

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH; JODHPUR**

**ORIGINAL APPLICATION NO. 77/2006**

**Date of order:** 05-01-2010

**CORAM:**

**HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER  
HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER**

Amar Nath Singh S/o Shri Chhog Nathji, by caste Nath, aged about years, Ex. Regular Mazdoor in the office of Sub Divisional Officer (Phones), Department of Telecommunication, B.S.N.L., Pali-Marwar, resident of Type-I, T-12, Telephone Colony, Mandia Road, Gharwala Jhaw, Pali-Marwar.

...Applicant.

Mr. Govind Suthar, proxy counsel for  
Mr. Manoj Bhandari, counsel for applicant.



**VERSUS**

1. The Union of India through the Secretary, Ministry of Communication, Department of Telecommunication, Sanchar Mantralaya, Sanchar Bhawan, New Delhi.
2. The Chief General Manager, Telecom, Department of Telecommunication, Jaipur.
3. The General Manager, Telecom District Pali-Marwar.
4. The Dy. General Manager, Telecom, Office of General Manager, District Pali-Marwar.
5. The Divisional Engineer (Phones), Office of General Manager, Telecom District, B.S.N.L. Pali-Marwar.
6. S.D.O. (Phones), Gurlai Marg, Mandia Road, Pali-Marwar.

... Respondents.

None present for the respondents.

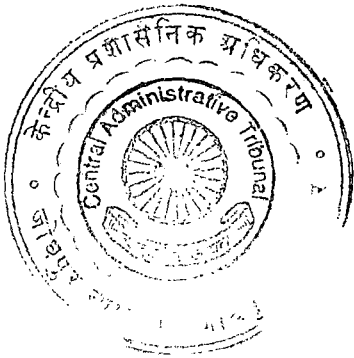
**ORDER****(Per Hon'ble Dr. K.S. Sugathan, Administrative Member)**

The applicant was an employee in the Department of Telecommunications. He was initially appointed as a temporary Mazdoor by the respondents in 1984 and subsequently regularized as a Mazdoor (Group D employee) in the year 1994. In September 1998, a charge sheet was issued to him. The charge against the applicant was that he was simultaneously working as a Lab. Boy in the Education Department of Rajasthan Government from March 1987. The applicant requested for a Hindi version of the charge sheet, which was supplied to him in 1999. He replied to the charge sheet and thereafter an enquiry officer was appointed to conduct an oral enquiry. The enquiry officers were changed many times due to transfer of officers but finally the enquiry was completed in April 2005. The enquiry report held that the charge against the applicant was proved. After considering the report the respondents issued a punishment order on 19.11.2005 by which the applicant was dismissed from service. There are four major contentions raised by the applicant in support of his prayer to quash to the penalty order. The first one is that a copy of the enquiry report was not given to him and he was not given a show cause notice regarding the proposed penalty. The second argument is that the respondent official who issued the penalty order is not competent to do so as the applicant continues to be a government employee and after formation of the BSNL as a



Corporation the official of the Corporation is not the disciplinary authority in respect of the employees such as the applicant. Thirdly there has been delay in initiating the proceedings; the incident relates to 1987 but the charge sheet was issued in the year 1998. And fourthly, matters other than those included in the charge sheet has been considered by the respondents while imposing the penalty.

2. The respondents have filed a reply. It is contended on behalf of the respondents that there is no undue delay in initiating the proceedings. The alleged misconduct of double employment continued from 1987 right upto 1995 and charge sheet was issued in the year 1998 as soon as the Department came to know about the double employment. The non-supply of the enquiry report to the employee would not vitiate the enquiry in each and every case. The enquiry officer has considered documentary and oral evidence and found that the applicant was appointed as a Lab Boy in the Education Department on 11.03.1987 and continued in that employment till 1995, while he was employed in the respondent's organization. Witnesses have also testified to the employment of the applicant in the Rajasthan Government. Copies of the statements given by witnesses have been given to the applicant. The nature of the misconduct is serious. Though the disciplinary authority has referred to the frequent absence of the employee, the penalty is imposed on the basis of the charge of misconduct proved in the enquiry. It is not correct to say that the disciplinary authority



has no jurisdiction. The charge sheet was issued prior to the establishment of BSNL in the year 2000. By circular dated 30.09.2005 it has been clarified by the Department of Telecommunication that in the case of Group C and D employees facing disciplinary proceedings and are on deemed deputation to BSNL the normal disciplinary authorities under Rule 12 of CCS (CCA) Rules shall continue. But if any of the penalties contemplated in Rule 11 (v) to (ix) is to be imposed the matter shall be sent to the Director (Staff) in Department of Telecommunications. The impugned dismissal order was passed by the respondents before they actually received the copy of the letter dated 30.9.2005. When the disciplinary authority came to know about the contents of the letter dated 30.09.2005 they referred the matter to the Director (Staff) who then considered the matter and by letter dated 24.05.2006 (Annex. R/4) agreed with the penalty imposed on the applicant.



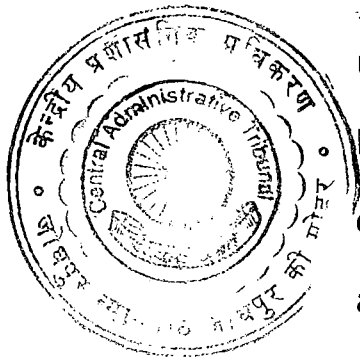
3. The applicant has filed a rejoinder and contended that the order passed by the Director (Staff) on 24.05.2006 agreeing with the original penalty order cannot be a legally valid penalty order. It is also contended that non-supply of the enquiry report has caused prejudice to the applicant.

4. We have heard the proxy counsel for the applicant on 09.11.2009. As the counsel for the respondents could not be present, both the counsels were also permitted to file written arguments. Thereafter written arguments were filed by both the

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rival counsels. We have considered the written arguments filed by both the counsels.

5. The issues for consideration in this OA are: (i) whether the non-supply of the enquiry report and a show cause notice to the applicant regarding the proposed penalty amounts to violation of a mandatory procedural requirement and a denial of the principles of natural justice; (ii) whether the disciplinary authority who had issued the penalty order was competent to do so in view of the establishment of the BSNL as a Corporation; (iii) whether the reference in the penalty order, to the past conduct of the applicant in regard to the leave/absence from duty has vitiated the penalty order; (iv) whether there has been undue delay in the issue of the charge sheet; and (v) if there has been any procedural irregularities/infirmities does it warrant quashing of the penalty order and reinstatement of the applicant.



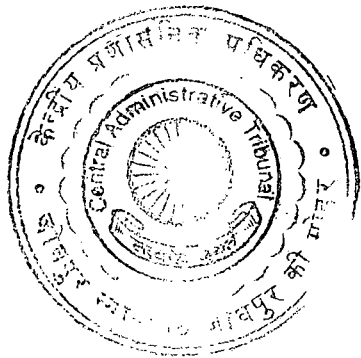
6. We shall take up the issue No. 1 first. Rule 15 (2) of the CCS (CCA) Rules stipulate that the disciplinary authority shall forward a copy of the enquiry report to the government servant along with tentative reasons for any disagreement, if any. The said rule reads as follows:

"15 (2). The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the Disciplinary Authority or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority,

within fifteen days, irrespective of whether the report is favourable or not to the Government servant."

It would be evident from the aforesaid extract that supply of copy of the enquiry <sup>report</sup> is mandatory. That it is also a denial of natural justice is the view of the Hon'ble Supreme Court in the case of **Managing Director, ECIL, Hyderabad and Others vs. B. Karunakar & Others** reported in (1993) 4 SCC 727. The following extract from the said judgment is relevant in this regard:

"29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authorities arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges leveled against him. That right is a part of the employee's right to defend himself against the charges leveled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice."



7. The second issue is the competency of the official who issued the order of penalty. It is issued by an officer of the BSNL, a Corporation which came into existence in the year 2000. It is contended on behalf of the respondents that by a circular dated 30.09.2005 it was clarified by the Department of Telecommunications that in respect of Group C and D employees who have not been absorbed in the BSNL, the disciplinary authorities would continue to be the same as before, but if a major penalty is sought to be imposed the matter shall be sent

to the Director (Staff) in DOT HQ who shall act as the disciplinary authority. The penalty imposed on the applicant is a major penalty and the penalty order is dated 19.11.2005 i.e. after the issue of the clarification dated 30.09.2005. Therefore the matter should have been decided by the Director (Staff). It is contended by the respondents that the officer who issued the order on 19.11.2005 was not in the know of the circular dated 30.09.2005 and when he came to know about it the matter was referred to the Director (Staff) who subsequently endorsed the penalty by his letter dated 24.05.2006. The said contention cannot be sustained in the eye of law. Ignorance of the law cannot be a valid ground for exercising a power vested in another authority. There is therefore merit in the contention raised by the applicant the order suffers from a legal infirmity.



8. The third issue is the reliance on matters other than those covered by the charge sheet. In the penalty order there is reference to the subsequent conduct of the applicant in terms of his punctuality/ absence from duty. Details are given about the leave taken by him and a doubt is expressed about his suitability for the job. It is contended by the respondents that even though the disciplinary authority has referred to the subsequent conduct of the applicant, the penalty was based on the charges proved against him. The said argument cannot be accepted because if the disciplinary authority did not want to consider the applicant's past conduct, there was no need to mention it in the penalty order. The intention of the disciplinary official might have been

to reinforce his reasoning for the harsh penalty. But as the matters regarding the applicant's conduct was not part of the charge sheet, any mention of that conduct in the penalty order only vitiates the legal validity of the order to that extent.

9. The fourth issue is the alleged delay in issue of the charge sheet. The applicant has contended that the incident relates to 1987 whereas the charge sheet was issued in the year 1998, i.e. after eleven years. This argument has no basis at all. It is seen from the records that the applicant continued his employment in the Education Department of Rajasthan Government from 1987 onwards right upto 1995. The charge sheet was issued in the year 1998. We therefore do not accept the validity of the said contention of the applicant.

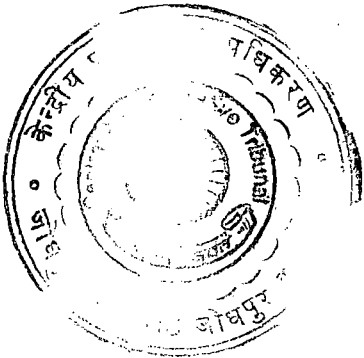
10. In view of the above discussion, it is found that the respondents have committed procedural irregularities/infirmities in the disciplinary proceedings in so far as they did not supply a copy of the enquiry report to the applicant; matters other than those included in the charge sheet were discussed in the penalty order and the official who issued the penalty order was not competent to do so. The next question therefore for consideration is whether the said procedural irregularities warrant the quashing of the penalty and the reinstatement of the applicant. For deciding this issue we have relied on the ruling of the Hon'ble Supreme Court in the following cases:



1. Managing Director, ECIL, Hyderabad and Others vs. B. Karunakar - (1993) 4 SCC 727 - para 31.
2. Haryana Financial Corporation and Another vs. Kailash Chandra Ahuja - (2008) 9 SCC 31 - para 44.
3. Union of India vs. Y.S. Sadhu - (2008) 12 SCC 30.

In para 31 of the citation No.1 referred to above it was held that:

"31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination



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of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law."

In para 44 of the citation No.2 it was held that:

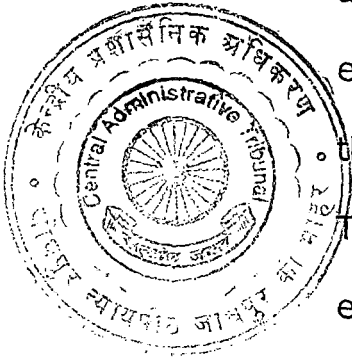
"44. From the aforesaid decisions, it is clear that though supply of report of the inquiry officer is part and parcel of natural justice and must be furnished to the delinquent employee, failure to do so would not automatically result in quashing or setting aside of the order or the order being declared null and void. For that, the delinquent employee has to show "prejudice". Unless he is able to show that non-supply of report of the inquiry officer has resulted in prejudice or miscarriage of justice, an order of punishment cannot be held to be vitiated. And whether prejudice had been caused to the delinquent employee depends upon the facts and circumstances of each case and no rule of universal application can be laid down."



In citation No.3 referred to above, after relying on the decision of the Hon'ble Supreme Court in Hiran Mayee Bhattacharyya v. S.M.School for Girls, (2002) 10 SCC 293 and in B. Karunakar case (supra), the Apex Court has ruled that "keeping in view the aforesaid position of law indicated in the aforesaid decisions, we are of the view that the course adopted in the two cases above, is to be followed. There shall not be any reinstatement, but the proceedings shall continue from the stage where it stood before the alleged vulnerability surfaced".

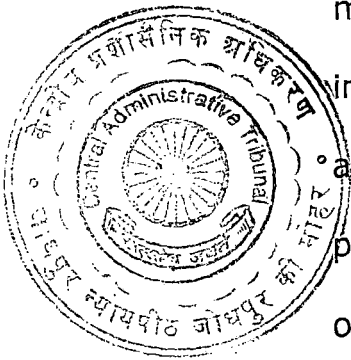
11. The ratio laid down by the Hon'ble Supreme Court is that order of reinstatement is not a mechanical ritual to be followed

in every case where there is a procedural infirmity. "The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. ...whether in fact prejudice has been caused to the employee or not on account of the denial to him of the report has to be considered on the facts and circumstances of each case. Where therefore even after the furnishing of the report no different consequence would have followed it would be a perversion of justice to permit the employee to resume duty and to get all he consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits..." (B. Karunakar supra) . In the present case the misconduct proved against the employee is a serious one. The applicant has not specifically denied that he was also employed in the education department of the Rajasthan government. His contention that his act has not caused any loss to the respondents does not dilute the misconduct committed by him. The charge of double employment has been proved on the basis of both documentary as well as oral evidence. The applicant was given full opportunity to present his case before the enquiry officer. We do not consider that even if a copy of the enquiry report was available to the applicant, it would not have made any difference to the seriousness of the misconduct which stood proved in a properly conducted enquiry and which has been virtually admitted by him in this O.A. itself.



Considering the facts and circumstances of this case and the serious misconduct which has been proved we are of the opinion that even though there have been procedural irregularities/infirmities after the submission of the enquiry report, this is not a fit case where reinstatement is warranted.

12. For the reasons stated above, this Original Application is disposed of with a direction to the respondents to provide a copy of the enquiry report along with a show cause notice regarding proposed penalty and after considering the representation of the applicant to the enquiry report and the show cause notice, take a decision about the penalty. The respondents are at liberty to modify the penalty order keeping in view the infirmities observed in this order and after considering the representation of the applicant. The aforesaid exercise shall be completed within a period of six months from the date of receipt of a copy of this order. There is no order as to costs.



(DR. K.B. SURESH)  
JUDICIAL MEMBER

(DR. K.S. SUGATHAN)  
ADMINISTRATIVE MEMBER

nlk

Received by  
Gauri Anand  
11/1/2010

दिनांक 17/12/15 को अतिशुद्धतुल्य  
मेरी उपस्थिति में दिनांक 9/2/16  
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संयोजक प्रमुख  
दोस्त न. प्रसाद नारायण  
जोधपुर न्यायपीठ, जोधपुर

P/C  
Pawan  
for V.D. Singh  
Pohar