reference to the letter on the subject cited above, I am to inform you that Sri Dharanidhar Routray was not a candidate of H.S.C. Examination in the year March, 1967, appeared through Golapokhari High School, Golapokhari in the R.C.High School, Khandapara Centre. So his HSC Certificate is not an authenticated one".

7. Copy of this letter, according to Respondents, had been provided to the applicant's husband along with the Memorandum of Charge dated 30.09.2002 (A/3). In sum and substance, it is the case of the Respondents that the charge levelled against the applicant's husband having been proved, he has rightly been imposed punishment of removal from service.
8. Applicant has filed rejoinder to the counter. Respondents have also filed additional counter-affidavit.
9. We have heard the learned counsels for both the sides and perused the records. We have also gone through the written notes of submissions filed by both the sides. We have also gone through the written notes of submission filed by both the sides.
10. The crux of the matter is whether the applicant' husband by producing a fake Matriculation Certificate had secured a job in the Department of

Telecommunication and if so, whether the charge levelled against him has been proved to the hilt.

11. In this connection, the relevant part of the report of the I.O. is quoted herein below:

"4. ASSESSMENT OF EVIDENCE

5. WRITTEN BRIEF OF PO :

The SPS was given sufficient scope and time to submit the original matriculation certificate but he failed to do so citing the fact that the same was submitted to the department and was not returned. Even the SPS was also asked to produce the Xerox copy of the certificate, which is available with him, but the SPS denied to produce it with the plea that the same is presently not traceable. The PO showed the Xerox copy of the matriculation certificate to the SPS, issued by BSE, Orissa and was earlier produced before the V.O. of Circle Office by the SPS as per VO's letter of dated 17-06-2002. Moreover the information available on the certificate completely matched with the reply made by the SPS during questioning but the DA denied its authenticity. Further the statement made by the SPS during hearing that no Xerox copy of the matriculation certificate is available with him at present contradicts his earlier self-signed statement of dated 13-11-2001 in which the SPS admitted to provide the Xerox copy of the certificate.

Despite several opportunities allowed to the SPS to present the documentary evidence, the SPS did not make any attempt to produce the documents with the intention to keep the inquiry in dark.

Thus, it reveals that, the SPS did not want to produce the original matriculation certificate and have no sufficient proof of handing over of the same to the departmental authority. Even the SPS deliberately denied producing the Xerox copy of the same stating that is not with him, though he had admitted earlier in his written statement about its availability with him. This shows a clear intention to suppress the material fact. Thus it is proved that, the original as well as the Xerox copies of the certificate are with the SPS but he did not want to produce before the inquiry.

Finally, the BSE, Orissa vide his letter of dated 24-05-2002, declared the matriculation certificate issued in favour of the SPS as not an authenticate one. Thus Sri DharanidharRoutray, the SPS, produced a false

matriculation certificate to get an employment in this department.

6. WRITTEN BRIEF OF SPS

The SPS termed the brief of the PO as misconceived and is not supported by any evidence. The SPS briefed about sending his original matriculation certificate to the departmental authority during appointment but the same was not returned to him. Further the SPS denied the authentication of the statement recorded on 13-11-2001 and the Xerox copy of the matriculation certificate handed over to him. According to him, the PO instead of bringing any evidence on record to prove the charge has tried to prove the charge by asking me (the SPS) to produce certain documents. In his brief, the SPS also denied the fact that the Xerox copy of the matriculation certificate was handed over by the SPS to the V.O. The SPS is firm on his declaration, that he had submitted the original matriculation certificate to then DET, Berhampur by post in 1973 and has not get it back since then. The SPS alleged that, during inquiry, he was regularly being insisted to produce certain documents, which is against the mandatory provisions of the CCS Conduct rules. According to the SPS, the PO's brief is based on assumption and presumptions. Further, the verification made by the BSE, Orissa declaring the said certificate as not authenticate, the brief of the SPS says, it is baseless only due to the fact that the prosecution failed to produce the Original matriculation certificate submitted by him on 06-04-1973 to the then DET, Berhampur by post.

Finally, the SPS summarized the PO's brief as baseless and not supported by any evidence. For which it is liable to be rejected and prayed to exonerate him of the so called fictitious charge.

7. DISCUSSION :

In the very outset, based on the entire hearing, defence arguments and other related facts and documents, the IO would like to discuss the points, perhaps attributable to paramount importance in the entire proceedings of the inquiry.

- i) The base of the proceeding is the Matriculation Certificate of the SPS by virtue of which a job was granted to him. Matriculation Certificate is considered to be a vital document for a person throughout his life. The certificate should be retained by the holder in his safe custody and it is the duty of the person concerned to get it back after verification wherever it is produced. But in this case, if the submission of the certificate is agreed upon to be made by the SPS by

post to then DET, Berhampur during 1973, the SPS has never tried to get it back from the authority or had never made any correspondence with the authority questioning the where-abouts of his certificate or even have not retained a Xerox copy or an attested true copy of the certificate for future requirements. Thus this argument of the defence is totally misleading for delay in the inquiry.

- ii) Xerox copy of the matriculation certificate was submitted by the SPS to VO during investigation and the SPS also agreed upon to produce the Xerox copy if required. But he failed to do so during the inquiry.
- iii) During inquiry, the SPS has been given ample scope and sufficient opportunities, to produce the Xerox copy of the certificates before the IO, but the SPS and his DA always denied to do so citing the facts that it is not available with him. Even sufficient time was granted to the SPS to collect a duplicate matriculation certificate from the BSE, Orissa but he did not do so.
- iv) As such, lack of interest with the SPS to produce documentary evidence before the IO despite all opportunities clearly indicates that, the SPS himself is trying to hide the truth without facing it.
- v) More-over documentary evidences produced by the PO is sufficient enough to indicate that, the Xerox copy of the matriculation certificate is available with the PO and the SPS had produced that certificate to the then DET, Berhmapur at the time of appointment during 1973 which was later declared as "false" by the issuing authority i.e. the BSE, Orissa, Cuttack.
- vi) So, it is understood that, this case does not require any more evidence from either of the party and the existing documentary evidences are sufficient enough to prove the charge against the SPS as per article I of the charge sheet.

8. FINDINGS:

In the light of the discussions made herein-above, analytical estimation of the listed documents & exhibits, the evidences emerged during the inquiry and the circumstantial evidences, I hold that, THE CHARGE UNDER ARTICLE – I STANDS PROVED".

12. The charge levelled against the applicant's husband is that he had secured the job of Telephone Operator in the Department of

Telecommunications by submitting a fraudulent certificate. The letter dated 24.05.2002 of the Board of Secondary Education, stated to have been received by the department as mentioned in para 6 of this order has not been formally proved by anybody of this department in the inquiry against the delinquent deceased husband of the applicant. The author of the said letter is not known. The person who has signed the said letter is also not known. Since neither the signature nor the content of the said letter has been proved by anybody, by the department, even under the standard of pre-ponderance of probability, just because such letter has been received by the respective department, that by itself cannot give rise to presumptions, assumptions or inference of the fact that such letter must have been sent by Board of Secondary Education. In the absence of any formal proof of said letter, it cannot be said that the initial burden of the department to prove its allegation against the delinquent deceased husband of the applicant, even in the standard of pre-ponderance of probability, has at all been discharged or complied with. In such circumstances, no adverse inference can be taken against the applicant for non production of original HSC certificate in question and he should not have been burdened with the responsibility and liability of proving that certificate in question is genuine one. Thus the decision making process in the departmental enquiry is arbitrary and is not in accordance with principle of natural justice. The stand taken by the respondents and action and role in this regard by them in the departmental proceeding in question has caused severe prejudice to the applicant and the same has caused miscarriage of justice. This Tribunal in facts and circumstance of this case finds that this is a case of “no evidence” and therefore it is the duty of this Tribunal to interfere in the arbitrary and illegal action of the respondents in passing the punishment of removal of service on delinquent deceased husband of the applicant.

There may be many reasons for non production of original certificate by the deceased husband of the applicant, the same might have been destroyed or has become non traceable and it was practically not possible by the deceased husband of the applicant to produce it before the inquiry officer due to lapse of so many years. It is pertinent to mention here that the deceased husband of the applicant joined the service way back in 1973 and the memorandum of charges was issued against him on 30.09.2002 in contemplation of disciplinary proceedings against him. The disciplinary proceedings was initiated against the deceased husband of the applicant on subsequently the Inquiring Officer submitted his report on 03.01.2004.

Thus it is apparent that due to initiation of disciplinary proceedings against the deceased husband of the applicant after lapse of so many years he was put in a disadvantageous position and not in a position to effectively defend himself in the said proceedings.

13. As has been mentioned in para 3 of this order the appeal of the deceased husband of the applicant was received on 18.06.2007 after filing review petition by him on 12.07.2007 and during pendency of the same he expired on 17.01.2009. Therefore the present applicant being widow of the deceased employee filed application vide Annexure A/10 dated 10.08.2009 before respondent no. 3 to set aside order of removal of service of her husband and to grant pensionary and other service benefits. She had earlier filed one O.A. in the year 2014 which has been mentioned earlier in this order. The said factual backgrounds were again required to be mentioned, in view of the plea of the delay taken by the respondents and further plea as to whether this Tribunal can go into merits of the issue of the case at the instance of widow of the deceased employee. Additionally the present applicant is widow and legal

heir of the deceased employee, therefore she is entitled to any amount payable to her husband. The legality and validity of the order of the Disciplinary Authority, Appellate Authority etc have to be tested on the touchstone of principle of natural justice. In the absence of the employee, his spouse has stepped into the shoe of her deceased husband. The punishment of removal of service of the husband of the applicant will seriously affect, since his honour has been tarnished by such order of punishment. In order to rectify the same the applicant being widow of the deceased employee has rightly approached this Tribunal against such orders which has affected her late husband, herself and family members as well. If the husband would have been alive, then he would have presumably considered to fight for justice and honour by availing remedies in accordance with law. On his behalf the present applicant has been compelled to file this case, finding no other alternative for the livelihood of the family and taking heavy burden of convincing the respondents to redress the grievance of her late husband. Therefore, we do not find any fault with the applicant in approaching this Tribunal when the sole breadwinner of the family is no more. Therefore this Tribunal finds the applicant has locus standi to challenge the impugned order in question, in order to right the wrong inflicted by the respondent by passing the impugned order of punishment against her husband.

14. Consequently the report of the Inquiry Officer at Annexure A/2, punishment order of the Disciplinary Authority dated 16.07.200 at annexure A/3 and the order of the appellate authority dated 08.06.200 vide Annexure A/5 stands quashed. Therefore ,as a necessary corollary we direct the respondents to disburse the full pay to the deceased husband of the applicant from 16.03.200 till his death on 16.1.200. But on peculiar facts and

circumstances of the case we do not direct for payment of interest on the said amount.

The applicant will be entitled to all consequential financial benefits which would have been disbursed to her deceased husband. Respondents are also directed to give regular family pension and disburse Death Cum Retirement Gratuity which she was entitled as per the rules and the same should be paid to the applicant within three months from the date of receipt of copy of this order by completing entire exercise within the said period. The prayer for grant of family pension to the applicant be considered and necessary steps be taken by the Respondents in this regard, within the said period of three months. The OA is accordingly allowed to that extent, but in the circumstance of this case, without any order as to costs.

(SWARUP KUMAR MISHRA)

(GOKUL CHANDRA PATI)

MEMBER(J)

MEMBER(A)

BKS

