

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/01173//2018

HYDERABAD, this the 19th day of October, 2020

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



J.GANESH PATNAIK S/o Late Gurunadham,
Aged about 58 years,
Occ : Personal Secretary to Principal General Manager (CM),
Gr.'B', O/o C.G.M. Telecom, A.P. Circle, 2nd Floor,
BSNL Bhavan, Chuttugunta, Vijayawada-520004,
R/o H.No.32-41-31, 2nd Lane, Revenue Colony,
Machavaram Down, Vijayawada-520004 (A.P.)

...Applicant

(By Advocate: Mr. J.Giridhar)

Vs.

1. The Union of India, Rep by its Secretary,
Department of Telecommunications,
Government of India, Sanchar Bhavan,
NEW DELHI-110001.
2. The Bharat Sanchar Nigam Limited,
Rep by its Chairman & Managing Director,
BSNL Corporate Office, Bharat Sanchar
Bhavan, Harish Chandra Mathur Lane,
Janpath, NEW DELHI-110001.
3. Director (HR),
Bharat Sanchar Nigam Limited,
BSNL Corporate Office, Bharat Sanchar
Bhavan, Harish Chandra Mathur Lane,
Janpath, NEW DELHI-110001.
4. The Chief General Manager, Telecom.,(BSNL)
Andhra Pradesh Telecom Circle, 4th floor,
BSNL Bhavan, Chuttugunta,
Vijayawada-520004.
5. Sr. General Manager (CMTS),
Andhra Pradesh Telecom Circle, 2nd floor,
BSNL Bhavan, Chuttugunta,
Vijayawada-520004.



6. The General Manager, BSNL,
Telecom District, 1st Floor,
BSNL Bhavan, Chuttugunta,
Vijayawada-520004.
 7. Sri K.V.S.RAJU,
Deputy General Manager, BSNL,
O/o G.M.Telecom District,
BSNL Bhavan, Chuttugunta,
Vijayawada-520004.
 8. Smt.MYNENI VENKATA BASAVAPURNA,
Junior Accounts Officer (CM),
Emp No.6605 HR No.198701175,
O/o G.M.Telecom District,
BSNL, Ground Floor,
BSNL Annexe Building
Chuttugunta,Vijayawada-520004.
 9. Sri A.UPENDRA RAO S/o Vijaya Krishna,
Office Superintendent (General),
Emp. No.5662, HR No.198206502,
Accounts Officer (Planning) Section,
O/o G.M. Telecom District, BSNL,
2nd Floor, BSNL Bhavan, Chuttugunta,
Vijayawada-520004.
 - 10.Sri DITTAKAVI SRIKRISHNA,
Chief Manager (F&A),
O/o. Zonal Head, National Small Industries Limited,
Branch Office, 203, Sri Dattasai Complex,
RTC Cross Roads, Hyderabad-500020.
 - 11.Smt.V.B.T. SUNDARI, Accounts Officer,
O/o General Manager, Telecom District,
BSNL, 1, Hospital Road,
CUDDALORE-607001.
- ... Respondents

(By Advocate: Mrs. K.Rajitha, Sr. CGSC for R-1 &
Mr. M.C.Jacob, SC for BSNL for RR 2 to 6)

ORDER (ORAL)**Hon'ble Mr. B.V. Sudhakar, Admn. Member**

2. The OA is filed to set aside the punishment imposed by the CGM, Telecom, A.P. Circle vide order dt. 30.07.2016, as confirmed by the 3rd respondent on 7.3.2018.




3. Brief facts of the case are that the 8th respondent lodged a complaint on 23.7.2013 against the applicant alleging misbehaviour, sexual harassment and spreading false rumours about her. Based on the complaint, an Internal Complaints Committee was formed which observed that most of the incidents complained about happened outside the office premises and therefore the aspect of sexual harassment cannot be proved. However, it being a fact that a serious altercation between the applicant and complainant occurred in the office premises on 19.7.2013, disciplinary action was recommended against both. Charge memorandum was thus issued on 27.1.2014 and an inquiry was conducted, wherein charges were held to be proved to the extent indicated therein. Disciplinary authority imposed the penalty of Reduction by two stages in the time scale of pay for a period of 2 years with attendant implications. Appeal preferred by the applicant has also been rejected. Aggrieved, OA is filed.

4. The contentions of the applicant are that the complaint made by the 8th respondent is vague and baseless. The complaint was made only after the 8th respondent assaulted the applicant. Sri L. Anatharam, working as CGM, Telangana Circle is not the competent disciplinary authority to impose the penalty vide order dt.30.07.2016 since the applicant is working under CGM, A.P Circle. Even the penalty order is not a speaking order and not given by the disciplinary

authority on his own. I.O. report is illegal since the inquiry was not conducted as per rules and there was no evidence to prove the charges. Applicant made many averments in regard to evidence tendered during the inquiry. Disciplinary authority has failed to analyse the submissions made against the I.O. report and that he has sought approval of BSNL Corporate Office, which is an appellate authority, instead of passing orders using his own discretion. Appellate authority is the Director working at BSNL, HQ who has approved the punishment order of the disciplinary authority. Appeal was preferred on 3.10.2016 and the same was not disposed even after lapse of one year. The appeal was rejected on 07.08.2018 by the 3rd respondent and communicated to the applicant on 23.08.2018 (Annexure A-1). Applicant relied on the Hon'ble Supreme Court judgment in *State of U.P. v. Mohd. Shariff*, 1982 (2) SLR SC 265 and vigilance guidelines to assert that the charge sheet has to be specific in respect of its details.

5. Respondents in the reply statement submit that the applicant while working as PS to the 6th respondent was issued a charge memo for misbehaving with Smt. M.V. Basava Purna, Phone Supervisor, the complainant, and for the altercation that happened between them in the office premises. Internal Complaints Committee (for short "*ICC*") constituted for the purpose, found the applicant and the complainant to have indulged in grave misconduct and for the same, charge memo was issued to the applicant. I.O. and P.O. were appointed and disciplinary inquiry was conducted. I.O. held the charges to be proved to the extent of spreading false rumours against the complainant and for the incident that happened on 19.7.2013 in the office premises. Based on the I.O. report, Disciplinary Authority has imposed the penalty of reduction by two stages with attendant consequences on 3.7.2016. Appeal was preferred on 3.10.2016 and the same was



rejected on 7.8.2018. Witnesses during the inquiry have confirmed that the applicant has portrayed the character of the complainant in poor light and that in the incident on 19.7.2013, the applicant had a role to play. Competent authority, but not the appellate authority, has given the approval to the disciplinary authority, i.e. CGM, Telangana Circle, for issuing the penalty order since A.P. Circle commenced Administrative operations from 1.10.2016 though it was formed on 1.6.2016. Till such time, the CGM, Telangana Circle was the administrative head and the disciplinary authority. The charges are serious in nature and hence, penalty imposed is proportionate to the offence committed. Complainant was also proceeded on disciplinary grounds. In departmental inquiry strict adherence to evidence act is not required.

Applicant filed a rejoinder and written submissions. We have gone through the contents therein carefully.

6. Heard both the counsel and perused the pleadings on record.

7. I. It is not in dispute that there was altercation between the applicant and the complainant, Smt. M.V.Basava Purna on 19.7.2013 which led to the constitution of ICC to inquire into the complaint of sexual harassment made by the complainant. ICC held that charges of sexual harassment are not maintainable and at the same time held that disciplinary action be initiated for the objectionable altercation that took place between the applicant and the complainant. Charge memo was thus issued on 27.1.2014 and I.O/P.O were appointed. The articles of charge are as follows.

“ARTICLE – I

That the said Sri J. Ganesh Patnaik, Personal Secretary (HRMS No. 198208720) working under Senior General Manager (CMTS), Vijayawada, was alleged in a complaint, dated 23.07.2013, submitted by Smt. Myneni Venkata Basava Purna, Phones Supervisor (O), working in VAS Section, under Accounts Officer (VAS), O/o. Sr. General Manager, Telecom District, Vijayawada that he had misbehaved with her and also harassed her sexually for the past five years. Also, he had spread false rumors about her character, causing mental agony and physical ill-health to her.



Thus Sri J. Ganesh Patnaik, Personal Secretary (HRMS No. 198208720) acted in a manner unbecoming of a public servant, failed to conduct in a manner conducive to the best interest of BSNL, by committing the acts subversive of discipline and good behaviour, lowering the image of the Company in the eyes of the public and spreading false rumors or false information, in contravention of Rule 4(1) (c) (d) and thereby committed the acts of misconduct under Rule 5(2), (25) and (35) of BSNL CDA Rules, 2006.

ARTICLE – II

That the said Sri J. Ganesh Patnaik, Personal Secretary (HRMS No. 198208720) working under Senior General Manager (CMTS), Vijayawada and Smt. Myneni Venkata Basava Purna, Phones Supervisor (O), both had serious altercation at about 1100 hours on 19.07.2013, leading to ruffle and scuffle in the corridor of 3rd floor of BSNL Annexe Building, Vijayawada which had been witnessed by gathering.

Thus Sri J. Ganesh Patnaik, Personal Secretary (HRMS No. 198208720) acted in a manner unbecoming of a public servant, failed to conduct in a manner conducive to the best interest of BSNL, by committing the acts subversive of discipline and good behaviour, lowering the image of the Company in the eyes of the public and spreading false rumors or false information, in contravention of Rule 4(1) (c) (d) and thereby committed the acts of misconduct under Rule 5(2), (25) and (35) of BSNL CDA Rules, 2006.”

II. I.O. held the charges as proved to the extent of spreading false rumours about the character of the complainant and for the incident that took place on 19.7.2013. Inquiry was held wherein 18 documents, 6 witnesses were examined over a period of nearly 1 year 3 months. Prosecution witnesses examined have tendered evidence that the applicant did speak about the character of the complainant in poor light and that he was also responsible for the unsavoury incident on 19.7.2013. Applicant has also introduced documents and 2 witnesses and he cross examined the witnesses at length. Therefore, it cannot be said that the

inquiry was not conducted in a proper manner. Applicant by presenting material in regard to the examination/cross examination of the witnesses is pressing for re-appreciation of evidence, which is impermissible under law, as observed by the

Hon'ble Apex Court in the *State of Bihar vs Phulpari Kumari* on 6 December, 2019 in Civil Appeal No. 8782 of 2019 (Arising out of SLP (C) No.21197 of 2019), as under:



6. The criminal trial against the Respondent is still pending consideration by a competent criminal Court. The order of dismissal from service of the Respondent was pursuant to a departmental inquiry held against her. The Inquiry Officer examined the evidence and concluded that the charge of demand and acceptance of illegal gratification by the Respondent was proved. The learned Single Judge and the Division Bench of the High Court committed an error in reappreciating the evidence and coming to a conclusion that the evidence on record was not sufficient to point to the guilt of the Respondent. It is settled law that interference with the orders passed pursuant to a departmental inquiry can be only in case of 'no evidence'. Sufficiency of evidence is not within the realm of judicial review. The standard of proof as required in a criminal trial is not the same in a departmental inquiry. Strict rules of evidence are to be followed by the criminal Court where the guilt of the accused has to be proved beyond reasonable doubt. On the other hand, preponderance of probabilities is the test adopted in finding the delinquent guilty of the charge. The High Court ought not to have interfered with the order of dismissal of the Respondent by re-examining the evidence and taking a view different from that of the disciplinary authority which was based on the findings of the Inquiry Officer.


Therefore, re-appreciation of evidence is not permitted if in a departmental inquiry the charges are held to be proved unless there is no evidence to prove the charges.

In the instant case, there was adequate evidence which was relied upon by the I.O. to prove the charges. Hence, the elaborate details presented by the applicant in respect of the examination of witnesses in the OA will be of no consequences, once the charges are held to be proved to the extent indicated based on evidence, by the I.O.

III. Respondents submit that the applicant had friendly relationship with the complainant over the years and that since their relationship turned sour, the

ugly incident occurred in the office premise, which is serious and hence disciplinary action was initiated against both. Applicant taking objection to this submission of the respondents is untenable since the respondents have every right to place facts which led to the issue of the charge sheet. However, these facts have not been taken as a basis to impose the penalty referred to. Being the PS of the CGM, it is expected of the applicant to conduct himself in a manner befitting his position and not indulge in an altercation with a female employee in the office premise. The Inquiry Officer has held the charges proved to the extent that the applicant spread rumours about the character of the complainant and responsible for the incident in question and we do not find anything amiss in regard to the conduct of the inquiry proceedings by the I.O, as alleged by the applicant.

IV. The CGM is the disciplinary authority for the grade of PS. Applicant was working as PS in A.P. Circle and hence, he claims that only CGM, A.P. Circle should be his disciplinary authority. Respondents have clarified that A.P. Circle was formed on 1.6.2016 but its administrative functioning commenced from 1.10.2016. Till that time, the CGM, Telangana Circle was looking after A.P. Circle and hence he was permitted by the competent authority, Director BSNL to pass the order in the disciplinary case against the applicant. Even presuming that the CGM A.P Circle was posted and was attending to official work, as claimed by the applicant, it is for the competent authority to decide as to who could be the disciplinary authority in any given circumstances. The important aspect is that the disciplinary authority has to be at the level of CGM which was ensured. We, therefore do not find any error with the decision of the competent authority to permit CGM, Telangana Circle to issue the disciplinary proceedings. In fact, the competent authority has the competency to appoint adhoc disciplinary authority



and in this background, directing the CGM, Telangana Circle to pass orders cannot be found fault with. It is to be noted that the Director, BSNL has not issued directions as appellate authority but as the competent authority and, this distinction should not be lost sight of. The disciplinary authority after considering the I.O. report and the defence of the applicant has imposed the penalty of Reduction by two stages in the time scale of pay for a period of 2 years and that he will not earn increments of pay during the period of reduction and on expiry of the reduction period, the reduction will have effect of postponing future increments of his pay, with immediate effect. We note that no malafide has been attributed to the Disciplinary Authority in imposing the penalty. Respondents have been liberal in imposing the penalty, given the damage done to the institution caused because of the facts of the case. In cases of the nature in question we often found the Govt of India imposing stringent punishments to eliminate reoccurrence of events which compromise the image of the institution and particularly involving female employees.

V. Departmental proceedings rely on preponderance of probabilities to prove charges and hence, strict application of provisions of the Indian Evidence Act is not a necessary requirement. Moreover, in regard to the incident happened in the office premises, the applicant was given ample opportunities to defend himself in the inquiry, which he did by examining many witnesses and perusing relevant documents produced by either side. The requirement of minute technical details are not required unless applicant attributes motive to the officials who deposed. Applicant is focussing on technicalities pertaining to the conduct of the inquiry and the incident, more than as to whether the incident took place or not and whether there was evidence to prove the charges. I.O. has proved that the

applicant was responsible for the incident and that he was spreading rumours showing the complainant's character in a manner which is objectionable. Complainant and the witnesses held their ground during the inquiry and hence, it cannot be held that it is a case of no evidence. Ultimately, it is substantive justice which will prevail over technical justice as observed by the Hon'ble Supreme Court in State, Rep. by Inspector of Police, CBI vs. M Subrahmanyam on 7 May, 2019 in Crl. Appeal No(s). 853 of 2019 (arising out of SLP (Crl.) No(s). 2133 of 2019), as under:




8. *In Bihar State Electricity Board vs. Bhowra Kankanee Collieries Ltd.*, 1984 Supp SCC 597, the Court opined:

“6. Undoubtedly, there is some negligence but when a substantive matter is dismissed on the ground of failure to comply with procedural directions, there is always some element of negligence involved in it because a vigilant litigant would not miss complying with procedural direction..... The question is whether the degree of negligence is so high as to bang the door of court to a suitor seeking justice. In other words, should an investigation of facts for rendering justice be peremptorily thwarted by some procedural lacuna?”

9. The failure to bring the authorisation on record, as observed, was more a matter of procedure, which is but a handmaid of justice. Substantive justice must always prevail over procedural or technical justice. To hold that failure to explain delay in a procedural matter would operate as res judicata will be a travesty of justice considering that the present is a matter relating to corruption in public life by holder of a public post. The rights of an accused are undoubtedly important, but so is the rule of law and societal interest in ensuring that an alleged offender be subjected to the laws of the land in the larger public interest. To put the rights of an accused at a higher pedestal and to make the rule of law and societal interest in prevention of crime, subservient to the same cannot be considered as dispensation of justice. A balance therefore has to be struck. A procedural lapse cannot be placed at par with what is or may be substantive violation of the law.”

The substantive justice is that the incident occurred and that the applicant showed the complainant in poor light for which he was penalised by the disciplinary authority for grave misconduct. Technical details like time, date etc. do not brush aside the fact as to whether the incident occurred or not. The inquiry has proved that the applicant was involved in the incident and that he had spread



insalubrious rumours about the complainant. Applicant in the rejoinder has again submitted many technical details which do not disprove findings of the Inquiry Officer. As for example, competent authority has to decide as to who could be the disciplinary authority in given circumstance and definitely not the applicant. In view of the bifurcation of the State of A.P, the CGM Telangana, was asked to act as disciplinary authority since the A.P. Circle was in the formative stage. As already stated earlier, presuming that the CGM, A.P. Circle was on duty, though not admitted by the respondents, it does not bar the competent authority to appoint a disciplinary authority. What is relevant is that an Officer of the rank of CGM has dealt with the disciplinary proceedings in question. When the CGM has decided the repeated objections of the applicant on this count do not hold water. Principles of Natural justice require reasonable opportunity to be granted to the applicant to defend himself. Applicant was given ample opportunities to protect himself in the inquiry which he availed and therefore, stating that Principles of Natural Justice have not been followed is not maintainable. It was for the applicant who was occupying a responsible to have shown restraint than indulging in despicable spat in the open office and that too, with an individual belonging to the fairer sex. Applicant was expected to actively assist Sr. General Manager in discharging his duties and instead, he became a source of embarrassment to the administration because of the issue adjudicated upon.

VI. Respondents did not spare even the complainant for the incident and she too was proceeded on disciplinary grounds. Therefore, the occurrence of the incident is a reality and the minor details are not very significant as this is not a criminal case warranting application of the Evidence Act in the strictest sense. In view of the above, the Hon'ble Apex Court judgment cited by the applicant would not

render any assistance to him. Appeal of the applicant was also rejected by the appellate authority. Ld. Counsel for the applicant submitted that since the complainant was penalised it proves that the applicant was innocent. We do not agree with this submission since the applicant was equally responsible for the incident and the charges were held to be proved by the I.O. to the extent indicated in paras supra, by holding an inquiry for more than a year involving a large number of documents and witnesses from either side.



VII. Applicant has also contended that the disciplinary authority has not issued a speaking order by properly analysing the facts of the case. This is not true since the disciplinary authority after stating the broad facts of the case and taking the I.O. report as well as the defense of the applicant into consideration has clearly observed as under:

“1. During inquiry proceedings all the state witnesses deposed that the charged officer made calls to them and commented badly about the character of Smt. M. Basava Purna. This has not been denied by him.

2. Mere contention of proofs i/r/o audio of calls or telephone call details cannot absolve the charged officer from the charges.

3. The degree of proof that has been demanded by the charged officer during the inquiry is not required in the departmental inquiries. The Inquiry Officer concluded the charges as proved basing on the depositions and documents.

4. Further the Defence Witnesses also deposed that they were unaware of the incidents prior to that of 19.07.2013.

5. As far as the Article II of the charge regarding serious altercation with Smt. Myneni Venkata Basava Purna, Phones Supervisor (O) leading to ruffle and scuffle in the office premises, the IO rightly observed it as consequence of earlier misbehaviour of the charged officer.”

Therefore, the order, based on the analysis of the facts, is a speaking order giving reasons for the imposition of the penalty.

VIII. In view of the aforesaid circumstances, viewed from any angle, we do not find any merit in the OA and hence, is dismissed with no order as to costs.



(B.V. SUDHAKAR)
MEMBER (ADMN.)

(ASHISH KALIA)
MEMBER(JUDL.)

/evr/