

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.
OA No.15/2015 & OA No.627/2013**

Dated this Tuesday the 17th day of December, 2019.

**Coram: Dr.Bhagwan Sahai, Member (Administrative)
Ravinder Kaur, Member (Judicial).**

O.A.15/2015

Shri R.G. Kulkarni,
Divisional Engineer (ACMT), BSNL,
New Administrative Building,
2nd Floor Sanja Road Osmanabad-413501.

Residing at:
Walmiki Nagar, Opp. Aswamegh Hotel,
Barshi Road, Latur – 413 531.

.. Applicant in
OA.15/2015.

O.A.627/2013

Balaji Ranba Gaikwad,
Divisional Engineer Planning,
BSNL, New Administrative Building,
2nd Floor Sanja Road, Osmanabad-413501.

Residing at:
CEN-2001/1-13/292 Maharashtra Graha
Nirman Sanstha, Barshi Road,
Latur-413 512.

.. Applicant in
OA.627/2013.

(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 – 110 001.
2. The Director (HR),
Bharat Sanchar Bhawan H.C. Mathur
Lane Janpath, New Delhi – 110 001.
3. The Chief General Manager,
BSNL Maharashtra Telecom Circle,

BSNL Admn Bldg., Juhu Road,
Santacruz (West), Mumbai-400 054.

4. The Sr.General Manager,
BSNL, Latur - 413 512.

..Respondents in
both the OAs.

(By Advocate Shri V.S. Masurkar).

Order reserved on : 19.09.2019

Order delivered on : 17.12.2019

ORDER

Per : Dr.Bhagwan Sahai, Member (A)

1(a). Shri R.G. Kulkarni, while working as Divisional Engineer (Commercial Officer) in Latur Telecom District of Bharat Sanchar Nigam Limited (BSNL) at Osmanabad filed O.A.15/2015 on 05.12.2014 seeking quashing and setting aside of charge-memo issued to him dated 17.03.2008, punishment order of Disciplinary Authority (reducing by 3 stages his time-scale of pay for 4 years during which period he was not to earn increment and on expiry of the period the reduction was to have effect of postponing future increments), order of Appellate Authority dated 01.09.2011 rejecting his appeal and order of Reviewing Authority dated 23.08.2014 (modifying the punishment to reduction by 3 stages in time-scale of

pay for two years during which period he was not to earn increments of pay and on expiry of that period the reduction was to have effect of postponing future increments). He also seeks cost of this O.A. from the respondents.

1(b). Shri Balaji Ranba Gaikwad, while working as Divisional Engineer (Planning) with BSNL, Osmanabad SSA filed O.A.No.627/2013 on 06.09.2013 seeking quashing and setting aside of charge-memo issued to him dated 17.03.2008, punishment order of Disciplinary Authority dated 19.04.2010 (reducing by 3 stages in time-scale of pay for 3 years during which period he was not to earn increment of pay and on expiry of that period the reduction was to have effect of postponing his future increments), order of Appellate Authority dated 05.07.2011 rejecting his appeal and order of Reviewing Authority dated 20.03.2013 rejecting his Review Petition. He also seeks cost of this O.A. from the respondents.

1(c). Since both these OAs are broadly identical in terms of impugned orders, reliefs sought and facts of the disciplinary proceedings, on request of learned counsels for the parties, they have been heard together on both these OAs on 19.09.2019 and they are being decided by this common order.

2. Summarized facts :

O.A.15/2015

2(a). When the applicant Shri R.G.Kulkarni was working as Sub-Divisional Engineer (Commercial Officer) in Latur Telecom District of BSNL, he received charge-sheet dated 17.03.2008 under Rule 36 of BSNL CDA Rules, 2006 with an Article of charge alleging that during year 2001-2004, without proper assessment of requirement, and without following departmental guidelines recommended for approval of printing of additional 20,000 copies of telephone directory in English for Lathur SSA for the year 2000 at the rate of Rs.67.5/- per copy against the

approved rate of Rs.9 per copy as per the agreement dated 15.01.1999, and printing of information pages in Marathi at the rate of 27 paise per page per copy, thereby causing monetary loss to the BSNL. By that act, Shri Kulkarni violated provisions of Rule 60 of FHB volume and Rule 6 of General Financial Rules (GFR) and failed to maintain absolute integrity and devotion to duty thereby contravening provisions of Rule 4(1)(a)(b) of BSNL CDA Rules, 2006.

2(b). The applicant submitted his reply to the charge-memo denying the allegations. Thereafter the departmental inquiry was ordered by the Disciplinary Authority and vide order dated 15.07.2008 appointed Dr.U.N. Palandurkar, Asst. General Manager (Lease CKT), Nagpur as the Inquiring Authority and Shri D.P. Patil, DE, CGMT, Maharashtra Circle, BSNL, Mumbai as the Presenting Officer.

The inquiry report was submitted on 30.06.2009 concluding that one part of

the Article of Charge relating to assessment of requirement of copies of the telephone directories was not proved but the other two parts of the charge pertaining to non-evaluation by the applicant (as member of the Committee) of the single quotation given by Contractor and awarding of the contract without approval of Chief General Manager were proved.

2(c). The applicant submitted his representation on 29.09.2009 with reference to the inquiry report, after considering which the Disciplinary Authority passed order dated 19.04.2010 awarding him the punishment as mentioned in Para 1(a) above. Against that the applicant filed an appeal dated 28.05.2010 which was rejected by the Appellate Authority by order dated 01.09.2011. Thereafter he filed a Review Petition dated 30.04.2012. After providing personal hearing to the applicant on 18.02.2014, by order dated 23.08.2014 the Reviewing Authority partly allowed his

Review Petition by reducing the punishment to two years. Therefore, this O.A. has been filed.

O.A. 627/2013

2 (d). While working as Sub-Divisional Engineer (PRO) in Latur Telecom District of BSNL, the applicant Shri Balaji R. Gaikwad received charge-memo dated 17.03.2008 issued by the General Manager Telecom BSNL, Latur under Rule 36 of BSNL Rules, 2006 with an Article of Charge alleging that while working as PRO, Latur during the year 2001-2004, without proper assessment of requirement and without following the departmental guidelines in this regard, he recommended for approval and placed order for printing of telephone directory for Latur SSA for the year 2001 additional 10,000 copies in English and 25,000 copies in Marathi and printing of information pages in Marathi at the rate of 13/- paise per page per copy against the approved rate of Rs.8/- per copy as per agreement dated 15.01.1999. By that

act, Shri Gaikwad violated the provisions of Rule 60 of FBH volume and Rule 6 of GFR and thereby failed to maintain absolute integrity and devotion to duty contravening provisions of Rule 4(1)(a)(b) of BSNL Rules, 2006.

2(e). He replied on 26.03.2008 denying the charge levelled against him and requesting for personal hearing. Thereafter the Disciplinary Authority ordered dated 15.07.2008 for conduct of disciplinary proceedings by appointing Dr.U.N. Palandurkar, Asst. General Manager (Lease CKT), Nagpur as the Inquiring Authority and Shri D.P. Patil, DE, CGMT, Maharashtra Circle, BSNL, Mumbai as the Presenting Officer.

The Inquiry Officer submitted his report dated 28.03.2009 concluding that one part of the Article of Charge relating to assessment of requirement of copies of the telephone directory was not approved but the other two parts of the charge pertaining to non-evaluation by the

applicant (as member of the Committee) of the single quotation given by Contractor and awarding of the contract on single quotation without approval of Chief General Manager were provided.

2(f). The applicant submitted his response dated 06.01.2010 to the inquiry report, after considering which the Disciplinary Authority passed the order of punishment dated 19.04.2010 reducing by 3 stages in the time-scale of his pay for three years as mentioned in Para 1(b) above. Against that order the applicant filed appeal dated 28.05.2010 which was rejected by the Appellate Authority by order dated 05.09.2011. Thereafter the applicant filed a Review Petition dated 27.03.2012, 01.01.2013, which was rejected by the Reviewing Authority by order dated 20.03.2013. Hence this O.A.

3. Contentions of the parties:

In their OAs, rejoinders and during arguments of their counsels, the applicants have contended that -

3(a). the charges against them pertain to their action in 2001-2004, but the charge-sheets were issued to them on 17.03.2008 i.e. after delay of 7/5 years;

3(b). in finalizing the agreement dated 15.01.1999, they were not involved and, therefore, for any lacuna / irregularity in that agreement, they cannot be held responsible;

3(c). when they were working as Sub-Divisional Engineers (Commercial Manager/PRO) during 2001-2004, they were nominated as members on respective negotiations committee / re-negotiations committee and as such their role as a member of the respective committee pertained only to decide number of additional copies to be printed and the rates at which those copies were to be printed;

3(d). the Committee on which Mr.Kulkarni was a member, met on 29.01.2001 and recommended the rate of Rs.75/- per additional copy and Rs.0.30

paise per additional page in Marathi. Since those rates were high, Telecom District Manager, Latur formed re-negotiations committee (on which Shri Kulkarni was also a member) and that committee finally recommended rate of Rs.67.5 per copy for additional 20,000 copies and 27 paise per page for information in Marathi;

3(e). the committee on which Mr.Gaikwad was a member met on 11.03.2003 and recommended printing of additional 10,000 copies of telephone directory for Latur SSA for the year 2001 in English and 25,000 copies in Marathi @ 13 paise per page per copy and he claims that the rate was as per the agreement dated 15.01.1999;

3(f). as per agreement of 15.01.1999 and clarification in letter dated 23.08.2000, the contractor was to submit quotation for additional copies. Therefore, the rates were finalised by the committees (on which the applicants were members) after negotiations with the

contractor. The number of additional copies decided by the committees for printing were on the basis of number of telephone connections in Latur, number of applications on wait list for connections and the expansion plan. Therefore, they were not in excess of requirement;

3(g). there was only one Article of Charge in the charge-memo issued to the applicants but in the inquiry reports submitted by the Inquiry Officer, he split the charge into 3 parts and then concluded that the charge had been partially proved. But even then the Disciplinary Authority considered the charge as proved and without appreciating the fact of only partial proving of the charge, he ordered the punishment which was harsh compared to the charge proved;

3(h). after closing of the evidence of both the sides, the Inquiry Officer directed to submit brief, and the Presenting Officer submitted the brief with a copy of an additional document i.e.

circular dated 27.11.1998 issued by the Department of Telecommunications prescribing guidelines on the subject matter. However, the applicants were not heard on this additional document in spite of request for it. The finding of the Inquiry Officer is not correct that the record of proceedings of the meeting of the negotiations committee did not reveal evaluation and justification for the rate of 67.5 per copy and 27/13 paise per page in Marathi;

3(i). the findings of the Inquiry Officer is also not correct that the applicants did not highlight in the meetings of their respective committees details of the circular dated 27.11.1998 issued by Department of Telecommunications which clearly mentioned that powers for getting printed directory with yellow pages on negative royalty were delegated to CGM and not to TDM/GM of SSA and approval to negotiated rates of single quotation were also delegated to CGM;

3(j). the finding of the Inquiry Officer in his reports that the work orders were placed before obtaining full bank guarantee is without evidence. The work order was issued by the Commercial Section and not by PRO;

3(k). the allegation that BSNL suffered loss due to the rates finalised by the committees was vague and in absence of any such calculations the finding of the Inquiry Officer is not correct that loss was caused to the BSNL;

3(l). in their representations on the inquiry reports, the applicants had explained the factual position but without considering it the Disciplinary Authority imposed the penalty on the applicants by his orders dated 19.04.2010. Thus during the inquiry proceedings, principles of natural justice were not followed;

3(m). the Reviewing Authority has mentioned in the order that it was the responsibility of the TEC (Tender Evaluation Committee) on which the

applicants were members to evaluate the rates quoted by the contractor but this reason is extraneous and not justified because TEC conducted it at the time of finalization of tender in the year 1999 during which the applicants were not involved. Thus the impugned orders are illegal, wrong and arbitrary, violative of Articles 14 and 16 of the Constitution and have been passed based on whims and fancies;

3(n). the action in the disciplinary proceedings pertained to the period of 2001-2004 whereas the BSNL CDA Rules, 2006 were notified only in 2006 and, therefore, those rules were not applicable to the applicants for their action at that time;

3(o). In support of their contentions, the applicants' counsel has attempted to rely on the following 11 caselaws and prayed that the OAs be allowed:-

(i). **State of Madhya Pradesh Vs. Bani Singh and Another, AIR 1990 SC 1308,**

- (ii) . State of Punjab Vs. Chaman Lal, 1995 SCC (2) 570,
- (iii) . P.V.Mahadevan Vs. M.D. Tamil Nadu Housing Board, 2005,
- (iv) . S. Sagar Vs. Union of India, 93(2001) DLT 194,
- (v) . Union of India Vs. H.C.Goyal, 1964 AIR 364,
- (vi) . Transport Commr Vs. Radha K Moorthy, 1995 SCC (1) 332,
- (vii) . Jeevan Kumar Jha Vs. State Bank of India & others dated 10.09.2014,
- (viii) . Writ Petition (C) 5466/2000 dated 07.07.2011 of Delhi High Court,
- (ix) . The Government of Andhra Pradesh & Ors. Vs. A. Venkata Rayudi, SC Appeal (Civil) 2302/2005 dated 31.10.2006, (2007) 1 SCC (L&S) 254,
- (x) . Anil Gilurker Vs. Bilaspur Raipur Kshetriya Gramin Bank and another, (2012) 2 SCC (L&S) 926,
- (xi) . O.A.2596/2012 & O.A.3465/2012, CAT, Principal Bench, New Delhi decided on 29.08.2013.

The reliance on the first four caselaws is on the issue of delay in

initiation and conclusion of the disciplinary proceedings, in next three it is regarding sufficiency of evidence to prove the charge, in (ix) and (x), it is about vagueness of charges and in (xi) it is with reference to applicability of BSNL CDA Rules, 2006.

In the reply and during arguments the respondents have contended that -

3(p). in the OAs the applicants are seeking re-assessment by the Tribunal of the evidence on record and to come to a conclusion different from that of the competent authorities. However, this is beyond the scope of judicial review of the Tribunal as settled in the following caselaws:-

(i). State of Tamil Nadu Vs. S. Subramaniam, AIR 1996 SC 1232,

(ii). Govt. of Tamil Nadu Vs. S. Vel Raj, 1997(1) SCSLJ 227,

(iii). Govt. of Tamil Nadu Vs. K.N. Ramamurthy, 1998(1) SLJ (SC) 63,

(iv). Commissioner and Secretary to the
Govt. Vs. S. Shanmugam, JT 1998 (4) SC
2366,

(v). Union of India Vs. B.K.
Srivastava, 1998(1) SCSLJ 74,

(vi). Union of India Vs. A.
Nagamalleshwari, 1998 (1) SCSLJ 78,

(vii). Apparel Export Promotion Council
Vs. A.K. Chopra, JT 1998 SC 61,

(viii). Deputy Commissioner, KVS Vs. J.
Hussain, AIR 2014 SC 766=(2013) 10 SCC
106,

As settled in the above caselaws,
the Tribunal is devoid of power to
reappreciate the evidence and come to its
own conclusions, which have been reached
by the Competent Authority based on the
evidence in case of the present
applicants;

3(q). the Tribunal also cannot
interfere in the finding of the Competent
Authority with respect to the quantum of
penalty because once the charges are

proved, a discretion to decide the kind of punishment to be imposed is with the Disciplinary Authority. The Appellate Authority can re-examine the case and even reduce the penalty imposed by the Disciplinary Authority when it finds that the case warrants lower punishment. However, such power is not available to the Court or Tribunal;

Thus the limited scope of judicial review can allow interference with the quantum of punishment only when the punishment awarded is shockingly disproportionate, outrageous and in defiance of logic or lack of good faith. In the judicial review, the Court should not be guided by misplaced sympathy while examining the quantum of punishment;

3(r). the respondent authorities have passed the orders impugned in these O.As in accordance with BSNL CDA Rules, 2006 by complying with their requirement;

3(s). the delay mentioned by the applicants in initiating the disciplinary

proceedings is administrative in nature because of involvement of many officers in printing of the telephone directory for Latur Telecom District. The disciplinary proceedings were initiated in 2008 as soon as the mis-conduct of the applicants came to notice of the higher authorities of the respondents;

3(t). as members of the negotiations / re-negotiations committees, the applicants ought to have followed the existing guidelines / instructions on the subject issued by the respondent authorities from time to time and they should have brought those instructions to the notice of other members of their committees;

3(u). as per agreement dated 15.01.1999 between Telecom District Manager, latur and Pooja Publications Pvt. Ltd., Parali Vaijanath, the contractor was permitted to publish telephone directories with advertisement on yellow pages as specified under the general terms and conditions of the contract and shall pay royalty to the

Latur Telecom District over the year. The Department was to pay Rs.10/- per copy for the first issue of 1999, @ Rs.9/- per copy for the 2nd issue 2000 and @ Rs.8/- per copy for the 3rd issued i.e. 2001;

3(v). as per that agreement for the year 2000, total 30,000 copies of 2nd issue of the telephone directories were got printed @ Rs.9/- per copy. However, for getting printed the additional 20,000 copies, quotation was called from Pooja Publications Pvt. Ltd. and after negotiations, the committee consisting of applicant Shri Kulkarni recommended the rate @ Rs.75/- per copy and 0.30 paise per page for the information in Marathi. Hence the TDM, Latur formed the re-negotiations committee (on which the applicant was again a member while working as Commercial Officer, Latur). After re-negotiations, that committee finalized the rate of Rs.67.50 per copy for the additional 20,000 copies and 0.27 paise per page for the Marathi pages.

These rates were much higher than those approved in the agreement of 1999. When as a member of the negotiations / re-negotiations committee, if the (Shri Kulkarni) had recorded his opinion as per the rates of the agreement dated 15.01.1999, the approved rates would not have been so high for the year 2000 issue. However, he did not perform this role and shied away from his responsibility. It was his responsibility to ensure that the guidelines and directions issued on the subject matter in the circular dated 27.11.1998 were followed. However, he did not perform that duty. Non-inclusion of the Circular of 27.11.1998 in the listed documents during the inquiry proceedings does not absolve the applicant of his responsibility of the official duty;

3(w). as per the above circular, the power to get printed the telephone directory with negative royalty were vested with the CGM, Maharashtra. There is no provision under Rule 37(5) of the BSNL CDA Rules, 2006 for issuing show

cause notice to the employees for making representation on the proposed penalty. However, the Disciplinary Authority took the decision to impose penalty after considering the report of the Inquiry Officer dated 30.06.2009 and the applicant's representation dated 29.09.2009 with reference to that inquiry report;

3(x). the contention of the applicant (Shri Kulkarni) that the inquiry report and action of the Disciplinary Authority are contradictory to the audit report is not acceptable because findings of one agency are not binding on other agencies;

3(y). the Reviewing Authority also gave a personal hearing to the applicant on 18.02.2014 and thus the principles of natural justice have been followed and the Reviewing Authority by taking lenient view modified the penalty as reduction by 3 stages in the time-scale of his pay for two years (instead of 4 years imposed by the Disciplinary Authority). Since the

powers for printing of the directory with yellow pages on negative royalty were delegated to CGM and not to TDM SSA, printing of the additional copies were not within the scope of approval of the TDM/GM. But the applicant got the additional copies of telephone directory printed not only at rates much higher than those approved in the 15.01.1999 agreement but also without proper assessment of the requirement and without following the departmental guidelines which resulted in monetary loss to BSNL;

3(z). the contention of Shri Gaikwad in his Review Petition dated 27.03.2012, 01.01.2013 submitted to CMD, BSNL is not correct that the GMT, Latur ordered for conducting negotiations based on the contractor's letter for printing additional copies and obeying his orders, the quotation was considered by the negotiations committee and there were no orders superseding the procedure followed in the previous two years of the contract. Therefore, his contention is not correct

that the committee did not have the opportunity to disagree with the procedure followed earlier;

3(aa). as observed by the Reviewing Authority, it was the responsibility of the Committee of which Shri Gaikwad was a member for proper evaluation of quotation as per the procedure and practice. Even if the number of copies to be printed was decided by TDM, Latur, the negotiating committee had the responsibility to make a recommendation of the rate in accordance with the guidelines of the Department for getting printed the telephone directory. Shri Gaikwad also failed to comply with the order that the power for printing of the directory was vested with CGM and he did not examine as to whether any tender had been floated or not.

In view of these serious lapses, the applicants have been punished. Hence the OAs be dismissed.

4. Analysis and conclusions:

4(a) . We have perused the OA memos and their annexes, rejoinders of the applicants, replies filed by the respondents, various caselaws cited by both the parties and considered the arguments advanced by both sides on 19.09.2019. From careful study of the case record and consideration of contentions of the parties, our analysis is as follows:

4(b) . The main issues to be decided in these OAs are -

(i). whether the applicants as members of the respective negotiations/re-negotiations committees, based on single quotation of Ms.Pooja Publications Pvt. Ltd recommended the rates for printing of the yellow pages telephone directories for the year 2000 and 2001 for Latur Telecom District in excess of the rates approved in the agreement dated 15.01.1999 and by not following instructions in the circular dated 27.11.1998; and

(ii). whether the applicants got approved those quantities and rates of the telephone directory by the TDM, Latur without prior approval of CGM and placed the orders for printing them without obtaining bank guarantees of full amount, thereby causing financial loss to BSNL.

4(c). The charge-sheets were issued to both the applicants on 17.03.2008 under Rule 36 of BSNL CDA Rules, 2006. The contention of the applicants is not correct that because the subject matter of charge-sheet pertained to their action in the years 2001-2004, the BSNL CDA Rules, 2006 were not in existence at that time and, therefore, the disciplinary proceedings against them could not have been conducted under the provisions of those rules.

The caselaw cited by the applicants i.e. Shri M.L. Sharma Vs. BSNL in O.A.2596/2012 and O.A.3465/2012 decided on 08.10.2013 is not applicable in the present cases because in those cases, the

proceedings against the applicants with charge-sheet dated 30.09.2000 had been initiated by BSNL authorities when the applicants were not employees of the BSNL and they became employees of BSNL only from 01.10.2000. But in the present cases the charge-sheets were issued in the year 2008 under Rule 36 of BSNL CDA Rules, 2006.

4(d). The claim of the applicants that they were not associated with finalization of the agreement dated 15.01.1999 and for any lacunae in that agreement, they are not responsible is irrelevant because the charge-sheets issued to them were not for any lacunae in that agreement, but they issued for their failure in complying with the rates mentioned in that agreement for a period of three years i.e. for the 1999 issue, 2000 issue and 2001 issue of the telephone directory for recommending higher rates than those of the agreement and placing printing orders accordingly for getting printed additional copies of the 2000 and 2001 issues.

4(e). The gist of the charge proved against the applicants during the inquiry proceedings is that they did not put up before the respective committees the 15.01.1999 agreement which had the approved rates for printing of the telephone directories, they recommended higher rates of Rs.67.50 per copy and 0.27 paise per page for the part in Marathi for the year 2000 issue as against the approved rate of Rs.9/- per copy and 0.13 paise per page of the Marathi portion for the 2001 issue and accordingly placed the orders for printing. Thus they did not follow the guidelines/instructions of the Department in the circular dated 27.11.1998, approved rates in 15.01.1999 agreement and got approved the higher rates of single tender without prior approval of CGM. While the charge-sheets also mentioned that the applicants did not correctly assess the requirement of additional copies, this part of the charge was not proved as per the inquiry report.

4 (f) . We find that after issuing of the charge-memos, the applicants submitted their representations, the Disciplinary Authority considered them, then the inquiry was conducted. Reports of the Inquiry Officer and the applicants' representations were considered, and thus after applying its mind, the Disciplinary Authority issued the orders of punishment dated 19.04.2010. The appeals filed by both the applicants were rejected by the Appellate Authority with detailed and well reasoned orders dated 01.09.2011 and 05.09.2011.

Thereafter the applicants preferred Review Petitions before the Reviewing Authority. In case of Shri Kulkarni, in the detailed order and after hearing him on 18.02.2014 and taking a lenient view, the Reviewing Authority modified the punishment of reduction by 3 stages in time-scale of pay for 4 years to a period of 2 years, but in case of Shri Gaikwad, by the detailed order the Reviewing Authority rejected the Review Petition. Thus the orders on the review

petitions were well reasoned passed with fairness.

4 (g) . During the inquiry proceedings, the respondent authorities have provided adequate opportunity of defence to the applicants, their representations / submissions have been duly considered. Thus there is no substance in the contention of the applicants that the DA, AA and RA have passed the orders without application of mind.

4 (h) . We also find no substance in the contention of the applicants that the Inquiry Officer accepted the additional document with the brief of Presenting Officer, after concluding the hearing on evidence. What the Inquiry Officer accepted as additional document was only a copy of the Department of Telecommunications Circular dated 27.11.1998. This circular was already in public domain and in any case minimum expectation from the applicants was to be aware of the guidelines in that circular.

Therefore, nothing new incriminating against the applicants was there in that document.

4(i). The main issue in the first four caselaws cited by the applicants is about delay in initiation and completion of the inquiry. We find that from the time of the incident i.e. in 2001 and 2003, there was delay in issuing of the charge-memo to the applicants by the respondents and also completion of disciplinary proceedings took long time. But the respondents have explained the delay. The case record also shows that from the year 2002 to 2006, the case record was with the investing agency. In the present case, there was no vagueness in the charge framed against the applicants as the evidence to prove it was clearly the official record. The other caselaws cited by the applicants also are of no help to them.

4(j). We have also perused the caselaws cited by the respondents with respect to the scope of judicial review of the

Tribunal and have been conscious of them while dealing with these OAs.

4 (k) . We also do not find any substance in the contention of the applicants that there was no financial loss caused to the respondent organization. By their recommending and getting approved higher rates only by TDM, Latur and placing orders for printing of the additional copies of the telephone directory at 7.5 times higher rate than the rates of only Rs.9/- and Rs.8/- respectively as per 15.01.1999 agreement for the relevant year 2000 and 2001 issues, obviously resulted in financial loss to the BSNL.

4(1) . The contention of the applicants is also misleading that the mention in the order of the Reviewing Authority that it was the responsibility of the Tender Evaluation Committee on which the applicants were members is extraneous and the tenders were finalized in the year 1999 and not in 2001 and 2003. In fact it was the responsibility of the negotiations

/ re-negotiations committees to carefully evaluate the rates and get them reduced to those similar to those in the 15.01.1999 agreement. They actually finalized the single quotation based higher rates and placed order with the contractor for the printing of the directories only with the approval of the TDM, Latur and without taking approval of the CGM. Thus they did not comply with the guidelines of the Department. In view of these conclusions, we find no merit in the OAs and they deserve dismissal.

5. Decision:

O.A.15/2015 and O.A.627/2013 are dismissed. No costs.

(Ravinder Kaur)
Member (J)

(Dr.Bhagwan Sahai)
Member (A).

kmg/H

JD
19/11/2