

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/20/1336/2014

HYDERABAD, this the 1st day of March, 2021

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



V. Narayana Rao,
S/o. Late V. Venkata Subba Rao,
Aged 58 years, Occ: BSNL Employee,
R/o.18-248-1, English Palem,
Machilipatnam, Krishna District.

...Applicant

(By Advocate: Sri Ch. Satyanarayana)

Vs.

1. The Union of India rep. by its
Sr. General Manager,
Bharat Sanchar Nigam Ltd.,
Vijayawada.
2. The Additional General Manager (HR/Admn),
S.R.G.M. Telecom District,
Bharat Sanchar Nigam Ltd.,
Vijayawada.
3. The Deputy General Manager (HR/ Admn),
S.R.G.M. Telecom District,
Bharat Sanchar Nigam Ltd.,
Vijayawada.
4. The Enquiry Officer / Divisional Engineer,
Bharat Sanchar Nigam Ltd.,
Vijayawada-East.
5. The Divisional Engineer-Telecom,
Bharat Sanchar Nigam Ltd.,
Machilipatnam.

....Respondents

(By Advocate: Smt. K. Sridevi, SC for BSNL)

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

Through Video Conferencing:



2. The OA is filed challenging the penalty of Dismissal from service imposed by the disciplinary authority vide order dt. 26.07.2012, as confirmed by the appellate authority vide order dt. 27.11.2013.

3. Brief facts of the case are that the applicant joined the respondents organization on 9.1.1981 by submitting the original certificates as required and confirmed the same in 1983 when the respondents sought for the same once again. The services of the applicant were confirmed in April 1988. Later, on 7.10.2009 applicant was asked to answer certain questions about his date of birth and while responding to the same, applicant has stated that his date of birth is 12.6.1955 and that he was not aware that his date of birth was recorded as 12.7.1958 in official records. Thereupon, charge sheet was issued on 6.1.2010 containing two articles of charge related to date of birth and SSC marks certificate. Inquiry officer has held that the charges as not proved. However, the Addl. General Manager, the 2nd respondent, has issued the disagreement note and thereupon applicant was dismissed from service on 26.07.2012. Challenging the action of the respondents, OA 963/2012 was filed wherein it was directed to file an appeal for consideration by the respondents. Accordingly, appeal was submitted and the same was rejected on 27.11.2013. Hence, the OA.

4. The contentions of the applicant are that the Addl. General Manager is the disciplinary authority as stated by him in the disagreement note dated 3.5.2011. The charge sheet was issued by the Divisional Engineer Machilipatnam, an authority subordinate to Addl. G.M & DGM, and the penalty was imposed by the DGM (HR). The inquiry officer was appointed by the DGM who is not the disciplinary authority. The entire procedure adopted by the respondents is contrary to Rule 36 of the BSNL CDA Rules 2006 and the dismissal is illegal. The inquiry officer has held that the charges are not proved. All the originals were submitted in 1981 and reconfirmed the fact in 1983 to the respondents.



5. Respondents in their reply statement have stated that the applicant has secured the job of Telephone Operator in 1980 by producing a bogus certificate. Action was taken as per Rules and the applicant was dismissed from service. There is no irregularity in the decision of the respondents.

6. There was no representation for the applicant. It is seen from the record that even in the past, there was no representation for the applicant on several occasions. Very recently, when the matter came up on 10.02.2021, there was no representation for the applicant and therefore, the matter was directed to be listed under the caption 'for dismissal'. Despite doing so, when the matter was listed on 11.02.2021, 24.02.2021 and today i.e. 01.03.2021, there was no representation for the applicant. This shows that the applicant is not interested to prosecute the matter. Respondents counsel

was present. Perused the pleadings on record and since the matter is of the year 2014, it was taken up for hearing.

7. I. The dispute is about dismissal of the applicant by incompetent authority violating the relevant rules on the subject. In this regard, it is appropriate to extract the relevant rules for resolving the dispute and hence they are reproduced hereunder:



Rule 34. Disciplinary Authority

- (1) *The Disciplinary Authority, as specified in the schedule or any authority higher than it may impose any of the penalties specified in Rule 33 on any employee.*
- (2) *The Disciplinary authority competent to impose any of the penalties specified in Rule 33 can institute disciplinary proceedings against any employee.*
- (3) *The Disciplinary Authority competent to impose penalties specified in clause (a) to (e) of Rule 33 can institute disciplinary proceedings against any employee for the imposition of any of the penalties in clause (f) to (j) of Rule 33, **Notwithstanding that such disciplinary authority is not competent under these rules to impose any of the later penalties. However, the competent Disciplinary Authority as per the schedule shall issue the final orders imposing Major Penalty.***

Thus, Rule 34 (3) of BSNL CDS Rules 2006, would make it clear that the DE (Divisional Engineer) who can impose minor penalties under Rule 33, can issue the charge sheet for imposition of major penalty. Hence, the contention that the DE is not competent to issue the charge sheet is invalid.

II. The next contention is that the DGM cannot impose the penalty of dismissal as the Addl. DGM has issued the Disagreement Note and hence, he alone can impose the penalty as disciplinary authority. However, a reference to the schedule of powers at Sl. No. 2, as extracted hereunder, the DGM is competent to impose major penalties in respect of employees of the grade of the applicant.

**SCHEDULE OF APPOINTING, DISCIPLINARY, APPELLATE AND
REVIEWING AUTHORITY IN BSNL FOR NON-EXECUTIVES**

**(FOR ABSORBED GROUP 'C' & 'D' & EQUIVALENT DIRECTLY
RECRUITED NON-EXECUTIVES)**



Sl. No.	Group Category & Pay Grade	Appointment Authority	Disciplinary Authority		Appellate Authority for Major Penalty & Reviewing Authority for minor penalty	Reviewing authority for major penalty
			Minor Penalty	Major Penalty		
1	NE-1 to NE-4* (Group D) Maximum of scale up to Rs.6,200/-	STS Group A/ DE/CAO/ Equivalent officer	JTS Group A/ Sr.SDE/SDE/ Sr.AO/AO/ Equivalent officer	STS Group A/ DE/CAO/ Equivalent officer	DGM concerned/SE/ Equivalent officer	GM concerned/ CE/ Equivalent officer
2	NE-5 to NE-11* (Group C) Maximum of scale up to Rs.12,245/-	DGM concerned/ SE/ Equivalent officer	STS Group A/ DE/ CAO/ Equivalent officer	<u>DGM concerned/</u> <u>SE/</u> <u>Equivalent officer</u>	GM concerned/CE/ Equivalent officer	CGM concerned/ Equivalent officer

Hence, even this contention of the applicant that the DGM is incompetent does not hold good.

III. Further, the disagreement note vividly brings out the fact that the Head Master of ZP High School, Chennuru has deposed that the applicant did not study in his school and the Headmistress of BGK ZP High School, Pedana has confirmed that the applicant studied in his school. The relevant portion of the disagreement note dated 03.05.2011 (Annexure A-6) is extracted herein below:

“DISAGREEMENT

WHEREAS a charge memo was issued to Sri V. Narayana Rao, SPS (O), O/o. Sub-divisional Engineer (Intl.), Machilipatnam under Rule 36 of BSNL CDA Rules – 2006, vide DET Machilipatnam Memo No.X/VNR/DET.MPM./09-10/4 dated 06.01.2010.

WHEREAS the Inquiry Officer submitted the inquiry report, vide Lr. No. VTD/X/Rule-36/VNR/2009-10/42 dated 15.03.2011, concluding the articles of charge as not proved.

On perusal of the Inquiry Report, I, the Disciplinary Authority, propose to disagree with the conclusion of the Inquiry Officer in the Inquiry report on the following grounds.

1. *The articles of charge framed against the Charged Official are with respect to bogus SSC marks certificate and false date of birth at the time of recruitment.*
2. *The PW 1, (vide deposition dated 4.12.2010) who is the headmistress of BGK ZP High School, Pedana, deposed in the inquiry that the Charged Official studied in their school from 6th to 10th class from 1967 to 1972. The PW1 further deposed that the SSC marks of the Charged Official as per the school records as 288/600 marks. And that the date of birth of the Charged Official is 12.06.1955.*
3. *The PW2 who is the headmaster of ZP High School, Chennur deposed (Deposition dated 4.12.2010) that the Charged Official did not study in their school as per their school records and to that effect he had given the letter.*
4. *The Charged Official obtained the job on the strength of a certificate as per which the Charged official studied in ZP School in Chennur and his marks 88% in SSC and date of birth as 12.07.1958.*
5. *The PW 1 is the headmistress of the school in which the Charged Official actually studied and she deposed as per the school records. The Inquiry Officer offered cross examination and the Charged Official preferred no cross examination. Similarly, the PW2 is the headmaster of the School in which the Charged Official is purported to have studied SSC and submitted a certificate to that effect and obtained the employment. PW 2 deposed that the Charged official did not study in his school.*
6. *The two witnesses are relevant witnesses, the deposition is in front of the Inquiry Officer, in the present of the Charged Official and the Charged Official did not cross examine the prosecution witnesses on his own choice. Such a deposition gains the highest evidentiary value. These depositions in the absence of any contrary answers during the cross examination are sufficient to hold the charges as proved. As per their depositions, the charges are fully proved.*

Now, therefore, I, T. Vara Prasad, Additional General Manager (HR/Admn), O/o. Senior General Manager, Telecom District, Vijayawada and Competent Disciplinary authority in this case, conclude that the articles of the charge are proved. A copy of the Inquiry Officer report is enclosed herewith and the Charged Official, Sri V. Narayana Rao, SPS (O), may make a representation on the disagreement on the Inquiry Officer report within 15 days. In case, no representation is received, it shall be presumed that the charged official has no comments to offer and the case shall be decided without the same."

The disagreement note has, in no uncertain terms, brought out the wrong doing of the applicant.

IV. The inquiry report was submitted to the DGM and the post was re-designated as Addl. GM with the corollary vide letter dated 13.12.2010 affirming that consequent to the re-designation, there will be no change in the posting, substantive status, pay duties and responsibilities of the concerned officer. The Addl. GM has issued the disagreement note and the



DGM imposed the penalty as per rules in vogue, as stated above. It requires no elaborate argument to establish that the SSC marks certificate obtained from Head Master, ZP High School, Chennuru, with higher percentage of 78% was with a motive of securing employment by unfair means. In fact, applicant studied SSC in 1972 from BGK ZPP High School, Pedana and secured 48% marks. The facts that the applicant did not study in Chennuru and that he has studied at Pedana have been confirmed by the respective Heads of the schools, as indicated in the disagreement note. Consequently, the date of birth shown as 12.7.1958 is incorrect and the correct date of birth is 12.6.1955, keeping in view the depositions of the respective Heads of the schools under reference. Even in his written defence statement dated 13.01.2011 to the charge memo, applicant has stated that he has studied in Pedana School and his exact date of birth is 12.06.1955 and he belatedly noticed that his DOB is shown as 12.07.1958. Even assuming that the applicant was not aware of the date of birth written in the Service Record, it was not explained as to how he could write the date of birth as 12.7.1958 in Form III. Though the applicant had submitted the originals in 1981 as claimed, but the fact remains that they are not genuine as seen from the facts stated supra.



V. The applicant further contends that the respondents have themselves stated that as per records available with BSNL the applicant studied SSC at BGK ZPP High School, Pedana in the year 1972 and has secured 48% marks with date of birth as 12.6.1955. When the records state so, there was no need to allege that he has submitted a bogus SSC certificate. Besides, the applicant asserts that if he were to submit bogus

certificates, the records of the respondents should not disclose that applicant had studied SSC in the year 1972 at BGK ZPP High School, Pedana and secured 48%. This is an illogical averment as the entire episode arose due to the fact that the applicant had obtained employment by submission of a certificate, which is not genuine. If he were to submit the original certificate with 48% marks, probably, he would not have got employment. However, the important aspect is the integrity of the person seeking employment in a Government/ Public Sector organization. If one lacks integrity, then he is unfit to be given a job, wherever it may be, either private, public or Govt. Illegality of producing fake certificates, like in the present case and obtaining employment cannot be upheld at any cost.



VI. Thus, from the above, it is clear that the respondents have acted within the domain of rules. We find no error in their decision of dismissing the applicant. As a result, we find no merit in the OA and hence, the same is dismissed, with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

/evr/