

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Jodhpur, this the 21st day of April, 2014

Original Application No. 113/2010

CORAM

Hon'ble Mr. Justice Kailash Chandra Joshi, Member (Judicial)
Hon'ble Ms Meenakshi Hooja, Member (Administrative)

K.C. Vyas s/o Shri Chandra Shekhar Vyas, aged about 50 years, resident of 71, Swamy Nagar, Tekari Mandari Road, Udaipur, at present employed on the post of SDE (Civil) in the office of SE (C) BSNL Civil Circle, 2nd Floor, Doorsanchar Bhawan, Sector-4, Hiranmagri, Udaipur.

.....Applicant

By Advocate: Mr. J.K. Mishra

Versus

1. Bharat Sanchar Nigam Ltd., through its Chairman and Managing Director, Corporate Office, Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi.
2. The Chief General Manager Telecommunication, Bharat Sanchar Nigam Ltd., (A govt. of India Enterprises) Rajasthan Circle, Sardar Patel Marg, Jaipur

.....Respondents

By Advocate : Mr. Anil Bhandari on behalf of Mr. N.M. Lodha

ORDER (ORAL)

Per Justice K.C. Joshi, M(J)

The present OA has filed by the applicant against the charge sheet dated 31.12.2004 (Ann.A/1) and the order of penalty dated 12.1.2010 (Ann.A/2) and has prayed for declaring these orders as

illegal and be quashed with all consequential benefits as if none of the impugned orders were in existence.

2. Short facts, as stated by the applicant, are that the applicant was initially appointed to the post of Junior Engineer (Civil) at Udaipur in P&T Civil Wing. He enjoyed his next promotion as Assistant Engineer in 1998 and absorbed in BSNL w.e.f. 1.10.2000 on the post of AE(C) which was subsequently designated as Sub-Divisional Engineer (C) [for short, SDE (C)]. During the period from January, 1999 to May, 2002 while posted as Asstt. Engineer (C) at Kota, he was implicated in a criminal case at the instance of CBI and a challan was filed on 4.10.2004 against him and four others before SPE/CBI Court at Jaipur alleging to have committed offence under Section 120-B read with Section 420 IPC and Section 13(1)(d) PC Act, 1988. The alleged incident relates to the year 1999-2000 and the same is pending trial. The applicant has averred that the respondents issued a charge sheet for major penalty under Rule 14 of CCS (CCA) Rules, 1965 vide memo dated 31.12.2004 on the same charges and on the same set of facts, which were subject matter of the aforesaid criminal case. Thereafter, the Inquiry Officer examined the 5 prosecution witnesses and other witnesses were dropped. According to the applicant, during the inquiry proceedings, he demanded 50 documents in support of his defence but he was allowed 20 documents. The applicant has further averred that the Inquiry Officer did not follow the established procedure for conducting the inquiry. The Inquiry Officer has held charge No.I and IV as partly proved to which the applicant

has filed a representation on 31.8.2009. The applicant has further averred that the Inquiry Officer has not made any analysis/assessment/comment for his fact/document whereas applicant's action is exactly according to the provisions of CPWD manual and the prevalent practice in the department. The prosecution installed two witnesses, Shri Raj Kumar, SE (O) MTNL, New Delhi and Shri Surendranath retired Sr. DDG (BW), New Delhi and based on their recorded statements, prosecution story was made out for the charge and since both of them did not turn up to give their evidence and in the absence of their deposition/evidence before the Inquiry Officer, the charge alleged against him does not stand before the law. It has been further averred that the penalty order dated 12.1.2010 is ex-facie a non-speaking order and it has been mentioned that the applicant could not bring any new fact based on evidence to rebut the findings of the Inquiry Officer but the contentions mentioned in the detailed representation have not been taken into consideration. It has further been stated by the applicant that the penalty order has been passed just to please the CBI authorities and the penalty order is based on no evidence and is a nullity in the eyes of law. Therefore, the applicant has filed the present OA challenging the charge sheet and the penalty order.

3. In reply to the OA, the respondents have denied the right of the applicant and by way of preliminary objection, it has been submitted that the without exhausting the alternative remedy, the applicant has approached this Tribunal. The respondents have

submitted that even during the pendency of criminal case, disciplinary proceedings can be conducted and there is no need of keeping the departmental proceedings in abeyance till the decision of criminal case because these are two separate and independent proceedings. It has been further submitted that relevant documents were given to the applicant and the documents which had no relation with the question involved in the disciplinary proceedings were not given to the applicant. The list of witnesses was already submitted and was known to the applicant and thereafter whenever the matter was kept for evidence then only the persons whose names were given as witnesses, were examined. The respondents have denied the averment of the applicant that the Inquiry Officer while drawing the conclusion has committed any wrong, but on the contrary submitted that the report submitted by the Inquiry Officer shows that all relevant factors have been taken into consideration and conclusion has been drawn with reasons and where the applicant was not found guilty he has been exonerated. The respondents have denied the averments made by the applicant that the Disciplinary Authority was under the influence of the CBI or that the order was passed to please the CBI authorities. It has been further submitted that the departmental inquiry was conducted as per law and thereafter representation submitted by the applicant was considered along with the record of the inquiry. Therefore, the OA deserves to be dismissed.

4. The applicant has filed rejoinder to the reply filed by the respondents reiterating the averments made in the OA.

5. Heard both the parties. During the course of arguments, counsel for the respondents contended that the impugned order of penalty is an appealable order and the applicant instead of filing the appeal before the respondent department directly approached this Tribunal for quashing of the charge sheet as well as the impugned order of penalty on various grounds. Counsel for the respondents further contended that when there is a specific provision for filing appeal against the impugned order, the applicant ought to have approached the Appellate Authority raising all his objections. Counsel for respondents further contended that in view of these submissions, the OA filed by the applicant lacks merit and deserves to be dismissed.

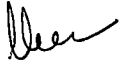
6. Per contra, counsel for the applicant contended that by way of this OA, the applicant has challenged the legality of the charge sheet as well as the penalty order on several grounds and he further contended that the Inquiry Officer held him partly guilty for only two charges and there are inherent contradictions in the charge sheet as well as in the conclusions made by the Inquiry Officer. Counsel for the applicant further contended that the Inquiry Officer has not complied with the mandatory provisions of rules as required under CCS (CCA) Rules.

7. We have considered the rival contentions of both the parties and perused the record. In view of the fact that the applicant has a right to file an appeal before the Appellate Authority and he ought to

have exhausted that remedy available to him by filing an appeal before the Appellate Authority. Therefore, we are proposing to dispose of this application with certain directions.

- (i) The applicant may file the appeal before the competent authority within a month from the date of receipt of a copy of this order.
- (ii) The respondent department is directed to treat this appeal within limitation because the applicant was pursuing his case bonafidely before this Tribunal.
- (iii) The respondent department is directed to decide the appeal within a period of three months from the date of receipt of such appeal.
- (iv) In case any grievance remains with the applicant after finalization of said appeal, he can approach this Tribunal.

8. The OA stands disposed of in the above terms with no order as to costs.


(MEENAKSHI HOOJA)
Administrative Member


(JUSTICE K.C.JOSHI)
Judicial Member

R/rss



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