

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No.040/00253/2015

Date of Order: This the Day of November, 2017

HON'BLE MOHD HALEEM KHAN,ADMINISTRATIVE MEMBER
HON'BLE MR.S.N.TERDAL, JUDICIAL MEMBER

Shri Ardhendu Sekhar Deb
Son of Late upendra Kumar Deb
House No.54, Joymati Nagar,
Pandu, Guwahati-12

Applicant

By Advocate Mr.S.K.Sikidar

-Versus-

1. Bharat Sanchar Nigam Limited
Represented by Chairman Managing Director,
Harish Chandra Mathur Lane, Janapath
New Delhi-110001
2. The Director (Human Resource)
Bharat Sanchar Nigam Limited
Harish Chandra Mathur Lane, Janapath
New Delhi-110001
3. The Chief General Manager
Task Force, NE Region,
Guwahati-781001

Respondents

By Advocate Mr.D.K.Bagshi,,BSNL

Date of hearing: 10.11.2017 Date of Order:

ORDER

Per Hon'ble Mr.S.N.Terdal:

This O.A. has been filed by the Applicant praying for setting aside of the Charged Memo No.TF/NE/Vig-46(iii) dated 13.10.2008, order passed by the Disciplinary Authority Memo No. TF/NE/Vig-46(iii)/39 dated 11.6.2014 and the order passed by the Appellate Authority Memo No.202-53/2014/appeal/VM-(Appeal) dated 31.3.2015 and for consequential reliefs.

2. Heard Mr.S.K.Sikidar, learned counsel for the Applicant and Mr.D.K.Bagshi, for Respondent No.3 (BSNL), perused the pleadings and documents produced by both sides.
3. The relevant facts of the case are that a Departmental Enquiry was initiated against the Applicant under Rule 36 of BSNL CDA Rules 2006 by issuing a Memo of charge No.TF/NE/Vig-46(iii) dated 13.10.2008, which is extracted below:-

**"Statement of Article of Charge framed against
Shri A.S.Deb, Sub Divisional Engineer, Optical
Fibre Cable (Survey), Guwahati**

That Shri A.S.Deb, while working as Sub- Divisional Engineer, OFC, Guwahati during the year 1996 failed to maintain absolute integrity and devotion to duty and committed

gross misconduct in as much as he had prepared and submitted false bills in respect of Sub-Section 13 & 14 of Imphal-Churachandpur Route of the contractor, M/s Lohit Engineering Co. without conducting test check as required under para 192 of the tender documents and CPWD Manual, Vol.II at Para No.7:33:1 & 7:33:2, but falsely certifying that work done satisfactory as per specification whereas the nature of soil and RCC protection shown were false, thereby acted in a manner of unbecoming a Public Servant and thus violated Rule 4(1) (a), (b) & (c) of BSNL CDA rules 2006.

4. A Departmental Enquiry was held and the Enquiry Officer submitted an Enquiry Report on 28.10.2013 holding that charge levelled against the Applicant could not be sustained. On 1.3.2014, the Disciplinary Authority disagreeing with the Enquiry Report, issued a disagreement note. The Applicant submitted a representation against the disagreement note. After considering the representation, the Disciplinary Authority held that the Article of charge was established and imposed a penalty of reduction of pay by two stages in the time scale of pay till retirement that is 31.01.2015, with further direction that the officer will not earn increments of pay during the said period, on the Applicant. The Applicant filed an appeal which was rejected by the appellate authority by the impugned order dated 31.3.2015 by imposing penalty of reduction of pay by two stages in the time scale or

pay till 30.01.2015 with further direction that the officer will not earn the increments of pay during this period and without cumulative effect.

5. The learned counsel for the Applicant submitted that for the events which happened in 1996 the charge sheet was issued in 2005 after in-ordinate delay of nearly 8-9 years. As such, in view of the law laid down by the Hon'ble Supreme Court, in the case of **P.V.Mahadevan, Vs. M.D.Tamilnadu Housing Board reported in 20059(6) SCC 636**, the charge memo requires to be quashed. The law laid down by the Hon'ble Supreme Court in the case of **P.V.Mahadevan, Vs .M.D.Tamilnadu Housing Board reported in 20059(6) SCC 636** is extracted below:-

“In the circumstances, we are of the opinion that allowing the respondents to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and dispute integrity would cause unbearable mental agony and distress to the officer concerned. The protected disciplinary enquiry against a government employee should therefore, be avoided not only in the interests of the government employee, but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and

more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protected disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

6. In view of the facts of the case narrated above and in view of the law laid down in the Hon'ble Supreme Court extracted above, the Charge Memos and the consequential the penalty orders require to be set aside.

7. In the result the O.A. is allowed. The impugned Charged Memo No.TF/NE/Vig-46(iii) dated 13.10.2008, order passed by the Disciplinary Authority Memo No. TF/NE/Vig-46(iii)/39 dated 11.6.2014 and the order passed by the Appellate Authority Memo No.202-53/2014/appeal/VM-(Appeal) dated 31.3.2015 are set aside.

8. No order as to costs.

(S.N.TERDAL)
JUDICIAL MEMBER

(MOHD HALEEM KHAN)
ADMINISTRATIVE MEMBER

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