

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.**

**OA No.108/2020 with MA Nos.128/2021
This the 17th day of September, 2021**

Reserved on : 25.06.2021
Pronounced on : 17.09.2021

**Coram : Hon'ble Shri J.V.Bhairavia, Member (J)
Hon'ble Shri A.K.Dubey, Member (A)**

Suhas Gopal Kamble
Aged : 49 years (DOB being 17.06.1970)
Son of Late Shri Gopal Krishna Kamble
Presently serving as General Manager (OP),
In the O/o PGTMD, BSNL,
Ahmedabad, Telecom District, Gulbai Tekra,
BSNL& Presently Residing at
No. 4011, 4th Floor, Sai Sharan Building, Sarkhej Road,
Vasna, Ahmedabad – 380 007Applicant

(By Advocate : M.S. Rao)

Versus

- 1 Bharat Sanchar Nigam Limited,
(To be represented through
its Chairman & Managing Director,
Ground Floor, Eastern Court Building,
Janpath, New Delhi – 110 001.
- 2 Shri Pravin Kumar Purwar,
Chairman & Managing Director,
Bharat Sanchar Nigam Limited,
BSNL Hqrs, Ground Floor,
Eastern Court Building, Janpath,
New Delhi – 110 001.
- 3 The Chief General Manager,
Bharat Sanchar Nigam Limited,
Gujarat Telecom Circle, Telecom Building,
Navrangpura, Ahmedabad – 380 009.
- 4 Shri Ashok Kumar Upadhyay,
(Inquiring Authority),
Principal General Manager Telecom District(PGMD)
Rajkot Telecom District, BSNL,
Loha Nagar Road, Rajkot – 360 002. Respondents

(By Advocate : Mr. Joy Mathew)

ORDER**Per : Hon'ble Shri J.V. Bhairavia, Member (J)**

1. In the instant OA, being aggrieved by the appointment of inquiring authority, vide order dated 10/01/2020 (Ann. A/1) with respect to charge memorandum dated 02/08/2019, as also letter dated 02/03/2020 whereby the applicant herein was directed to remain present for preliminary hearing and also aggrieved by letter no. VIG/Rajkot/Inquiry/Shri Suhash Gopal Kamble/2020-21/3 dated 02/03/2020 (Ann. A/3) whereby he was supplied the copy of charge sheet and instructed to submit the name of his defence assistance and the list of his defence documents to be presented during the hearing, the applicant herein has filed the present OA under Section 19 of the A.T. Act, 1985 seeking the following reliefs :

"Para 8 :-

- A *call upon the respondents herein to produce before this Hon'ble Tribunal all the original files, notings, correspondence exchanged amongst them, giving rise to the issuance of the (i) the impugned order bearing No.15-19/MH/2019/VM-VI dated 10.01.2020 at Annexure A/1 hereto issued by the respondent no.2 herein, (ii) the impugned communication bearing No. VIG/Rajkot/Inquiry/Shri Suhash Gopal Kamble/2020-21/4 dated 02.03.2020 at Annexure A/2 issued by the Respondent No.4 herein as also (iii) the impugned communication bearing No.VIG/Rajkot/Inquiry/Shri Suhash Gopal Kamble/2020-21/3 dated 02.03.2020 at Annexure A/3 issued by the Respondent No.4 herein.*
- B *upon its perusal of the aforesaid original documents, your Lordships may be further graciously pleased to:-*
 - B-1 *quash and set aside the (i) the impugned Order bearing No.15-19/MH/2019/VM-VI dated 10.01.2020 at Annexure A/1 hereto issued by respondent no.2 herein, (ii) the impugned communication bearing No. VIG/Rajkot/Inquiry/Shri Suhash Gopal Kamble/2020-21/4 dated 02.03.2020 at Annexure A./2 issued by the Respondent No.4 herein as also (iii) the impugned communication bearing No. VIG/Rajkot/Inquiry/Shri Suhash Gopal Kamble/2020-21/3 dated 02.03.2020 at Annexure A/3 issued by the Respondent No.4 herein;*
- C *issue appropriate directions commanding all the respondents herein to restrain themselves, their officers, representatives, agents, etc., from proceedings any further in whatsoever manner, in pursuance of the Charge Memorandum bearing*

No.VIG/014528/1700/Rule 36/99301861 dated 02.08.2019 at Annexure A/7 hereto as also the impugned documents at Annexure A/1 to Annexure A/3 hereto, during the pendency of criminal case which is currently pending before the Learned Sessions Judge, Court of Sessions, Ratnagiri, Maharashtra is pursuance of the filing of the Criminal Charge Sheet dated 20.11.2017 at Annexure A/6 hereto before the said Learned Court of Sessions, Ratnagiri, Maharashtra.

D grant such other and further relief/s as may be deemed fit and proper in the peculiar facts and circumstances of the present case."

2. It is apt to mention that initially the present OA was dismissed by Learned Single Member of this Tribunal vide order dated 06/03/2020. Aggrieved by it, the applicant herein had approached the Hon'ble High Court of Gujarat by way of filing SCA No. 6616/2020 on the ground of jurisdiction and power of the Single Member of this Tribunal to decide issue related to disciplinary proceedings. The Hon'ble High Court after considering the Appendix – I under Rule 18(c) of the Central Administrative Tribunal Rules of Practice, 1993 held that the list specified in the Schedule of Appendix – I does not include the cases relating to the departmental proceedings and the said subject matter falls under the purview of Division Bench of the Tribunal only. Accordingly, the Hon'ble High Court vide its 26.02.2021 quashed and set aside the impugned order dated 06/03/2020 passed by Single Member of this Tribunal and the said SCA came to be disposed of by remitting the matter back to this Tribunal with a direction to decide the OA afresh by Division Bench. The said order has been produced by the applicant by filing MA No. 128/2021 and has further sought relief for direction to restrain the inquiry authority from continuing with departmental inquiry during the pendency of this OA. Due to prevailing second wave of Covid – 19 pandemic the present OA was not taken up for final hearing expeditiously. After some time, on the request of counsel for the parties present OA has been taken up for the final hearing.

3. The facts of the case in brief are as under :

3.1 The applicant while working as General Manager, BSNL, Ratnagiri, Maharashtra an FIR, dated 29/03/2016 for the alleged offence under Section 120B of the IPC and under Sections 7, 12

& 13(2) r/w Section 13(1) (a) of the Prevention of Corruption Act, 1988 was registered against him by the CBI, ACB, Mumbai. After completion of the investigation Charge-sheet dated 20.11.2017 yielded from said FIR was filed by the prosecuting authority and the said criminal case / proceeding is pending before the before the Court of Special Judge CBI at Ratnagiri, Maharashtra. Thereafter, the applicant came to be transferred from Maharashtra and posted in Gujarat Telecom Circle at Ahmedabad, Gujarat.

- 3.2** When the applicant was serving as General Manger, BSNL, in O/o PGTMD, a charge memorandum dated 02.08.2019 (Annexure A/7), for major penalty under Rule 36 of BSNL, CDA Rules, 2006 was issued by respondent no. 2 herein, being the applicant's disciplinary authority for the charges that while he was working as GM, Ratnagiri, Sanchar, BSNL committed gross misconduct during the period 2015-16 being public servant abuse his office position in as much as he indulged in corrupt activities by obtaining illegal gratification from various contractors of BSNL at Ratnagiri and Sindhudurg Districts and thereby contravened Rule No. 4(1)(a), (4)(1)(b), 4(1)(c) and 5(2) CDA Rules, 2006. Alongwith charge memorandum dated 02.08.2019 applicant was served with Article of Charge (Annexure - I), statement of imputation (Annexure - II), List of documents (Annexure – III) and the list of witnesses (Annexure – IV) and he was directed to submit a written statement of his defence and also to state whether he desires to be heard in person.
- 4.** In response to charge memorandum dated 02.08.2019, the applicant had submitted his formal representation dated 09.09.2019 requesting the disciplinary authority to forthwith suspend the current disciplinary proceedings since the charge levelled against him were identical to the charges levelled by the CBI, ACB, Mumbai in the Criminal Charge Sheet dated 20.11.2017
- 5.** It is stated that the disciplinary authority vide Order No.15-19/MH/2019/VM-VI dated 10.01.2020 (Annexure A/1) appointed

respondent no.4 herein as Inquiring Authority to inquire into the charges framed against the applicant. Subsequently, the Inquiry Authority vide letter dated 02.03.2020 (Annexure A/2) as also by separate letter of the same date i.e. 02.03.2020 (Annexure A/3), informed the applicant about the date and time of Preliminary Hearing scheduled on 19.03.2020 and instructed the applicant to remain present on said date at given address. Further as per Annexure A/3, has sent copy of the charge sheet to the applicant and instructed him to submit the name his defence assistance and the list of defence documents. Hence, the instant OA.

6. Learned Counsel Mr. Rao submits that on conjoint reading and perusal of the criminal charge sheet (Ann. A/6) as also the departmental charge memorandum (Ann. A/7) the allegations levelled against the applicant are the same and identical. The charges levelled against the applicant in criminal case is of grave nature which involved complicated question of law and therefore it is expedient and necessary that disciplinary proceedings should not be permitted any further in the light of law laid down by Hon'ble Apex Court in Capt. M Paul Anthony Vs. Bharat Gold Mines Limited reported in 1999 (3) SCC 679 and urged that the Disciplinary Authority ought not to have appointed the Inquiring Office and the Inquiry Officer ought not to have issued the Impugned orders dated 02.03.2020 listing the departmental proceedings for hearing.

6.1 He contended that it is the statutory duty of the disciplinary authority to carefully peruse the contents of the written statement of defence and then come to a conclusion as to whether it is necessary to continue or drop the proceedings in view of what has been stated in the written statement or it is expedient to proceed with the exercise into the inquiry of truth of charges. Further it is contended that in the case of applicant, on perusal of Ann. A/1, i.e., order dated 10/01/2020, the disciplinary authority had nowhere stated in the said order either implicitly or explicitly that the representation of the applicant dated 09/09/2019 (Ann. A/9)

has been considered. It is submitted that the respondent ought to have applied its mind upon receipt of reply of the applicant. In this regard, the counsel for the applicant placed reliance on the judgment passed in the case of State of Punjab Vs. V. K. Khanna reported in AIR 2001 SC 343 and submits that the impugned decision of the Disciplinary Authority and of Inquiry Officer are illegal & are liable to be quashed.

6.2 It is submitted that the witnesses cited/listed in departmental charge memorandum are common in the charge sheet submitted by the CBI, ACB case which is pending before the Special Court, CBI, Ratnagiri. If the applicant is compelled to open / disclose his defence in advance during the present departmental inquiry it will cause a serious prejudice to the applicant in the aforesaid criminal case.

6.3 Mr Rao also submits that the impugned decision to proceed further with the departmental inquiry against the applicant vide order dated 10.01.2020 is actuated by the mala fide motive of respondent no.2. In this regard reference has been made by the counsel for the applicant that in his statutory appeal dated 31.08.2019 (Ann. A/11 & A/12) preferred to the Board of Director of BSNL with respect to the penalty order dated 02.08.2019 passed in another departmental proceeding, the applicant had raised certain grievances against the said respondent no.2 who was also the disciplinary authority in the said departmental proceeding. The said appeal dated 31.08.2019 is still pending and the respondent no. 2, being aware of the contents of the said appeal, has with a mala fide motive and intention totally ignored the applicant's request/representation dated 09.09.2019 to suspend the present departmental inquiry/proceeding and vide impugned order the respondent no.2 proceeded further nominated an IO in the present departmental inquiry. Therefore, the impugned order has been issued against the applicant with mala fide intention.

6.4 Learned Counsel by relying upon the para 33 of the judgment passed in V. K. Khanna (Supra) case submits that in the event if there is an element of malice or mala fide, motive involved in issuance of charge sheet or the concerned authority is so biased that the inquiry would be a mere farcical show and the conclusions are well known then, in that event interference at the earliest stage is called for so as to avoid the harassment and humiliation of a public official. In this regard, ld. counsel also placed reliance on the OM dated 01.08.2007 (Ann. RJ/4) on the subject “simultaneous action” i.e. prosecution in a court and initiation of departmental proceedings against the government servant.

He further placed reliance on order passed by Allahabad High Court in Writ No. 15476/2019 in the case of Mahendra Singh Vs. State of U.P. & other decided on 15.10.2019 wherein it was held that whether disciplinary inquiry is to continue at all or not, and whether result of criminal trial is to be awaited, is to be decided by the disciplinary authority in disciplinary proceeding. The said petition was disposed of with a direction upon the respondent therein to examine petitioner's grievance in view of the observations made by the Apex Court in Capt. M. Paul Anthony (Supra). Therefore, it is submitted that in the present case the disciplinary authority ought to have decided whether the disciplinary proceedings needs to be suspended or dropped since the departmental inquiry is based on common charges and evidence in the pending criminal case.

Learned Counsel also submits that in pursuance to the legal notice issued by the applicant's advocate vide communication dated 06.07.2020 (Ann. A/18) the inquiry officer informed him that the hearing of departmental inquiry has been stopped and further action / decision is put on hold for want of court directives. Further, vide order dated 22.10.2020 (Ann. A/19), on retirement of present Inquiry Officer, i.e respondent no. 4, new inquiry officer has been appointed by the disciplinary authority.

7 Per contra, respondents have filed their reply and denied the contention of the applicant. It is stated that the disciplinary authority has correctly exercised its power under the Rules to initiate the proceedings against the applicant.

It is stated that the charge levelled against the applicant in the departmental charge memorandum cannot be said to be identical and based on same set of evidence as of criminal case pending before the Special Court, CBI, Ratnagiri. In this regard, it is also submitted that in criminal case the CBI relies upon 188 documents and 50 witnesses whereas in present disciplinary proceeding against the applicant (As per the departmental charge memorandum) the department relies upon 77 documents and 50 witnesses. All the 50 witnesses are not the same being relied by the CBI in the Special case which is stated to be pending before the CBI Court, Ratnagiri.

Further the respondent denied the contention of the applicant that complicated question of facts and law are involved in the present case. Ld. Counsel Mr. Mathew submits that on the contrary, it is a simple case that the applicant had granted certain contracts to some contractors who paid money to a third party and consequently transferred the said amount to the bank account maintained by the applicant herein. Therefore, in the present case, no complicated question of law and fact is involved.

It is submitted that a mere charges or show cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so as laid down in a series of judgment by the Supreme Court.

The Learned Counsel placed reliance on the judgment passed in the case of Union of India and another Vs. Kunishetty Satyanarayana (2007) 2 SCC (L&S) 304 wherein it has been held that if the criminal trial is likely to take more time, the department can proceed with departmental proceedings, even if, there is a stay on account of the pendency of the criminal case. He also placed reliance on the judgments reported in (2005) 10 SCC 471 Hindustan Petroleum

Corporation Ltd. Vs. Service Berry as also other judgments referred (Ann. R/3 Colly.).

He also placed reliance on the judgment passed by Hon'ble High Court of Gujarat in case of Suresh Nathalal Rathod Vs. Union of India in SCA No. 7630/2016 decided on 05/07/2016 (Ann. R/4).

Learned Counsel submits that as such there is no prejudice caused to the applicant in initiation of departmental inquiry and the allegation of mala fide against the Disciplinary Authority is without any substance and misconceived. It is premature for the applicant to presume any adverse decision against him until the Disciplinary Proceeding concludes. Hence, the applicant is not entitled for any relief as sought for in this OA.

8. The applicant has filed his rejoinder and denied the contention of the respondents. The judgment as also the OM relied upon by the counsel for the applicant has already been referred hereinabove.
9. Heard learned counsel for the respective parties and perused the material placed on record.
10. It is noticed that the applicant herein was served with departmental charge memorandum dated 02.08.2019 (Annexure A/7), for the following charge:

“that the Shri Suhas Gopal Kamble, while working as a General Manager, Sanchar Bhavan, Ratnagiri & Sindhudurg, Maharashtra, committed gross misconduct during the period 2014-16 as much as that he had awarded a total number of 14 contract to certain contractors and in lieu of awarding the contract, obtained illegal gratification from them directly in his account or in the account of his conduits. Thus, by said act, the CO failed to maintain absolute integrity, devotion to duty unbecoming of government servant, indulged in taking illegal gratification and thereby contravened rule no. 4(1)(a, b, c) & 5 (2) of BSNL CDA Rules 2006.”

It is noticed that along with the charge sheet dated 02.08.2019, the statement of imputations as also the list of documents and the witnesses by which the Article of Charges framed against the CO are proposed to be sustained was supplied to the applicant.

- 11 The Learned Counsel Mr. Rao for the applicant mainly contended that in the present OA, the only question is whether it is legal, valid and proper for Disciplinary Authority i.e. respondent no.2 herein to proceed further with the proceedings by nominating the Inquiry Officer/Presenting Officer in pursuance of the departmental Charge Memorandum dated 02.08.2019, when the applicant herein in response to the said charge memorandum has contended in his representation dated 09.09.2019 inter alia that the allegations levelled against him in the aforesaid Charge Memorandum and also in the criminal case against him arising out of the Criminal Charge Sheet dated 20.11.2017 are the same and are based on the very same set of facts, documents and the witnesses.
- 12 The learned counsel for the applicant mainly submitted that for the said incident, criminal case was registered against the applicant by the CBI and the judicial proceeding is pending before the CBI Court. It was also argued that the material relied upon by the Disciplinary Authority were common in nature with the material of prosecution case registered against him in the criminal court. It was also argued by the counsel that if the department proceeded with the departmental inquiry, it would adversely affect the defence of the applicant in the Trial as the applicant would have to disclose his defence in the departmental inquiry. In support of the said submission, the learned counsel placed reliance on the judgment passed by the Hon'ble Apex Court in the case of *State Bank of India & Ors. v/s. Neelam Nag & Anr.*, and *Stanzen Toyotetsu India Private Ltd. V/s. Girish V. & Ors.*

On the other hand the learned counsel Shri Joy Mathew, for respondents submitted that the charges levelled against the applicant in departmental charge memorandum are with respect to misconduct under BSNL CDA Rules and the documents and list of witnesses stated/cited in Annexures of said charge memorandum are not common with the list of documents and witnesses stated in the charge sheet filed by the CBI ACB in Special Case. No prejudice will be caused to the applicant since the departmental inquiry is yet to begin.

13. It is well settled principle of law that the purposes of departmental inquiry and criminal proceedings are two different and distinct aspects. In this regard, we deem it appropriate to refer to the judgment passed by three Judges' Bench of Hon'ble Apex Court in the case of ***Depot Manager, A.P. State Road Transport Corporation v/s. Mohd. Yousaf Miya*** reported in (1997) SCC L&S 548, wherein it was held that:

"The purposes of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public (sic duty), as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry.

The enquiry in departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course.

The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of

the Evidence Act. The evidence required in the departmental enquiry is not regulated by the Evidence Act."
(emphasised supplied)

14. Further, whether the departmental proceedings and proceedings in a criminal case on the basis of the same set of facts and evidence can be continued simultaneously, the said question has been considered by the Hon'ble Apex Court in the case of *M.Paul Anthony v/s. Bharat Gold Mines* reported in (1999) 3 SCC 679 and after referring the judgment passed in A.P.State Road Transport Corporation (supra) answered in para 22 as under :

"The conclusions which are deducible from various decisions of this Court referred to above are :

- (i) *Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.*
- (ii) *If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.*
- (iii) *Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.*
- (iv) *The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the Departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.*
- (v) *If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest."*

15. Recently, in the case of **Shashi Bhushan Prasad V/s. CISF** reported in (2019) 7 SCC 797 : (2019) 2 SCC (L&S) 527 the Hon'ble Apex Court after considering the law laid down in the case of A.P.SRTC

v/s. Mohd. Yousuf Miya (supra), and Ajit Kumar Nag v/s. Indian Oil Corporation Ltd, held in para 19 as under :

“We are in full agreement with the exposition of law laid down by this court and it is fairly well settled that two proceedings criminal and departmental are entirely different. They operate in different fields and have different objective whereas the object of the criminal trial is to inflict appropriate punishment on an offender, the purpose of inquiry proceedings is to deal with the delinquent departmentally and to impose the penalty in accordance with the service rules.”

16. On examining the facts of the present case it is noticed that, the criminal case was registered against the Applicant for alleged offence punishable under Sections 7, 13(1)(d) & 13(2) of the Prevention of Corruption Act, 1988 before Special Court, CBI Ratnagiri, whereas, the departmental proceeding has been initiated against the Applicant for alleged violation of Rules stipulated in BSNL (Conduct, Discipline & Appeal) Rules 2006. The said BSNL Rules prohibit taking or giving bribes or any illegal gratification or indulging in corrupt practice. Rule 4 (1) of the said rules lays down that every BSNL employee shall at all times maintain absolute integrity, devotion to duty, do nothing which is unbecoming of a public servant. Not adhering to the said rules will amount to misconduct. Accordingly, the Disciplinary Authority decided to initiate the departmental proceedings and issued charge memorandum dated 02.08.2019 under Rule 36 of BSNL (CDA) Rules 2006 to maintain discipline in the Organization and to sustain the said charges, the list of documents and witnesses attached to the departmental charge memorandum are different than the list of documents and witnesses in the Criminal Charge sheet filed by the CBI ACB in special case under the provisions of the Prevention of Corruption Act, 1988.
17. At this stage, we reiterate the settled proposition of Law that standard of proof as required in a criminal trial is not the same as is in a departmental inquiry. Strict rules of evidence are to be followed by the criminal court and the guilt of the accused has to be proved beyond reasonable doubt but in departmental proceeding, on the other hand, preponderance of probabilities is the test adopted in

finding the delinquent guilty of the charge. It is also well settled that interference of court pursuant to departmental inquiry can only be in cases of no evidence. In the present case it can be seen that the applicant has approached this Tribunal against the decision of the disciplinary authority for appointing the Inquiry Officer and in turn the Inquiry Officer has called upon the applicant to participate in preliminary hearing, the said decision of the disciplinary authority and the inquiry officer in our considered opinion is cannot be said to be suffering from any infirmities.

- 18** So far as grievance of the applicant with regard to mala fide action on the part of respondent no.2 is concerned, same in our considered view is misconstrued without any cogent reason. The allegation levelled against respondent no.2 by the applicant in the appeal filed by him before the Appellate Authority with respect decision of imposition of penalty upon the applicant in different disciplinary proceedings cannot be substantial evidence to accept the allegation of malafide on the part of respondents in initiation of disciplinary proceedings in the present case. Undisputedly, the disciplinary authority has taken action for issuance of charge memorandum for the alleged misconduct with respect to not adhering to the provision of Rule 4 (1) of BSNL (CDA) Rules 2006. Under the circumstances, the said grievance of *mala fide* against the applicant is not tenable. We also decline to accept the submission of applicant that continuation of departmental inquiry will prejudice to him.
- 19** Guided by the above settled position in law and considering the factual matrix of the present case, we, find no reasons as to why the departmental proceeding should not be continued. The judgment relied upon by the counsel for the applicant in the facts and circumstances of the present case as narrated hereinabove are not helpful. Even otherwise, it is settled principles of law that the departmental proceedings cannot be unduly delayed.

20. In view of our above discussion and guided by well settled position in law on the issue, we do not find any procedural infirmities in the decision of the Disciplinary Authority in issuance of the charge memorandum dated 02.08.2019 under the provisions of Rule 36 BSNL (CDA) Rules, 2006, and conducting the departmental inquiry against the applicant in addition or parallel to the criminal proceeding before the competent court. Thus, we come to the considered conclusion that the Applicant has not made out a case calling for our intervention. The OA lacks merit. Accordingly, the same is dismissed. Pending MAs, if any, also stands disposed of. No order as to costs.

(A.K.Dubey)
Member (A)

(J.V.Bhairavia)
Member (J)

Nk/abp