

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/01217/2014

HYDERABAD, this the 16th day of October, 2020

**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**



Smt.G.V.Ramana D/o Late Ramarao,
Aged about 42 years, Occ : Regular Mazdoor,
HRMS No.200100286,
(Under the orders of dismissal from service),
O/o Sub Divisional Engineer, E-10 B (Extl),
Vijayawada, R/o H.No.156, G Block,
Vambay Colony, Singh Nagar, Vijayawada.

...Applicant

(By Advocate : Dr.A.Raghu Kumar)

Vs.

1. The Union of India, rep by its Secretary,
Department of Telecommunications,
Ministry of Communications and Information
Technology, 20, Ashoka Road, New Delhi 1.
2. The Bharat Sanchar Nigam Limited,
Rep by its Chairman cum Managing Director,
BSNL Corporate Office, Barakumba Road,
Statesman House, New Delhi 1.
3. The Chief General Manager,
A.P.Telcom, Bharat Sanchar Nigam Limited,
Door Sanchar Bhavan, Nampally Station Road,
Abids, Hyderabad.
4. The Senior General Manager, Telecom District,
BSNL, Vijayawada, Chuttugunta, Vijayawada.
5. The Deputy General Manager (CFA),
O/o Senior General Manager, Telecom District,
BSNL, Vijayawada, Chuttugunta, Vijayawada.
6. The Divisional Engineer (Phones),
Central Division, BSNL, Vijayawada.Respondents

(By Advocate : Mrs.K.Rajitha, Sr.CGSC for R-1,
Mrs.K.Sridevi, SC for BSNL

ORAL ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:



2. The O.A. has been filed challenging the penalty of dismissing the applicant from service.
3. The brief facts of the case are that the applicant was appointed as full time casual labour on 22.11.2001 and her services were regularized. On 6.11.2009, she was convicted and sentenced to simple imprisonment of 3 months in CC No.1049/2008. Consequently, she was placed under suspension on 30.4.2010 and it was followed up by a charge sheet issued under Rule 35 of BSNL (CDA) Rules 2006, proposing a minor penalty against the applicant on 5.5.2010. Respondents withdrew the charge sheet dated 5.5.2010 and in its place, keeping in view the conviction of the applicant in CC No.1049/2008, charge sheet under Rule 40 of BSNL (CDA) 2006 was issued. Rule 40 provides for dispensing with the inquiry and imposing a penalty and the reason given by the respondents to withdraw minor penalty charge sheet is that there were certain technical defects in that charge sheet. Finally, 5th respondent imposed the penalty of dismissal from service on 24.5.2010. Applicant preferred an appeal, which was rejected on 22.6.2010. In the meanwhile, on 10.10.2012, the Criminal Appeal No.211/2009 filed with Metropolitan Sessions Judge, Vijayawada was referred to Lok Adalat, Vijayawada. It ended in a compromise resulting in acquittal, is the version of the applicant.

4. The contentions of the applicant are that the respondents imposing penalty of dismissal from service is grossly disproportionate to the alleged misconduct. Respondents have not properly appreciated the facts and circumstances of the case. The CC No.1049/2008 in which the applicant is alleged to have been convicted and sentenced, has ended in acquittal in Lok Adalat vide order dated 10.10.2012. Therefore, refusal to reinstate the applicant by rejecting her request is bad in law. The action of the respondents in issuing Memo dated 11.5.2010, proposing to dismiss the applicant on the ground of conviction, dispensing with the inquiry by withdrawing the earlier Memo dated 5.5.2010 reflects the malafide and vindictive approach of the respondents.

5. Respondents in their reply statement state that the applicant Smt. G.V. Ramana, regular mazdoor was issued a Memo on 11.5.2010 proposing to award appropriate penalty in accordance with Rule 40(a) of BSNL (CDA) Rules 2006 on the grounds of misconduct which led to her conviction in a criminal case. Applicant was given reasonable opportunity to defend her case. After thorough evaluation of the entire case, the Disciplinary Authority imposed the penalty of dismissal from service w.e.f. 24.5.2010. The ground for dismissal is that the applicant was found guilty of the offence u/S 128 of Negotiable Instruments Act and she was sentenced to undergo simple imprisonment for a period of three months and further sentenced to pay compensation of Rs.5000/- as provided u/s 357 (3) of **CRPC** by the competent court. Appeal preferred by the applicant was rejected on 27.9.2014. The applicant was convicted in a criminal case and, therefore, cannot plead for any leniency.

6. Heard Dr. A. Raghu Kumar, learned counsel for the applicant, Smt. K. Rajitha, Senior Standing Counsel appearing for DoT and Smt. K. Sridevi, learned Standing Counsel for BSNL, and perused the pleadings on record.

7. It is not disputed that the applicant was convicted in a criminal case bearing the No.1049/2008 which resulted in a sentence of simple imprisonment for three months and a fine of Rs.5000/-. When appealed, the sentence of imprisonment was suspended on 30.4.2010. Respondents initiated a minor penalty charge sheet under Rule 35 of BSNL (CDA) Rules, 2006 on 5.5.2010. However, they withdrew the said proceedings for technical reasons and issued notice under Rule 40 of BSNL (CDA) Rules, 2006 keeping in view the conviction of the applicant in CC No.1049/2008 by the competent judge. Disciplinary Authority by invoking Rule 40 of BSNL (CDA) Rules, 2006 dismissed the applicant from service on 24.5.2010 for the reason that the conviction of the applicant was not set aside but the sentence was set aside by the Lok Adalat. Applicant claims that in view of the compromise reached in the Lok Adalat, the issue is fully settled. In this regard, learned counsel for the applicant has submitted the judgement of the Hon'ble High Court of Kerala at Ernakulam **R.G. Vilas Kumar v. Food Corporation of India** in WP (C) No.16011 of 2013 (B) dt. 03.03.2015 wherein it was held that failure to comply with the provisions of the Negotiable Instruments Act cannot be treated as criminal case. The relevant portion of the judgment is extracted herein below:

“8. The conviction for the offence under Section 138 of the Negotiable Instruments Act, has to be differentiated from the offences. The offence under Section 138 of the Negotiable Instruments Act is, in fact, a technical offence in the sense on account of certain contingency if the cheque has to be dishonoured, the drawer of the cheque is liable to be punished under law. If the conviction is for the sole reason that the cheque happened to be dishonoured for want of sufficient





fund, it does not involve any moral turpitude, one may become poorer after issuance of the cheque. The offence under Section 138 of the Negotiable Instruments Act cannot be classified one coming under Annexure to Rule 14 as above. Annexure to Rule 14 in C.C.S. (C.C.A) Rules classify types of cases which may meant action for imposing major penalty.

*9. Considering the facts and circumstances, it cannot be said that such a breach to honour cheque would entail in an offence of moral turpitude. The technical offence in law is understood on account of qualifying certain technical parameters as contemplated in law to attract the offence. Therefore, such offences are more of quasi penal offence and not in offences as understood in general law. The petitioner has been imposed with major penalty of reversion taking note of the conviction under Section 138 of the Negotiable Instruments Act as the retention of the petitioner in the public service found undesirable. In **Kaushalya Devi Massand v. Roopkishore Khore** [(2011) 4 SCC 593], the Hon'ble Supreme Court held that offence under Section 138 of the "Negotiable Instruments Act cannot be equated with offence under Indian Penal Code. It is almost in nature of civil wrong having criminal overtones."*

10. I am of the view, such finding is unsustainable, unless, it is found that the petitioner's conviction as a result of the prosecution against him for any offence of moral turpitude. The retention in public service, necessarily, presuppose that public servant's personal credibility among general public is not lowered due to involvement in any offence of moral turpitude. It refers to thought, action and mind of the public servant to result in lower the image. The disciplinary proceedings without advert to the findings of the criminal court to hold that retention of the petitioner in the public service is undesirable, is therefore, illegal.

11. The judgment of the Criminal Court has been produced before this Court. It shows that the petitioner has been proceeded only for the reason that the cheque has been bounced. No doubt, the petitioner is liable to be proceeded for his absence without informing the authority. As indicated above, the authorities without advert to the findings of the Criminal Court entered into a decision for imposing major penalty, which is per se illegal. Considering that the petitioner has been only convicted for the offence under Section 138 of the Negotiable Instruments Act. I am of the view, the major penalty as now imposed on the petitioner has to be set aside. It is open for the authorities to impose any minor penalty on the petitioner."

It is also seen that the applicant has been proceeded in other criminal cases bearing No.1054 & 224/2008. Learned counsel for the applicant stated that the applicant comes from the lower rung of the society. She was not able to manage her financial issues properly and this has led to her borrowing some money from others. In the process, she was deceived by persons, who gave the loan by demanding more money than what has been lent. However, though these facts cannot be verified by the Tribunal, yet the personal issues of the applicant have not caused any harm to the

organization. Nevertheless, since it reflects on the conduct of the applicant, respondents following the rules took the necessary action. We do not find any fault in regard to respondents proceeding against the applicant as per rules. However, we find that the penalty of dismissal is harsh, shocking and disproportionate to the offence committed by the applicant. Moreover, applicant is from the lower rung of the respondents organization, who would not be fully aware of the conduct rules and the consequences for violation of the same. That much of margin has to be given to Group 'D' employees. Perhaps managing finances was not her forte and in the reply statement it is not said any where that the applicant has caused any loss to the respondents organization financially or otherwise.

Keeping the judgment of the Hon'ble High Court of Kerala, cited supra, in view and other aspects stated above, we set aside the penalty of dismissal imposed vide Memo dated 24.5.2010 and thereupon direct the respondents to impose any penalty other than dismissal, removal and compulsory retirement, so as to meet the ends of justice.

With the above direction, the O.A. is disposed of by granting three months time to the respondents to implement the order. No order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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