

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 612 of 2010
Cuttack, this the 19th day of October, 2011

P.K.Pandia Applicant

-v-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?


(A.K.PATNAIK)
Member(Judl)


(C. R. MOHAPATRA)
Member (Admn.)

12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.612 of 2010
Cuttack, this the 19th day of October, 2011

C O R A M

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER(A)
A N D
THE HON'BLE MR. A.K.PATNAIK, MEMBER(J)

Sri Pramod Kumar Pandia, aged about 48 years, son of Binod Bihari Pandia at present working as Sub Divisional Engineer in the office of the General Manager, Telecom District, BSNL, Bhubaneswar.

.....Applicant

Legal practitioner :M/s. A.K.Mohanty, S.Rath, Advocate
- Versus -

1. Chief General Manager Telecom, Bharat Sanchar Nigam Ltd., Orissa Circle, Bhubaneswar-751001.
3. General Manager (HR & Admn), O/O the CGMT, BSNL, Orissa Circle, Bhubaneswar-751 001.
4. General Manager, Telecom District, Door Sanchar Bhavan, Bhubaneswar-751 022.

....Respondents

Legal Practitioner :Mr. S.B.Jena, ASC.

O R D E R

MR. C.R.MOHAPATRA, MEMBER (A):-

In this second round of litigation, the applicant who is working as Sub-Divisional Engineer in the office of the General Manager, Telecom District, BSNL, Bhubaneswar has assailed the Office Order under Annexure-5 dated 4-2-2010 imposing the punishment of stoppage of one increment for one year with cumulative effect in the Disciplinary Proceedings initiated against him under Rule 35 of BSNL (CDA) Rules, 2006.

2. Facts in nut shell are that initially the Applicant was imposed with the punishment of stoppage of one increment without cumulative effect in office order dated 18th July, 2009 which was challenged by him in OA No. 356 of 2009 mainly on the ground that imposition of punishment without making regular hearing as provided under Rules being bad in law is liable to be set aside. Respondents filed their counter opposing the prayer of the applicant. The said OA No. 356 of 2009 was disposed of by this Tribunal on 1st December, 2009. Relevant portion of the order is quoted herein below:

“.....In the instant case since there has been no compliance of the Rules while imposing the punishment on the applicant, the order under Annexure-A/3 is not sustainable in the eyes of law. But in the circumstances what should be the approach of the Tribunal has also been summarized by the Hon’ble Apex Court in the case of **Union of India v Y.S.Sadhu, Ex Inspector**, (2009) 1 SCC (L&S) 126 in which it has been held that if the departmental enquiry conducted against the delinquent is found defective, instead of putting the disciplinary proceedings to a nullity by quashing the impugned order, liberty needs to be given for holding fresh proceedings from the stage of alleged illegality. In the light of discussions made above, the impugned order under Annexure-A/3 is hereby quashed and the matter is remitted back to the Respondents (Disciplinary Authority) to consider and pass

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appropriate order afresh on the show cause reply filed by the Applicant. However, in the event it is decided by the disciplinary authority to proceed further in the matter then the authority shall proceed in terms of the BSNL CDA Rules with specific reference to Rule 36 of the rules ibid. The proceedings so initiated must be finalized within a period of 180 days from the date of receipt of copy of this order."

3. Thereafter, the Respondents considered the case of the applicant afresh and in order under Annexure-A/5 dated 4th February, 2010 imposed the punishment of withholding of next increment of pay for one year with cumulative effect. Applicant preferred appeal under Annexure-A/6 dated 22-02-2010 and thereafter approached this Tribunal in the present OA seeking to quash the impugned order under Annexure-A/5 mainly on the ground that the punishment is based on no evidence, without conducting any enquiry by way of giving him opportunity to examine/cross examine the witnesses on whose allegation charge sheet and punishment was issued/imposed and the punishment imposed was biased due to the Applicant having taken shelter of this Tribunal.

4. Respondents filed their counter in which it has been stated that on receipt of allegation of

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collecting Rs.1000/-more for providing new telephone connections as SDOT, Sonepur the matter was investigated into by the Circle Vigilance Cell. On enquiry the allegation of collecting Rs.1000/- over and above the fixed tariff for providing new telephone connections having been found genuine by the Vigilance Cell, opportunity was granted to the applicant to have his say. The Applicant submitted his reply. However, in compliance of the order of this Hon'ble Tribunal, the Respondents considered the matter afresh and imposed the punishment under Annexure-A/5. The appeal preferred by the Applicant was considered but for the reasons mentioned in order the same was rejected and communicated to the Applicant in letter under Annexure-R/8. They have also denied the allegation of the applicant that imposition of punishment without conducting enquiry was bad in law, the punishment was based on no evidence, without application of mind and biased and have prayed to dismiss this OA.

5. Learned Counsel appearing for the parties have reiterated the stand taken in their respective pleadings and having heard them at length, perused

16

the materials placed on record including D&A Rules of the BSNL. Applicant was issued charge sheet under Rule 35 of BSNL CDA Rules, 2006. It provides as under:

Rule 35. Procedure for imposing minor penalties –

Subject to the provisions of sub rule 4 of Rule 37-

(1) Where it is proposed to impose any of the minor penalties specified in Clause (a) to (d) of Rule 33, the employee concerned shall be informed in writing of the imputation of the misconduct or misbehavior against him and shall be given an opportunity to submit his written statement of defence within a specified period (not exceeding 15 days). The defence statement, if any, submitted by the employee shall be taken into consideration by the disciplinary authority before passing orders.

(2) The record of the proceeding shall include:

- (a) A copy of statement of imputations of misconduct or misbehavior delivered to the employee;
- (b) His defence statement if any; and
- (c) The orders of the competent authority together with the reason therefor.

Rule 33 deals with the various penalties to be imposed in a minor disciplinary proceeding. It provides as under:

"Rule 33. PENALTIES:

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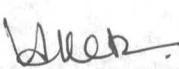
(A) Minor Penalties -

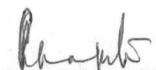
- (a) Censure;
- (b) Withholding of promotion;
- (c) Withholding of increments of pay with or without cumulative effect;
- (d) Recovery from pay of the whole or part of any pecuniary loss caused by him to the company by negligence or breach of orders;
- (e) Reduction to a lower stage in the time scale of pay for a period not exceeding three years, without cumulative effect and not adversely affecting his pension/terminal benefits;

6. It is seen that the punishment imposed on the applicant falls within Rule 33 (c) and we have not come across any provision that before imposing such punishment an enquiry is a must. Therefore, the contention of the applicant that imposition of the minor punishment without conducting regular hearing is bad in law is not sustainable. Hence the said contention of the applicant is over ruled. Coming to the contention of the applicant that the allegation and punishment is based on no evidence is far from truth as after going through the impugned order we find that the DA has come to the conclusion of guilt of the applicant after establishing the allegation levelled against the applicant. The Appellate Authority has justified the punishment imposed on the applicant in a

well reasoned order which remains unchallenged. Therefore, the allegation of the applicant that the punishment is based on no evidence does not hold any water. Similarly, we find that the applicant has raised the allegation of mala fide and colourable exercise of power of the DA but has not produced any unimpeachable material in support thereof. Law is well settled that people are prone to raise the allegation of bias and therefore, the Court/Tribunals should not place any importance on the same unless the said allegation is established by the party beyond reasonable doubt. In view of the above, we do not find any justification to accept the contention of the applicant that the punishment is the out come of malice.

7. For the discussions made above, this OA being devoid of any merit stands dismissed. No costs.


(A.K. PATNAIK)
Member (Judicial)


(C.R. MOHAPATRA)
Member(Admn.)