

152

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

O.A.210/434/2016

Date of decision : December 02nd, 2019.

Coram: Dr. Bhagwan Sahai, Member (Administrative)
R.N. Singh, Member (Judicial).

Shri Zafarali Sayadali
JTO BSNL Kalyan (Retired),
Residing at
b-9/3-4 MBC Colony Mithanagar,
Near Dutta Mandir M.G. Road,
Goregaon (W) - 400 090.

.. Applicant.

(By Advocate Shri G. B. Kamdi).

Versus

1. Bharat Sanchar Nigam Ltd.
Through Chairman & Managing Director
Bharat Sanchar Bhawan H.C. Mathur
Lane Janpath New Delhi - 110001.
2. The Director (HR)
Bharat Sanchar Bhawan H.C. Mathur
Lane Janpath New Delhi - 110 001.
3. The Superintendent of Post Offices
Nanded Dn,
Nanded - 431 602.

.. Respondents.

(By Advocate Shri V. S. Masurkar).

O R D E R (O R A L)
Per : R. N. Singh, Member (J)

Present.

1. Shri G. B. Kamdi, learned counsel for the
applicant.

2. Shri V. S. Masurkar, learned counsel for the respondents.
3. Heard the learned counsels for the parties.
4. The applicant has filed the present OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"(a) This Hon'ble Tribunal will be pleased to call for record and after going through its propriety and legality be pleased to quash and set aside the impugned charge-memo dated 24.03.2005 and also the punishment order dated 22.01.2011 passed by the Disciplinary authority, the order dated 30.03.2012 passed by the Appellate Authority and order dated 30.05.2014 passed by the Reviewing Authority with all consequential benefits of promotion, arrears of pay etc. if any.

(b) Any other and further orders as this Hon'ble Tribunal may deem fit, proper and necessary in the facts and circumstances of the case.

(c) The cost of this original application be provided."

5. The brief facts leading to the present OA and we noted as under:

(I) The applicant before his retirement on attaining the age of superannuation on 30.06.2012 has been working as JTA under the respondents and a charge-memorandum dated 24.03.2005 (Annexure A-4) for major penalty has been issued by the respondents to him. Vide said memorandum the following charges were

framed against the applicant:

"ARTICLE-I

That Shri Zafarali Sayadali, while functioning as Public Relation Officer at the office of Area Manager, BSNL, Tarapur during the period from 23.05.2002 to 13.07.2004, committed grave misconduct in as much as he remitted amount less by Rs.4002/- only (Rs. Four thousand two only) on 13.07.2004 and the same has not been remitted till date to BSNL, thereby violated Rule No.5 of GFR, 1963.

Thus by this aforesaid act, Shri Zafarali Sayadali then PRO, Tarapur committed grave misconduct in as much as he failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Government Servant, thereby contravening Rule 3(1) (I), (ii) and (iii) of CCS (Conduct) Rule 1964.

ARTICLE-II

That Shri Zafarali Sayadali, while functioning as Public Relation Officer at the office of Area Manager, BSNL, Tarapur during the period from 23.05.2002 to 13.07.2004, committed grave misconduct in as much as on 09.07.2004 he had allowed the counter clerk Shri Manoj B. Ram with 16 excel sim cards alongwith their receipts, to go outside the premises with malafide intention.

Thus by his aforesaid act, Shri Zafarali Sayadali then PRO, Tarapur committed grave misconduct in as much as he failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Government Servant and also failed to endure the integrity of his subordinate official under his control and authority, thereby contravening Rule 3(1)(i), (ii) & (iii) and 3(2) (I) of CCS (conduct) Rules 1964.

ARTICLE-III

That Shri Zafarali Sayadali, while functioning as Public Relation Officer at the office of Area Manager, BSNL, Tarapur during the period from 23.05.2002 to 13.07.2004, committed grave misconduct in as much as on 09.07.2004 he prepared 33 Eng-9 receipts against 33 Excel sim cards as sold with signature which is not tallying actual signature of Shri M. B. Ram with malafide intention even through the cards were not actually sold.

Thus by his aforesaid act, Shri Zafarali Sayadali then PRO, Tarapur committed grave misconduct in as much as he failed to maintain integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Government Servant, thereby contravening Rule 3(1) (I), (ii) and (iii) of CCS (Conduct) Rules 1964.

ARTICLE-IV

That Shri Zafarali Sayadali, while he was kept under suspension from 16.07.2004, committed grave misconduct in as much as he did not reply the questionnaire served to him, instead he forwarded a letter dated 28.09.2004 that he might be served charge sheet directly. Thus he failed to answer the questionnaire supplied to him.

Thus by his aforesaid act of insubordination on the part of Shri Zafarali Sayadali then PRO, Tarapur committed grave misconduct in as much as he acted in a manner unbecoming of a Government Servant, thereby contravening Rule 3(1)(iii) of CCS (Conduct) Rules, 1964."

6. The respondents have proposed to prove the aforesaid allegation against the applicant by the following documents:

1. Statement of Daily collection statement of Mobile counter dtd 09.07.2004.
2. Statement of Mobile bill cash counter dtd 09.07.2004.
3. Statement of Daily Collection statement of Mobile counter dtd 12.07.2004.
4. Statement of Mobile bill cash counter dtd 12.07.2004.
5. Statement of daily information regarding Mobile registration and sim card sold dt 09.07.2004.
6. Statement of daily information regarding Mobile registration and sim card sold dt.12.07.2004.
7. Copy of Bank remittance challan prepared on 13.07.2004 of Rs.74802/-.
8. Copy of the page of Register for cash making over by O/o PRO to AOTR, BSNL, Tarapur for the amount of Rs.74802 dt.13.07.2004.
9. Eng-9 receipt book No.MHT 1141.
10. Eng-9 receipt book No. MHT 1172.
11. Eng-9 receipt book No.MHT 1173.
12. Copy of page of Excel sim card stock register maintained by PRO Tarapur.
13. Excel prepaid register New connection w.e.f.11.09.2003.
14. Statement of Security guard Shri R. V. Patil dtd 17.07.2004.
15. 16 Excel sim cards having sim numbers 89916 64020 31138 0838 to 0844, 0846 to 0853 and 0864 along with their receipts.
16. Letter No. Jawak Kramank 2642/2004 dated 14.07.2004 containing statement of Shri Zafarali and Shri Manoj B. Ram from Boisar Police Station.
17. Note prepared dated 17.07.2004.
18. Statement of Shri J. M. P. Yadav dt.01.10.2004.
19. Letter No.KYN/VIG/X-I/ZS04-05/7 dt 20.09.2004 along with questionnaire.
20. Postal receipt for registered post with No.A 5751 dt 21.09.2004.
21. Letter No.KYN/VIG/X-I/ZS/04-05/8 dt.20.09.2004 along with questionnaire.
22. Letter No.KYN/VSI/VIG/04-05 dt

25.09.2004 from G. M. Vasai.

23. Letter No.GM/VSI/VIG/04-05 dt

28.09.2004 from G. M. Vasai with reply of Shri Zafarali Sayadali."

7. The respondents proposed to rely upon the following witnesses to sustain the aforesaid allegations:

1. Shri J. M. P. Yadav, Sr. TOA(P), O/o PRO, BSNL. Tarapur.
2. Shri Manoj B. Ram, Sr. TOA(G).
3. Shri A. K. Jha, Area Manager, BSNL, Tarapur.
4. Shri R. V. Patil, Security Guard O/o Area Manager, Tarapur.
5. Shri J. V. Jawale, AO(TR), O/o Area Manager, Tarapur.
6. Shri T. R.Choudhary, SDE Tech, O/o Area Manager, TARapur.
7. Shri D. M. Chandanshive, PRO O/o Area Manager, Tarapur.
8. Shri Paul Thurai SDE (Vig) O/o PGMT, Kalyan.
9. Shri V. D. Pradhan SDE (Vig) O/o PGMT, Kalyan.
10. Shri H. K. Joshi, AO (Vig) O/o PGMT, Kalyan.
11. Shri S. G. Khare, Sr TOA (P) O/o Area Manager, Tarapur."

8. It is not in dispute that the aforesaid memorandum was received by the applicant along with the list of documents and the list of witnesses by which the respondents proposed to prove the aforesaid charges. On denial of charges a regular inquiry was conducted and the applicant participated in such regular inquiry.

9. The Inquiry Officer submitted his report dated 12.11.2009 (Annexure A-7) and vide such report

the Inquiry Officer reported the Article 1, 2 and 3 as 'proved' and Articles 4 as 'not proved'. After receipt of the defence representation from the applicant on such inquiry report, the Disciplinary Authority considered the relevant documents and passed the order of punishment dated 22.01.2011 (Annexure A-1) awarding reduction of pay by four stages from Rs.38980/- to 34620/- in the scale of pay Rs.20600-46500 for a period of one year and five months w.e.f. 01.02.2011. Vide the said order of punishment, it was further ordered that the applicant will not earn increments of pay during the period of such reduction.

10. Aggrieved by the order of punishment, the applicant preferred an appeal dated 04.02.2011 (Annexure A-10) and the Appellate Authority passed the Appellate Order dated 30.03.2012 (Annexure A-2) whereby the Appellate Authority rejected the applicant's appeal and upheld the order of punishment, passed by the Disciplinary Authority. The applicant after his retirement on 30.06.2012 preferred a Revision Application dated 16.10.2012 (Annexure A-11), followed by a reminder dated 12.01.2015 (Annexure A-12) and the same have also been considered by the Revisionary Authority who has

passed the order dated 30.05.2014 which the applicant claims to have received only on 28.04.2015. The Revisionary Authority rejected the Revision Application of the applicant and upheld the punishment order and Appellate Order.

11. Aggrieved by the aforesaid impugned order(s), the present OA by the applicant before this Tribunal.

12. In response to the notice issued from this Tribunal, the respondents have filed reply affidavit, the applicant has filed rejoinder.

13. The only argument on behalf of the applicant through his learned counsel is that the impugned orders are based on no evidence. He submits that it is the admitted case of the respondents that no direct evidence has come on record to support the aforesaid allegation against the applicant and in view of the same the impugned orders are liable to be set aside. Per contra, the learned counsel for the respondents vehemently argues that the very charge-memo has been issued along with a list of documents, noted herein above and proposed to be supported by a list of witnesses and such list of documents and witnesses have been issued to the applicant along with the impugned charge-memo and the applicant has

not only received the same but has also participated in the inquiry proceedings and has got adequate opportunity of cross-examining the witnesses and has also got the adequate opportunity to lead the defence evidence. He further argues that the aforesaid articles of charges are based on documentary evidence and the authenticity of the same has not been doubted and disproved by the applicant rather the same has been proved in the inquiry and the applicant has got the adequate opportunity to cross-examine the witnesses. It is, therefore, misplaced at the end of the applicant to argue that this is a case of no evidence.

14. The learned counsel for the respondents further submits that this Tribunal is having limited jurisdiction in the matter of disciplinary proceedings in as much as this Tribunal is not supposed to re-appreciate the evidence and come to its own conclusion in view of the law laid down by the Hon'ble Apex Court in case of AIR 1996 SC 1232 State of Tamil Nadu V/S S. Subramaniam.

15. He further places reliance upon the law laid down by the Hon'ble Apex Court in case of Govt. of Tamil Nadu V/S K. N. Ramamurthy reported in 1998 (1) SLJ (SC) 63 to argue that in the matter of quantum of

penalty and in the matter of finding of Competent Authority, the Tribunal and Courts are not expected to interfere.

16. We have heard the learned counsels for the parties and considered the pleadings on record and have also taken into consideration the submissions made by the learned counsels for the parties.

17. From the inquiry report we find that the inquiry officer has taken into consideration the deposition of 11 prosecution witnesses SW1 to SW11 and has also considered statement of the defence witnesses as produced by the applicant and their deposition has been recorded as DW1 to DW11. The applicant has also been examined in general by the Inquiry Officer. While furnishing his report, the inquiry officer has appreciated the evidence on record. After examination and appreciation of the evidence led on behalf of the parties, the IO has submitted the report to the effect that Articles 1 to 3 have been proved and Article-4 is not proved.

18. It is also not disputed by the learned counsel for the applicant that all the prosecution witnesses have deposed and have made the statements against him in the inquiry proceedings.

19. So far, the law referred by the learned

counsel for the respondents, there cannot be any dispute.

20. In the facts and circumstances, we are of the view that the impugned order(s) cannot be construed to be based on no evidence. Accordingly, we find this OA to be devoid of any merit. Accordingly, the present OA is dismissed.

21. However, in the facts and circumstances, no order as to costs.

(R. N. Singh)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

V.

JD
19/12/19

