

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.460/2015

Dated this ~~Wednesday~~ the 5th day of February, 2020

CORAM: DR. BHAGWAN SAHAI, MEMBER (A)
RAVINDER KAUR, MEMBER (J)

Domingo Jose Rebello
H.No.49, Pockvaddo, Betalbatim,
Salcete, Goa-403 713
Presently working as JTO(Trans)
In the office of SDE (Trans)
Margao, Goa-403 601.

... *Applicant*

(By Advocate Shri R.P. Saxena)

VERSUS

1. The Director (HR)
Bharat Sanchar Nigam Limited
(A Govt. of India Enterprise)
Sanchar Bhawan, H.C. Mathur Lane
Janpath, New Delhi - 110 001.
2. The Chief General Manager Telecom
Bharat Sanchar Nigam Limited
A-Wing, 6th Floor, BSNL Admn. Bldg,
Juhu Road, Santacruz (West)
Mumbai - 400 054.
3. The General Manager Telecom
Bharat Sanchar Nigam Limited
Goa Telecom District
Sanchar Bhavan, EDC Plot No.3,
Patto Panaji,
Goa-403 001

... *Respondents*

(By Advocate Shri V.S. Masurkar)

ORDER

PER: RAVINDER KAUR, MEMBER (J)

This application has been filed by the
applicant under Section 19 of the Administrative

Tribunals Act, 1985 seeking the following reliefs:-

"8.1 The Hon'ble Tribunal may be pleased to call for the record of the case and after examining the same to hold and declare that the impugned orders dated 28.07.2008, 25.04.2014 and 30.05.2015 cannot be sustained in law.

8.2 The Hon'ble Tribunal may be pleased to quash and set aside the said impugned orders dated 28.07.2008, 25.04.2014 and 30.05.2015 with consequential benefits.

8.3 The Hon'ble Tribunal may be pleased to award cost of the case and to pass such further order/s as deem fit and proper in the facts and circumstances of the case."

2. The applicant is a Junior Telecom Officer in Bharat Sanchar Nigam Limited (in short 'BSNL') governed by the BSNL (CDA) Rules, 2006 (Annex A-4). He was served with chargesheet dated 28.03.2007 (Annex A-5) under Rule 36 of BSNL (CDA) Rules, 2006 (hereinafter referred as CDA Rules, 2006) with the following article of charge:-

"ANNEXURE - I

STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST SHRI D.J. REBELLO, THE THEN SDE (MARGAO), GOA AND NOW JTO (MIS), MARGAO, GOA

Article-I

Whereas Shri D.J. Rebello, while working as SDE (Margao), Goa, during the year 2003-2004 failed to post verify the credential of the Cellone subscribers. This resulted in heavy outstanding dues of the bills approximately Rs.1,16,33,464/- against subscribers.

Thus by aforesaid act, Shri D.J. Rebello, working as SDE (Margao), Goa, failed to act as per the instructions laid down in "Manual in Mobile Billing, Accounting and Commercial Process" which was circulated to all SSA units by the CGM, Maharashtra circle vide Letter No.CGM-

MH/CS/Orders/Tariff/02-03/59 dated 18.10.2002, thereby failed to maintain absolute integrity and devotion to duty contravening provision of Rule 4(1)(a) and (b) of BSNL Conduct, Discipline and Appeal Rules, 2006."

2.1 The inquiry proceedings commenced on 13.06.2007. After concluding the inquiry, the Inquiry Officer submitted its report dated 17.05.2008 (07.05.2008 as mentioned in the Appellate Authority's order Annex A-1) to the Disciplinary Authority. The Appellate Authority issued order dated 28.07.2008 (Annex A-1) observing that the inquiry was not conducted properly as the charged officer i.e. the applicant had raised issues about non-supply of documents. The Appellate Authority vide aforesaid order directed for appointment of new Inquiry Officer and Presenting Officer to inquire into the case afresh from the stage of preliminary hearing as per provision of Rule 36 of (CDA) Rules, 2006. The order of Appellate Authority reads as under:-

"No.:VIG/MH-2007/47/13

Dated 28.07.2008

WHEREAS disciplinary proceedings under Rule 36 of BSNL CDA RULES 2006 has been initiated against Shri D J Rebello, JTO, Margao vide Memo No.:GMTDG/VIG/DJR/06-07/04 dated 28.03.2007.

WHEREAS on denial of the charges by the said Shri D J Rebello, the Charged Officer, Shri N.M. Mangalore, Sr. Supdt. T.T. & I.O., CTO, Mumbai, was appointed as Inquiry

Officer vide order of even number dated 17.05.2007 to conduct the inquiry as per procedure prescribed under Rule 36 of BSNL CDA Rules 2006.

WHEREAS Shri N M Mangalore, Sr. Supdt. T.T. & I.O., CTO, Mumbai, the Inquiring Authority has submitted his report dated 07.05.2008. On perusal of the inquiry report and the associated records, the Disciplinary Authority has noticed that inquiry was not done properly. The charged officer was having points against non supply of documents.

AND WHEREAS the Competent Disciplinary Authority after carefully going through the records of the case has come to the conclusion that further inquiry from the stage of Preliminary Hearing to be held and the Inquiry Officer also be changed for the purpose of fair inquiry.

NOW, THEREFORE, the undersigned in exercise of the powers conferred by sub-rule (1) of Rule 37 of BSNL CDA Rules, 2006 and in the interest of justice, hereby order that the inquiry be conducted fresh from the stage of preliminary hearing. It is further ordered that new Inquiry and Presenting Officer be appointed to inquiry into the case afresh from the stage of preliminary hearing as per provision of Rule 36 of BSNL, CDA Rules 2006."

The applicant submitted representation dated 11.09.2008 (Annex A-8) to the effect that as per Rule 37(1) of (CDA) Rules, fresh or further inquiry could only be ordered by the Disciplinary Authority that too for reasons to be recorded in writing. Further, the Disciplinary Authority can remit the case to the same Inquiring Authority who had conducted the inquiry earlier. The applicant also submits that since he had already submitted his defence brief wherein he disclosed the lines of defence, therefore, it would be improper and illegal to

hold fresh inquiry from the preliminary stage. Further, the Inquiry Officer had erred in not following the prescribed procedure under Rule 36(14) and Rule 36(15) of CDA Rules, 2006. The Charged Officer (the applicant) was also irregularly allowed to be cross-examined by the Presenting Officer, against the prescribed rules. He claims benefit of all these lapses.

2.2 The applicant made further representation dated 22.10.2008 (Annex A-9) wherein apart from raising other contentions, he stated that whatever documents were requisitioned by him during the inquiry proceedings, were supplied to him and as such he was left with no claim in respect of these documents.

2.3 In pursuance to the order of the Appellate Authority dated 28.07.2008, the Disciplinary Authority appointed Inquiry Officer as well as Presenting Officer vide letter dated 24.10.2008 (Annex A-10). Fresh inquiry was conducted. The Inquiry Officer submitted inquiry report dated 11.08.2009 (Annex A-11), the copy of which was supplied to the applicant by the Disciplinary Authority vide order dated 17.03.2010 (Annex A-12). As per the inquiry

report, the charge levelled against the applicant was not proved. The applicant made representation dated 22.03.2010 (Annex A-13) seeking his discharge in view of the inquiry report. However, the Disciplinary Authority vide order dated 24.05.2011 imposed major penalty of 'Reduction to a lower stage in the time scale of pay by two stages' while making the following observations:-

"3. Dis-agreeing with the findings of the Inquiry Officer and Disciplinary Authority had ordered for De-novo inquiry from the stage of preliminary hearing vide order No.VIG/MH/2007/47/13, dated 28.07.2008, on appointment of new Inquiry Officer and Presenting Officer. Accordingly, Shri S.Y. Naik, the then DET (HQ/Internal) Margao was appointed as the Inquiry Officer vide order No.CMTDG/VIG/DJR/06-07/28 dated 24.10.2008 and Shri R.D. Mohakar, SDE (MPC), Goa was appointed as the Presenting Officer vide Order No.CMTDG/VIG/DJR/06-07/31 dated 05.11.2008.

(4) The De-novo Inquiry Authority had submitted his Inquiry report and concluded that, "the charges are Not Proved" vide letter No.DET(HO)/MGO/DI/DJR/08-09 dated 11/08/2009. A copy of the said inquiry report was served on 22-03-2010 to Shri D.J. Rebello, the charged officer, to enable him to make representation as he may wish to make against it vide Memorandum No.GMTDG/VIG/DJR/06-07/46, dated 17.03.2010. In response to the said memorandum Shri D.J. Rebello the then SDE (Officiating), CSC, Margao, now JTO (Trans), Margao had submitted his representation dated 22.03.2010, praying that he may be discharged from the charges which are framed against him.

(5) As per the CVC Advice vide No.006/P&T/067-117152, dated 24.01.2011, the Commission has advised 'imposition of major penalty to the said officer Shri D.J. Rebello the then SDE (Officiating), CSC, Margao, now JTO (Trans), Margao". The Commission had also conveyed its concern that the exoneration of officers on such grounds will result to huge loss to BSNL.

NOW, THEREFORE, after careful consideration of the case, I Shri G.R. Ravi, General Manager Telecom, Goa competent under BSNL (CDA) rules, 2006, hereby impose the major penalty of reduction to a lower stage in the time scale of his pay by two stages for a period of two years (present basic pay Rs.31,450/- in pay scale of rs.16,400/- to 40,500/-) with the further direction that he will not earn his increment of pay during the period of such reduction and on expiry of such period, the reduction will have the effect of postponing his future increment of pay of Shri D.J. Rebello SDE (Officiating) CSC, Margao now JTO (Trans), Margao."

2.4 The applicant was served with the copy of the CVC advice dated 24.01.2011 alongwith the penalty order dated 24.05.2011 (Annex A-14) which he challenged before Appellate Authority. The Appellate Authority vide order dated 27.01.2012 (Annex A-16) modified the penalty order and imposed penalty of 'Reduction to a lower stage in the time scale of applicant's pay by one stage for a period of two years with the further direction that he will not earn his increment of pay during the period of such reduction and on expiry of such period, the reduction will have the effect of postponing his future increment of pay'. Thereafter the applicant preferred Review Petition dated 29.02.2012 (Annex-17). The Reviewing Authority vide order dated 25.04.2014 set aside the penalty order dated 24.05.2011 and remitted the case to the Disciplinary Authority from the

stage of receipt of inquiry officer's report by the Disciplinary Authority and further action as per Rule 37 of CDA Rules, 2006. Thereafter again the Disciplinary Authority served upon the applicant, Memorandum dated 16.07.2014 (Annex A-18) with re-inquiry report dated 11.08.2009 (Annex A-11) and CVC advice dated 24.01.2011 (Annex A-14) alongwith its disagreement note. The applicant submitted representation dated 25.07.2014 (Annex A-19) with a prayer to withdraw the aforesaid Memorandum and to exonerate him in view of the findings in the inquiry report dated 11.08.2009 and para 2 of earlier Memorandum dated 17.03.2010 (Annex A-12) whereby the Disciplinary Authority had agreed with the findings of the Inquiry Officer.

2.5 Thereafter the Disciplinary Authority vide order dated 30.05.2015 imposed the penalty of *'reduction to a lower stage in the time scale of his pay by one stage for a period of one year with the further direction that he will not earn his increment of pay during the period of such reduction and on expiry of such period, the reduction will have the effect of postponing his future increment of pay on applicant.'*

2.6 The main contention of the applicant is that the provisions of BSNL CDA Rules, 2006 do

not enable the Disciplinary Authority to order re-inquiry by new Inquiry Officer. To the contrary only further inquiry on the specific points is permitted and that too by same Inquiry Officer.

2.7 The applicant has placed reliance on Rule 37 of BSNL CDA Rules, 2006 and submitted that the order dated 25.04.2014 issued by the Reviewing Authority remitting the case to the Disciplinary Authority from the stage of inquiry report is also not sustainable in view of Rule 37 of CDA Rules, 2006 as he did not consider and decide the issue of de-novo or re-inquiry raised by the applicant. Further, the said order is in violation of Rule 58 of the BSNL CDA Rules, 2006 as the Reviewing Authority could only pass an order under Rule 58(1)(a) & (d). The Reviewing Authority has also not considered the fact that while forwarding the re-inquiry report dated 11.08.2009 to the applicant by the Disciplinary Authority vide Memorandum dated 17.03.2010, the Disciplinary Authority agreed with the findings of Inquiring Authority but still issued the penalty order dated 25.04.2014 without issuing any disagreement note.

2.8 The Reviewing Authority also failed to observe that the applicant had not been supplied the copy of CVC first stage advice in terms of instruction No.99/VGL/66 dated 28.06.2000 alongwith the chargesheet.

2.9 Relying on the impugned order dated 30.05.2015 (Annex A-3) passed by the Disciplinary Authority imposing major penalty upon the applicant, as discussed in earlier paragraph, it is stated that the Disciplinary Authority did not consider the detailed explanation given by the applicant vide his representation dated 25.07.2014. The Disciplinary Authority did not apply his mind and blindly accepted the second stage of advice of CVC dated 24.01.2011, the copy of which was supplied to him alongwith the penalty order dated 24.05.2011, though it was required to be provided alongwith the copy of the inquiry report.

2.10 The applicant has submitted that all the impugned orders are issued in violation of BSNL CDA Rules, 2006 and are liable to be quashed and set aside.

3. The respondents have filed detailed affidavit in reply denying the contents of the OA and have submitted that the powers of this Tribunal of judicial review have limited scope. Interference by this Tribunal is permissible only when the punishment is shockingly disproportionate, outrageous, in-defiance of logic, etc.

3.1 In reply on merits, it is stated that all the orders passed by the various authorities are as per the Rules of BSNL, CDA Rules, 2006.

4. We have heard the arguments addressed by Shri R.P. Saxena, learned counsel for the applicant and Shri V.S. Masurkar, learned counsel for the respondents and have carefully considered the facts, circumstances, law points and rival contentions in the case. We have carefully examined the pleadings and annexes filed by the parties.

5. Rule 36 of BSNL Conduct, Discipline & Appeal Rules, 2006 deals with the procedure for imposing major penalties which reads as follows:-

Rule 36. PROCEDURE FOR IMPOSING MAJOR PENALTIES (1)
No order for imposing any of the penalties specified in clause (e) (minor penalty) and (f) to (j) of Rule 33 shall be made except after an inquiry is held in accordance with this rule.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against an employee, it may itself inquire into, or appoint any public servant (herein after called the Inquiring Authority) to enquire into the truth thereof.

(3) Where it is proposed to hold an inquiry, the disciplinary authority shall draw up or cause to be drawn up.

(a) the substance of the imputation of misconduct or misbehavior into definite and distinct articles of charge.

(b) each article of charge to be supported by

(i) a statement of all relevant facts including any admission or confession made by the employee,

(ii) a list of documents by which and a list of witnesses by whom, the articles of charge are proposed to be sustained.

Explanation: It will not be necessary to show the documents listed with the charge sheet or any other document to the employee at this stage.

(4) The Disciplinary Authority shall deliver or cause to be delivered to the employee a copy of the articles of charge, the statement of the imputation of misconduct or misbehavior and list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the employee to submit, within such time as may be specified by Disciplinary Authority (not exceeding 15 days), a written statement of his defence and state whether he desires to be heard in person.

(5) (a) On receipt of written statement of the employee, the Disciplinary Authority may itself inquire into such of the articles of charges as are not admitted, or appoint an Inquiring Authority for the purpose under sub-rule (2).

(b) If all the articles of charge have been admitted by the employee in his written statement, the Disciplinary Authority shall record its finding on each charge after taking such evidence as it may think fit and shall act in the manner laid down in Rule 37.

(c) Where the Disciplinary Authority itself inquires into any articles of charge or appoints an Inquiring Authority for holding any inquiry into such charge, it may, by an order, appoint a public servant to be known as "Presenting Officer" to present on its behalf the case in support of the articles of charge.

(6) The Disciplinary Authority shall, where it is not the Inquiring Authority, forward to Inquiring Authority:

(a) A copy of the articles of charge and the statement of the imputations of misconduct or misbehavior;

(b) A copy of the written statement of the defence, if any, submitted by the employee;

(c) A copy of the statement of witnesses, if any, referred to in sub-

rule (3) ;

(d) Evidence proving the delivery of the documents referred in sub-rule (3) to the employee;

(e) A copy of the order appointing the "Presenting Officer".

(7) On the date fixed by the Inquiring Authority the employee shall appear before the Inquiring Authority at the time, place and date specified in the notice. The Inquiring Authority shall ask the employee whether he pleads guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the Inquiring Authority shall record the plea, sign the record and obtain the signature of the employee concerned thereon. The Inquiring Authority shall return a finding of guilt in respect of those articles of charge to which the employees concerned pleads guilty.

(8) (a) An employee may take the assistance of any other public servant but may not engage a legal practitioner for the purpose, unless the presenting officer appointed by disciplinary authority is a legal practitioner or, the disciplinary authority having regard to circumstances of the case so permits.

(b) The employee shall not take the assistance of any public servant who has two pending disciplinary cases on hand in which he has to function as Defence Assistant.

(c) An employee against whom disciplinary proceedings are pending under these Rules shall not be entitled to assist another employee in disciplinary proceedings under these rules till the completion of such proceedings.

(9) If the employee does not plead guilty, the Inquiring Authority shall adjourn the case to a later date not exceeding thirty days, after recording an order that the employee may, for the purpose of preparing his defence :

(a) Inspect the documents listed with the charge-sheet;

(b) Submit a list of additional documents that he wants to examine; and

(c) be supplied with the copies of the statement of witness, if any, listed in the charge-sheet.

Note: Relevancy of the additional documents referred to 9 (b) and the copies of statements of witnesses referred to in sub-rule 9 (c) above will have to be given by the employee concerned, and the documents and witnesses shall be summoned if the Inquiring Authority is satisfied about their relevance to the charge under enquiry.

(10) The Inquiring Authority shall, on receipt of the notice for the discovery or production of documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept, with a requisition for the production of the documents by such date as may be specified in the requisition.

Provided that the Inquiring Authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, not relevant to the case.

(11) The authority, in whose custody or possession the requisitioned documents are, shall arrange to produce the same before the Inquiring Authority on the date, place and time specified in the requisition notice:

Provided that the authority having the custody or possession of the requisitioned documents may claim privilege, for reasons to be recorded by it in writing, if the production of such documents will be against public interest or the interest of the Company. In that event, it shall inform the Inquiring Authority accordingly. The Inquiring Authority shall, on being so informed, communicate the information to the employee and withdraw the requisition.

(12) On the date fixed for the enquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the Disciplinary Authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the employee. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on a new matter, without the leave of the Inquiring Authority. The Inquiring Authority may also put such questions to the witnesses as it thinks fit.

(13) Before the close of the prosecution case, the Inquiring Authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the charge-sheet or may itself call for new evidence or recall or re-examine any witness. In such a case the employee shall be given opportunity to inspect the documentary evidence before it is taken on record or to cross-examine a witness, who has been so summoned. The Inquiring Authority may also allow the employee to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interest of justice.

(14) When the case for the Inquiring Authority is closed, the employee shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the employee shall be required to sign the record. In either case, a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(15) The evidence on behalf of the employee shall then be produced. The employee may examine himself in his own behalf if he so prefers. The witnesses produced by the employee shall then be examined and shall be liable to cross-examination, reexamination and examination by the Inquiring Authority according to the provisions applicable to the witnesses for the Disciplinary Authority.

(16) *The Inquiring Authority may, after the employee closes his case, and shall, if the employee has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the employee to explain any circumstances appearing in the evidence against him.*

(17) *The Inquiring Authority may, after completion of the production of evidence, hear the presenting Officer, if any, appointed, and the employee, or permit them to file written briefs of their respective case, if they so desire.*

(18) *If the employee to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence referred to in sub-rule (3) on or before the date specified for the purpose or does not appear in person, before the Inquiring Authority or otherwise fails or refuses to comply with any of the provisions of these rules, the Inquiring Authority may hold the inquiry 'Exparte'.*

(19) (a) *Where a Disciplinary Authority competent to impose any of the penalties specified in Clause (a) to (e) of Rule 33 (but not competent to impose any of the penalties specified in clause (f) to (j) of Rule 33) , has itself inquired into or caused to be inquired into the articles of any charge and that authority, having regard to its own findings or having regard to its decision on any of the findings of any Inquiring Authority appointed by it, is of the opinion that penalties specified in clause (f) to (j) of Rule 33 should be imposed on the employee, that authority shall forward the records of the inquiry to such Disciplinary Authority as is competent to impose the last mentioned penalties.*

(b) *The Disciplinary Authority to which the records are so forwarded may act on the evidence on the record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interests of justice recall the witness and examine, cross-examine and re-examine the witness and may impose on the employee such penalty as it may deem fit in accordance with these rules.*

(20) *Whenever any Inquiring Authority after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another Inquiring Authority which has, and which exercises, such jurisdiction, the Inquiring Authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself :*

Provided that if the succeeding Inquiring Authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and re-examine any such witnesses as herein before provided.

(21) *After the conclusion of the enquiry, a report shall be prepared by*

the Inquiring Authority and it shall contain: -

- (a) the articles of charge and the statement of the imputations of misconduct or misbehavior;*
- (b) the defence of the employee in respect of each article of charge;*
- (c) an assessment of the evidence in respect of each article of charge;*
- (d) the findings on each article of charge and reasons therefor.*

Explanation: *If in the opinion of the Inquiring Authority the proceedings of the inquiry establish any article of charge different from the original articles of charge, it may record its finding on such article of charge: Provided that the finding on such articles of charge shall not be recorded unless the employee has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.*

(22) The Inquiring Authority where it is not itself the Disciplinary Authority, shall forward to the Disciplinary Authority the records of enquiry which shall include-

- (a) the report of the enquiry prepared by it under sub-rule (21) above;*
- (b) the written statement of defence, if any, submitted by the employee referred to in sub rule (14);*
- (c) the oral and documentary evidence produced in the course of the enquiry;*
- (d) written briefs, if any, filed by the Presenting Officer or the employee or both during the course of the inquiry referred to in sub-rule (17) and ;*
- (e) the orders, if any, made by the Disciplinary Authority and the Inquiring Authority in regard to the inquiry. “*

Rule 37 of CDA Rules, 2006 deals with the action to be taken on the inquiry report. The provisions of Rule 37 are reproduced as under:-

Rule 37. ACTION ON THE ENQUIRY REPORT

(1) The Disciplinary Authority, if it is not itself the Inquiring Authority may, for reasons to be recorded by it in writing remit the case to the Inquiring Authority for fresh or further enquiry and report and the Inquiring Authority shall there upon proceed to hold the further inquiry according to the provisions of Rule 36, as far as may be.

(2) (a) The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the Disciplinary Authority or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority

together with its own tentative reasons for disagreement, if any, with the finding of the Inquiring Authority on any articles of charge to the employee who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within 15 days, irrespective of whether the report is favourable or not to the employee.

(b) The Disciplinary Authority shall consider the representation, if any, submitted by the employee and record its findings before proceeding further in the manner as specified in sub-rule (3) to (6).

(3) The Disciplinary Authority shall, if it disagrees with the findings of the Inquiring Authority on any Article of Charge, record its reasons for such disagreements and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(4) If the Disciplinary Authority having regard to its finding on all or any of the articles of charge is of the opinion that any of the penalties specified in Clause (a) to (e) of Rule 33 should be imposed on the employee, it shall, notwithstanding anything contained in Rule 35, make an order imposing such penalty.

(5) If the Disciplinary Authority having regard to its finding on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in Clause (f) to (j) of Rule 33 should be imposed on the employee, it shall make an order imposing such penalty and it shall not be necessary to give the employee any opportunity of making representation on the penalty proposed to be imposed.

(6) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge is of the opinion that no penalty is called for, it may pass an order exonerating the employee concerned.

6. As per Rule 37 (1) of CDA Rules, 2006, it is crystal clear that in case the Disciplinary Authority itself is not the Inquiring Authority, it may, for reasons to be recorded in writing remit the case to the Inquiring Authority for fresh or further inquiry and report. Thereafter, the Inquiring Authority shall proceed to hold further inquiry according to the provisions of Rule 36. As per Rule 37(2)

(a) CDA Rules, 2006, the Disciplinary Authority shall thereafter forward the copy of the report of the inquiry alongwith its own tentative reasons for disagreement, if any, with the finding of the Inquiring Authority on any articles of charge to the concerned employee. The employee shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within 15 days, irrespective of whether the report is favourable or not to him.

As per Rule 37(2)(b), the Disciplinary Authority shall consider the representation, if any, submitted by the employee and record its findings before proceeding further in the manner as specified in sub-rule (3) to (6). The bare reading of Rule 37(1) of CDA Rules, 2006 shows that in case the Disciplinary Authority has not itself inquired into the matter and when the inquiry report is forwarded to it by the Inquiry Officer under Rule 36 (22), after going through the same, the Disciplinary Authority may remit the case to the Inquiry Officer for conducting inquiry afresh or further inquiry. However, for issuing any such

direction, he is required to record reasons. It is thereafter that the Inquiry Officer shall proceed to conduct fresh or further inquiry as the case may be. The Rule 37(2)(a) is mandatory provision.

7. The careful perusal of CDA Rules, 2006 shows there is no provision which empowers the Appellate Authority to order for conducting fresh inquiry from the stage of preliminary hearing.

8. In the present case, it is further observed that there is no order of the Disciplinary Authority on the report of the Inquiry Officer dated 17.05.2008 whereby the Inquiry Officer held the charge against the applicant was not proved. To the contrary the Appellate Authority vide order dated 28.07.2008 (Annex A-1) ordered that the inquiry be conducted afresh from the stage of preliminary hearing and also ordered for appointment of new inquiry and Presenting Officer, to inquire into the case afresh as per provisions of Rule 36 of CDA Rules 2006. This order is contrary to the provisions of Rule 37(1) CDA Rules, 2006 and is per-se illegal. It appears that the

Appellate Authority assumed and exercised the power of Disciplinary Authority while passing the aforesaid impugned order dated 28.07.2008. As a result all subsequent proceedings stand vitiated.

9. We have further noticed from the record that even after fresh inquiry was conducted by the newly appointed Inquiry Officer, in terms of the above referred order dated 28.07.2008 of the Appellate Authority, he too held that the charge against the applicant was not proved. On the basis of inquiry report, the Disciplinary Authority recorded findings vide order dated 17.03.2010 (Annex A-12) to the following effect:-

"MEMORANDUM

A copy of the Inquiry Report No.DET(HQ)/MGO/2009-2010 dated 11/08/2009 submitted by Shri S.Y. Naik, SDE O/o GMT Goa, who had been appointed as the Inquiring Authority to re-inquire into the charges framed against Shri D.J. Rebello, the then SDE, presently working as JTO, Margao, Goa, vide order no.GMTDG/VIG/DJR/06-07/04 DATED 28.03.2007.

2. Inquiry Officer has held the charges levelled against Shri D.J. Rebello, the then SDE, presently working as JTO, Margao, Goa, as not proved. After going through the Inquiry Report, and relevant documents, disciplinary authority agrees with the finding of Inquiry Officer.

3. Shri D.J. Rebello, the then SDE, presently working as JTO, Margao, Goa is hereby informed that he may make such representation as he may wish to make in the matter. Such representation, if any, shall be made in writing within fifteen

days of the receipt of this Memorandum, failing which it will be presumed that he has no representation to make, and further necessary action in the matter is liable to be taken accordingly.

4. The receipt of this Memorandum, alongwith a copy of the Inquiry Report shall be acknowledged by Shri D.J. Rebello, the then SDE, presently working as JTO, Margao, Goa."

10. The perusal of above order clearly shows that the Disciplinary Authority agreed with the report of the Inquiry Officer, exonerating the applicant. As required vide aforesaid Memorandum, the applicant filed his representation dated 22.03.2010 but surprisingly the Disciplinary Authority contrary to his observation in the aforesaid Memorandum dated 17.03.2010 agreeing to the report of the Inquiry Officer, imposed major penalty upon the applicant vide order dated 24.05.2011. The said penalty order is also against the provisions laid down in Rule 37(2)BSNL CDA Rules, 2006 which clearly prescribe that the Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry with its own tentative reasons for disagreement, if any, with the findings of the Inquiring Authority on any articles of charge to the employee who shall be

required to submit, if he so desires, his written representation to the Disciplinary Authority within 15 days, irrespective of the fact whether the report is favourable or not to the employee. Thereafter the Disciplinary Authority shall consider the representation of the employee and pass an appropriate order.

11. The Hon'ble Apex court in the case of Punjab National Bank and Others Vs. Kunj Behari Misra & Shanti Prasad Goel, reported in AIR 1998 SC 2713 dealt with Regulation 7 which is analogous to Rule 37(2) of CDA Rules, 2006. The question which arose before Hon'ble Apex Court for consideration was that when the inquiry officer, during the course of disciplinary proceedings, comes to a conclusion that all or some of the charges alleging misconduct against an official are not proved, then can the disciplinary authority differ from the view of Inquiry Officer and give a contrary finding without affording any opportunity to the delinquent officer.

In the above referred case, the disciplinary proceedings were initiated by the appellate bank against the respondents namely Kunj Bihari Mishra and Shanti Prasad Goel. Charges were

framed against both of them. The Disciplinary Authority did not conduct the inquiry itself and Inquiry Officer was appointed to hold the inquiry. The Inquiry Officer heard the respondents. In his inquiry report, he found Kunj Bihari Misra guilty of one charge and exonerated him of all other charges whereas Shanti Prasad Goel was found not guilty of any charge and was exonerated. The Hon'ble Apex Court made the following observations in para 4:

"On the receipt of the reports from the inquiry officer the disciplinary authority, namely, the Regional Manager of appellant-bank, to whom the reports were submitted, did not agree, in the case of Misra, with the findings of the inquiry officer in respect of charges two to six and by a short order dated 12th December, 1983 passed an order holding that it was an undisputed position that Misra being Assistant Manager was in the joint custody of the keys of the currency chest and he had personal responsibility towards the safe custody of the cash and that no material had been placed during the inquiry proceedings to establish that he had discharged his duties in the manner expected of him. The disciplinary authority accordingly held Misra to be responsible for the shortage in question and held that a minor penalty of proportionate recovery ought to be imposed on the respondent for the loss of Rs.1 lac caused to be the bank due to negligence on his part in the discharge of his duties. Similarly in the case of Goel the disciplinary authority did not agree with the inquiry report and passed an order dated 15th December, 1983 directing proportionate recovery of the loss of Rs. 1 lac caused to the bank by him. It may here be noticed that during the pendency of these disciplinary proceedings both Misra and Goel superannuated on 31st December, 1983. The disciplinary authority accordingly directed the recovery of the money from the bank's contribution to the provident fund of the respondent-officers."

The aforesaid order was challenged by the respondents before the Hon'ble High Court at Allahabad vide Civil Writ Petition

Nos.3197/1984 and 1192/1984. The main contention of the respondents in these Petitions was that the Disciplinary Authority, who had chosen to disagree with the conclusions arrived at by the Inquiry Officer, could not have come to adverse conclusions without giving them an opportunity of being heard. The Hon'ble High Court allowed the Writ Petitions vide its judgment dated 20.02.1990, which was the subject matter before the Hon'ble Apex Court vide Special Leave Petitions. The Hon'ble Apex Court referred to the relevant Regulation 4, prescribing minor and major penalties which may be imposed on an officer/employee for acts of misconduct or for any other good and sufficient reason. Regulation 6 prescribes procedure for imposing major penalties. Regulation 7 provides as to what action has to be taken on the submission of the inquiry report and reads as under:-

" 7. Action on the inquiry report: (1) The Disciplinary Authority, if it is not itself the Inquiry Authority, may, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority for fresh or further inquiry and report and Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of regulation 6 as far as may be.

(2) The disciplinary Authority shall, if it disagrees with the findings of the Inquiring Authority on any article of charge, record its reasons for such disagreement and

record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the Disciplinary Authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in Regulation 4 should be imposed on the officer employee it shall, notwithstanding anything imposing in regulation 8, make an order imposing such penalty.

(4) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the officer employee concerned.

The Hon'ble Apex Court relying upon its own judgment in the case of Institute of Chartered Accountants of India Vs. L.K. Ratna, reported in 1986 (4) SCC 537 and Ram Kishan Vs. Union of India reported in 1995 (6) SCC 157 held as under:-

The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

12. The aforesaid judgment is fully applicable to the the facts and circumstances

of the present case. The Inquiry Officer in the present case vide inquiry report dated 11.08.2009 held that the charge against the applicant was not proved. He submitted the Inquiry report to the Disciplinary Authority, who vide order dated 17.03.2010 agreed with the Inquiry report and sent the Inquiry report alongwith his agreement note to the applicant and sought his representation thereon. The applicant submitted his representation and thereafter the Disciplinary Authority without writing any reasons for disagreement and giving opportunity to the applicant to make his representation thereon, imposed major penalty vide order dated 24.05.2011 against the applicant. This act on the part of the Disciplinary Authority is against the Rule 37(2) of CDA Rules, 2006 and principles of natural justice.

13. It is further observed that the Disciplinary Authority while passing major penalty order vide order dated 24.05.2011 seems to have been swayed by the CVC advice dated 24.01.2011 whereby the Commission advised imposition of major penalty against

the applicant. The Disciplinary Authority despite his concurrence with the inquiry Officer's report vide Memorandum dated 17.03.2010, imposed major penalty upon the applicant. This reflects total non-application of mind and casual approach on the part of the Disciplinary Authority in violation of Rule 37(2) CDA Rules, 2006.

14. It is also observed that the applicant was served with the copy of CVC advice alongwith the penalty order dated 24.05.2011 which is against the settled principles of law. The Hon'ble Apex Court has dealt with the issue of non-supply of UPSC advice to the delinquent in the case of Union of India & Others Vs. S.K. Kapoor, reported in (2011) 1 SCC (L&S) 725. The Hon'ble Apex Court while discussing its view in the case of Union of India Vs T.V. Patel reported in (2007) 4 SCC 785 made the following observations:-

"7. In the aforesaid decision, it has been observed in SCC para 25 that 'the provisions of Article 320(3)(c) of the Constitution of India are not mandatory'. We are of the opinion that although Article 320(3)(c) is not mandatory, if the authorities do consult the Union Public Service Commission and rely on the report of the commission for taking disciplinary action, then the principles of natural justice require that a copy of the report must be supplied in advance to the employee concerned so that he may have an opportunity of rebuttal. Thus, in our view, the aforesaid

decision in T.V.Patel's case is clearly distinguishable.

It is further held in the case of S.K. Kapoor (Supra) as follows:-

"There may be a case where the report of the Union Public Service Commission is not relied upon by the disciplinary authority and in that case it is certainly not necessary to supply a copy of the same to the employee concerned. However, if it is relied upon, then a copy of the same must be supplied in advance to the employee concerned, otherwise, there will be violation of the principles of natural justice. This is also the view taken by this Court in S.N. Narula vs. Union of India & Others."

In the case of S.N. Narula Vs. Union of India and Others, reported in 2011 (1) SCC (L&S) 727, the Hon'ble Apex Court again dealt with the issue of non-communication of UPSC report accepted by the Disciplinary Authority to delinquent employee. The relevant paragraphs of the judgment are para 2,3 and 7 which are reproduced as follows:-

"2. Thereafter, the proceedings were sent for opinion of the Union Public Service Commission and the Union Public Service Commission gave an opinion to the effect that the appellant's pension shall be reduced to the minimum and he shall not be granted any gratuity. The disciplinary authority accepted the proposal of the Union Public Service Commission and imposed the said punishment.

3. It is to be noticed that the advisory opinion of the Union Public Service Commission was not communicated to the appellant before he was heard by the disciplinary authority. The same was communicated to the appellant along with final order passed in the matter by the disciplinary authority.

.....

7. We find that the stand taken by the Central Administrative Tribunal was correct and the High Court was not justified in interfering with the order. Therefore, we set aside the judgment of the Division Bench of the High Court and direct that the disciplinary proceedings against the appellant be finally disposed of in accordance with the direction given by the Tribunal in para 6 of the order. The appellant may submit a representation within two weeks to the disciplinary authority and we make it clear that the matter shall be finally disposed of by the disciplinary authority within a period of 3 months thereafter."

15. In the present case, the applicant was served a copy of CVC advice alongwith penalty order and was not given any opportunity to make his representation thereon, before the Disciplinary Authority could pass any order in the proceedings. We fail to understand as to how the Disciplinary Authority could commit such a glaring mistake. Then the applicant preferred appeal against the order dated 24.05.2011 whereby the Appellate Authority vide order dated 27.01.2012 modified the order of the Disciplinary Authority. The applicant approached the Reviewing Authority who vide order dated 25.04.2014, without making any comments on the order of the Appellate Authority, set aside the order dated 24.05.2011 of the Disciplinary Authority and once again remitted the matter back to the

Disciplinary Authority from the stage of receipt of the inquiry report. However, none of the above authorities noticed the glaring mistake committed by the Disciplinary Authority. Thus in view of the above facts of the case, we are of the considered opinion that the disciplinary proceedings in the present case have been carried out in illegal manner at all the stages subsequent to the order of the Appellate Authority dated 28.07.2008 whereby he had directed fresh inquiry to be conducted from the stage of preliminary hearing.

16. In these circumstances, all the orders dated 28.07.2008, 25.04.2014 and 30.05.2015 are vitiated, so they are set aside and quashed. The respondents, if they so desire, are at liberty to recommence the disciplinary proceedings against the applicant from the stage of submission of the Inquiry report dated 17.05.2008.

17. Accordingly, the Original application is allowed in above terms. No order as to costs.

(Ravinder Kaur)
Member (J)

(Dr. Bhagwan Sahaï)
Member (A)

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