



**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA No.224/2017

New Delhi, this the 27th day of November, 2020

(Through Video Conferencing)

**Hon'ble Justice Mr. L. Narasimha Reddy, Chairman
Hon'ble Mr. A.K. Bishnoi, Member (A)**

Arvind Kumar Gahlaut, (Age 55 Years, Group 'B')
Divisional Engineer (Transmission),
Resident of B-6, Parivahan Apartment,
Sector-5, Vasundhara, Ghaziabad
Uttarpradesh

Also at :
Divisional Engineer (Transmission),
Okhla Telephone Exchange, New Friends Colony,
New Delhi

.....Applicant

(By Advocate: Shri Shankar Kumar Jha)

Versus

1. Mahanagar Telephone Nigam Limited
Through,
Chairman and Managing Director
Mahanagar Telephone Nigam Limited
Mahanagar Door Sanchar Sadan, Corporate Office
9, CGO Complex, Lodhi Road, New Delhi
2. Mahanagar Telephone Nigam Limited
Through
Executive Director
Mahanagar Telephone Nigam Limited
Khurshid Lal Bhawan,
Janpath, New Delhi - 110001

.....Respondents

(By Advocate: None)

O R D E R (Oral)**Hon'ble Mr. A.K. Bishnoi, Member (A):**

Briefly the facts of the case are as follows:-

- (i) The applicant joined the respondent organization-MTNL as Junior Engineer in the year 1985. While he was working as COC-(Construction Officer-Cable) VII (N), charge memo dated 15.06.2007 was served upon him alleging certain irregularities committed in the purchase of 280 telephone poles/DP posts. The applicant submitted a written brief dated 01.12.2008 denying all the allegations.
- (ii) An inquiry was conducted and the Inquiry Officer submitted his report on 22.12.2008. Of the three elements of charge in the charge memo two were held to be not established and one was held to be established. The competent authority on 11.05.2009 went on to impose the penalty of reduction by one stage in the time scale of pay for a period of one year with immediate effect, with the further direction that during the period of reduction, the applicant will not earn increments of pay and on expiry of the period, the reduction will have the effect of postponing his future increments of pay. The applicant appealed against this order which was rejected by the Appellate Authority.



2. The applicant has filed this O.A. seeking the following reliefs:-

- “a) this Hon’ble Tribunal may graciously be call upon the records of the inquiry proceedings of this case from the respondents;
- b) this Hon’ble Tribunal may graciously be pleased to quash the inquiry report dated 22.12.2008, Disciplinary order dated 11.05.2009, Order dated 20.02.2016 passed by the Appellate Authority;
- c) this Hon’ble Tribunal may direct the Respondent to grant the consequential relief, if the present O.A. is allowed;
- d) this Hon’ble Tribunal may further make such other and further orders it deems fit and proper in the facts and circumstances of the case.”



3. We heard Shri Shankar Kumar Jha, learned counsel for the applicant.

4. The contention of the applicant in the OA and as argued by the learned counsel for the applicant Shri S.K. Jha, relates to the one element of charge which has been held to be established. The submission made is that there were no instructions or orders to the effect that counter signatures of the next higher authority were required. It has been argued that this has been admitted by the respondents in reply to an RTI query and the report of the Inquiry Officer mentions that there were no written instructions or orders in this regard and that it was only a general practice. Learned counsel for the applicant argues that in the absence of written instructions or orders, the

applicant could not be held responsible for not getting the orders countersigned by the superior authority and as such the punishment order is bad in law and needs to be quashed.

5. The respondents in their counter reply denied the contentions made by the applicant and have justified the imposition of the penalty on the applicant.



6. We have carefully gone through the pleadings on record and the submissions made by the learned counsel for the applicant.

7. The charge memorandum dated 15.06.2007 is extracted below:-

“That Shri. A.K. Gahlot SDE (GO-35600) while working as COC-VII(N) under GM (Dev.) MTNL, New Delhi during the period 2001-02, 2002-03, 2003-04 and 2004-05 has committed an act of gross misconduct and misbehaviour in a manner as much as with malafide intention and vested interest he received 280 DP posts/poles (recovered) fraudulently from different stores of Area SDEs MTNL, Delhi, without consent of his controlling DE (CCN) in Charges and without following proper procedure. (As per details in Annexure A-IV) and all the issue slips of DP posts not found entered in stock registers of COC-VII(N) unit.

That the said Shri. A.K.Gahlot bungled away 55 DP posts/poles in connivance with the fellow employees and the contractors. Consequently, MTNL has suffered a heavy loss amounting Rs. 70,400/- towards the cost of 55 DP posts @ Rs. 1280/- per post (Annexure – A-IV read with B).

By the aforesaid act, the said Shri. A.K.Gahlot SDE (GO-35600) has failed to maintain absolute integrity, devotion

to duty and acted in a manner unbecoming of a Company employer in violation of Rule 4 (1) (i) and (iii) of MTNL, Conduct, Discipline & Appeal Rules, 1998.”

8. In his inquiry report, the Inquiry Officer has come to the following conclusion:-

CONCLUSION & FINDINGS

On the basis of the Oral and documentary evidences adduced before this Inquiry as well as the argument tendered by the prosecution as well as defence side assessed in Analysis & Assessment of Evidences :-

I V.P. Singh hold that :

The charges levelled against Shri. A.K. Gahlot (GO – 35600) while working as COC-VII (N) under GM (Dev) MTNL, New Delhi during the period 2001-02, 2002-03, 2003-04 & 2004-05 that the SPS received stores of Area SDEs SKN & Keshav Puram, without issuing authority letters to store I/C of COC-VII (N) unit and persons other than store I/C and not maintained records properly in respect of DP posts received from Area SDEs as all the issue slips were not found entered in the stock register of COC-VII (N) unit, by the aforesaid act, Shri. A.K.Gahlot SDE (GO-35600) failed to maintain absolute integrity and acted in a manner unbecoming of a Company employee in violation of Rule 4 (1) (i) & (iii) of MTNL, Conduct, Discipline and Appeal Rules, 1998 ARE NOT ESTABLISHED & the charges levelled against Shri. A.K. Gahalot SDE (GO-35600) that the SPS issued issue slips without consent/counter signature of his controlling DE (CCN) and without preparing ACE-5 in respect of 280 DP posts by the aforesaid act, the said Shri A.K. Gahlot, SDE (GO-35600) failed to maintain devotion to duty in violation of Rule 4 (1) (ii) of MTNL, Conduct, Discipline and Appeal Rules, 1998 ARE ESTABLISHED.

The charges levelled against Shri. A.K. Gahlot SDE (GO-35600) that the SPS has bungled away 55 DP posts/poles in connivance with the fellow employees and the contractors & MTNL has suffered a heavy loss amounting to Rs. 70,400/- towards the cost of 55 DP posts @ 1280/- per post ARE NOT ESTABLISHED.”





9. The issue under consideration, therefore, is limited to the third element of charge, i.e., that the applicant issued slips without consent/countersignature of his controlling officer and without preparing ACE-5 in respect of purchase of 280 DP posts and thus the applicant failed to maintain devotion to duty in violation of Rule 4 (I) (ii) of MTNL, Conduct, Discipline and Appeal Rules, 1998. The issue is whether the competent authority was justified in imposing the penalty on the basis of the conclusions in the inquiry report. The Disciplinary Authority does not cite any rule or instruction on the basis of which the element of charge is said to have been established. It has only been mentioned that it was a day to day practice. The same has been the case at the Inquiry and the Appellate stage. Thus it can be validly inferred that there were no written orders or instructions in regard to this element of charge which has been said to have been established and consequently punishment awarded to the applicant. However, it can also not be lost sight of that many procedures get evolved over a period of time and even when there are no written instructions they cannot be totally ignored though they may not carry the same force as written instructions and orders do.

10. The applicant during the Inquiry has also not refuted that such a practice existed. It was open to him to build up

his defence on these lines leaving it open for the respondents to refute his contention.

11. In view of the above discussion, the conclusion of the Inquiry Officer that the third element of charge is established, in the absence of written orders and instructions, is diluted though not entirely nullified.



12. Under the circumstances, we partly allow the OA and direct that the penalty of withholding of increment be modified to the effect that it would be 'without cumulative effect' instead of 'with cumulative effect'.

There shall be no order as to costs.

(A.K. Bishnoi)
Member(A)

(Justice L. Narasimha Reddy)
Chairman

cc.