

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No.402/2017

Reserved on: 12.03.2020
Pronounced on: 29.05.2020

**Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhyaya, Member (A)**

Chotu Singh s/o Mangej Singh, aged about 70 years, r/o 85 Nirmal Watika, Near Benar Road, Jhotwara, Jaipur. Retired as LM-II from the department of B.S.N.L.

...Applicant.

(By Advocate: Shri B.K.Jatti with Ms.A.B.Jatti and
Shri P.N.Jatti)

Versus

1. Union of India through the Secretary to the Govt. of India, Department of Telecom, Sanchar Bhawan, New Delhi.
2. Union of India through the Chairperson, Bharat Sanchar Nigam Limited, Bharat Sanchar Bhawan, New Delhi.
3. Chief General Manager BSNL, Dept. of Telecom, Rajasthan Circle, Jaipur.
4. General Manager Telecom, BSNL, Jhunjunu Dn.Jhunjunu.
5. Bank of Baroda, Vaishali Nagar Branch, Jagdamban Tower, Amrapali Circle, Vaishali Nagar, Jaipur.

...Respondents.

(By Advocate: Shri R.P.Singh for Shri Neeraj Batra)

ORDER

Per: A.Mukhopadhyaya, Member (A):

The present Original Application, (OA), has arisen from an order dated 25.11.2016, (Annexure A/1), issued by the respondents imposing a penalty of withholding of 100% of the applicant's monthly pension permanently and the letter dated 15.06.2017 communicating this issued by the Bank of Baroda.

2. Briefly, the pertinent facts of the case, as averred by the applicant, are that he joined the Post and Telegraph Department as Lineman on 10.04.1968. He was arrested in September 1990 in connection with an FIR dated 14.09.1990 under Sections 376, 511 and 342 of IPC. Consequent upon this arrest, he was suspended forthwith with effect from 14.09.1990. Later, he was released on bail on 24.09.1990. However, he remained suspended from duties till 08.11.1991. While no departmental chargesheet was served on him in connection with these criminal proceedings, he was convicted on the criminal charges under the aforementioned Sections of IPC on 31.08.1994 and was sentenced to 3 years of rigorous imprisonment with a fine of Rs.2000/-. On this, the applicant appealed against his conviction in the Hon'ble

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High Court of Rajasthan; (Appeal No.474 of 1994). In this appeal, the aforementioned sentence was suspended. The applicant avers that while he continued in the service of the respondents throughout this entire period, no disciplinary inquiry was ever initiated against him in relation to the aforementioned criminal proceedings and subsequent conviction and further that this state of affairs continued till his absorption in the respondent organisation, - BSNL, on 25.01.2002. Thereafter, the applicant after serving for a number of years with the respondent organisation superannuated from service on 30.11.2007.

3. After this, the applicant approached this Tribunal vide OA No.577/2009 in which the relief finally sought was for payment of commutation of pension, gratuity and final pension. This Tribunal vide its order dated 20.09.2011 in that OA, (Annexure -I to the rejoinder to the reply to OA refers), held as follows:

... the applicant is entitled to final pension including commutation and gratuity and, thus the respondents are directed to take further necessary action in this regard, expeditiously but in any case not later than three months from the date of receipt of a copy of this order.

4. The applicant avers that the respondents complied with this order of the Tribunal which is the final judicial order in

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this regard and that this position was honoured till his pension was completely withdrawn vide the impugned order dated 25.11.2016 as intimated through the letter dated 15.06.2017 issued by the Bank of Baroda, (Annexure A/1), in the present OA. Aggrieved by this action of the respondents, he has now approached this Tribunal seeking the following relief:-

8.1 That by a suitable writ/order or the directions the order dated 25.11.2016 with the order dated 15.06.2017 being arbitrary and issued by incompetent officer be quashed and set aside.

8.2 That by a suitable writ/order or direction the respondents be directed to issue the order of payment of pension by Bank of Baroda as previously.

8.3 That by a suitable writ/order or direction the respondents be directed to pay the payment of pension for the month of May 2017 and June 2017 with immediate effect and the pension for July 2017 also be released.

8.4 Any other relief which is deemed fit be granted.

5. In his counter to the additional affidavit filed by the respondents in this case, the applicant has further contended that since his suspension with relation to criminal proceedings initiated against him in 1990 was also revoked by the respondent authorities later, there were no disciplinary proceedings pending or even contemplated against him on this count at the time of his retirement. He

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further avers that the criminal proceedings against him were brought to the notice of this Tribunal in OA No.577/2009 as evidenced by the order passed by this Tribunal on 20.09.2011 which notes in Para-7 that "**both the parties admit that this criminal case is of private nature and it is not filed against the applicant in his official capacity by the Government authorities.**"

6. In his counter affidavit, the applicant also points out that Rule 61(4)(2)(b) of the BSNL CDA Rules, (hereafter referred to as the "**Rules**") reads as follows:-

The disciplinary proceedings, if not instituted while the absorbed employee was in service, whether before his retirement, or during his re-employment-

(i) Shall not be instituted save with sanction of the Chairman/Managing Director.

(ii) Shall not be in respect of any event which took place more than four years before such institution, and

(iii) Shall be conducted by such authority and in such place as the Chairman/Managing Director may direct and in accordance with the procedure applicable to disciplinary proceedings in which an order of dismissal from service could be made in relation to the absorbed employee during his service.

7. Thus, the applicant contends that for fresh departmental proceedings to be initiated against him as a retired employee of BSNL, the prior sanction of the

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Chairman/Managing Director specifying the authority to conduct such proceedings as well as the venue is mandatory as per the provisions of Rule 61(4)(2) (b). In this connection, the applicant further states that while a show-cause notice was served to him under Rule 40 of Rules on 24.06.2015 by the GMTD Jhunjhunu, approval for instituting these disciplinary proceedings was given by the competent authority i.e. Chairman/Managing Director much later on 05.05.2016 and received on 30.05.2016; (page 18 of the counter affidavit refers). Thus, the applicant contends that by their own admission, the respondents have confirmed that the disciplinary proceedings leading to the impugned order at Annexure A/1 were instituted before obtaining the sanction of the Chairman/Managing Director and were also with reference to an event which was more than four years old at the time of institution of proceedings, thus violating Rule 61(4)(2)(b) of the **“Rules”**.

8. In their reply and additional affidavit, the respondents, while not disputing the chronology of events, aver that disciplinary action was correctly initiated against the applicant under Rule 40 of the Rules for suppressing material information relating to the aforementioned criminal proceedings against him when joining BSNL and

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even thereafter; (para 4.2 of reply refers). They further aver that the applicant had been retired provisionally on 30.11.2007 and not on completion of satisfactory service or on attaining the age of superannuation, (para 4.4 of reply refers), and that Criminal Appeal No.474/1994 filed by the applicant against his conviction under Sections 376 and 511 of IPC is still pending in the Hon'ble High Court of Rajasthan, Jaipur. They state that the applicant had been allowed to draw pension with effect from 01.12.2007 "**for want of information about his conviction by the court for the heinous offence committed by him**"; (para 5.1 of reply refer). They aver that under the relevant rules, GMTD, BSNL, Jhunjunu, who is also the pension sanctioning authority of the applicant, can withhold 100% of his monthly pension permanently and that this decision has also been confirmed/ratified by the DoT; (para 5.3 of reply to OA read with Annexure R/13 with additional affidavit on behalf of the respondents refers). They also contend that the applicant obtained favourable orders in OA No.577/2009 from this Tribunal by suppressing the true nature of the facts related to his conviction in a criminal case in that he informed the Tribunal that a private criminal case was pending against him whereas the incident in question took place inside the official premises of the

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respondents and could not therefore be said to be of a private nature.

9. Learned counsels for the applicant and the respondents were heard and the material available on record was perused. Both learned counsels for the applicant and the respondents reiterated the pleadings and arguments made in the OA and its reply read with their subsequent affidavits.

10. From a perusal of the record as well as the admitted position of the respondents, it is clear that the applicant was visited with disciplinary proceedings vide the respondents' show cause notice/explanation memo dated 24.06.2015, (Annexure R/6 with reply to OA filed by Respondent Nos.2 to 4 refers), whereas the communication conveying CMD, BSNL's approval to initiate disciplinary action is dated 05.05.2016; (Annexures A/1 of OA and R/2 of reply to OA refer). This leads to the undisputable conclusion that prior sanction of CMD BSNL was not taken in terms of Rule 61 of the "**Rules**" at the time of initiation of these proceedings. While this alone would result in these proceedings being vitiated, it is also abundantly clear from the record as well as the averments of the parties that the disciplinary proceedings initiated in 2015, almost 8

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years after retirement of the applicant from service were with respect to an event which took place around 20 years earlier i.e. considerably more than four years before such institution, thus rendering the proceedings completely violative of Rule 61 (4)(2)(b)(ii). For these reasons, we find that the disciplinary proceedings in question as well as the resultant impugned penalty order dated 25.11.2016, (Annexure A/1), and the letter dated 15.06.2017 issued by the Bank of Baroda in this connection are illegal having no basis in law or rules.

11. In view of the findings as above, the OA is allowed and the impugned order of 25.11.2016 as well as the effect given to this by the Bank of Baroda as communicated by its letter dated 15.06.2017 (Annexure A/1), are quashed and set aside. The respondents are directed to resume payment of pension as per rules to the applicant in the manner paid earlier including arrears that may have arisen in the intervening period.

12. There shall be no order on costs.

(A.Mukhopadhyaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

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