

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Original Application No. 274/2010

Jodhpur, May the 8th, 2014.

CORAM

HON'BLE MR. JUSTICE KAILASH CHANDRA JOSHI, MEMBER (J)
HON'BLE MS. MEENAKSHI HOOJA, MEMBER (A)

V.K. Agarwal S/o Shri Rāmji Lal Agarwal, aged about 59 years, resident of 15/88, Private Bus Stand, Love Garden, Above Perfect dental Care, Bhilwara, at present holding the post of SDO Phones Bhilwara, BSNL.

.....Applicant

Mr. J.K. Mishra, counsel for applicant

Vs.

1. Bharat Sanchar Nigam Ltd, through its Chairman & Managing Director, Corporate Office, Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi – 11001.
2. The Director (HRD), BSNL, Corporate Office, Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi.
3. The Chief General manager Telecommunication, Bharat Sanchar Nigam Ltd, (A Govt. of India Enterprises) Rajasthan Circle, Sardar Patel marg, Jaipur-08.

...Respondents

Mr D.P. Dhaka, proxy counsel on behalf of Mr Vinit Mathur, Counsel for respondents

ORDER (oral)

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

The present application has been filed by the applicant challenging the Memo containing charge sheet Annex. A/1 dated 17.08.2004, order of the Disciplinary Authority Annex. A/2 dated 17.06.2008 whereby penalty of reduction by two stages in the time

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scale of pay for a period of one year has been imposed upon the applicant and order of Appellate Authority (Annex. A/3) dated 22.10.2009. Therefore, he has prayed for the following reliefs:-

- (i) That impugned charge sheet dated 17.08.2004 (Annex. A/1), penalty order dated 17.06.2008 (Annex. A/2), imposing the penalty of reduction by two stages in time scale of pay for one year with future effect, and appellate order 22.10.2009 (Annex. A/3), passed by 3rd respondent rejecting the appeal, may be declared illegal and the same may be quashed. The respondents may be directed to allow all consequential benefits as if none of the impugned orders were ever in existence.
- (ii) That the respondents may be directed to produce the case file of disciplinary proceedings at the time of hearing of this case, for perusal by this Hon'ble Tribunal so as to unfold the true facts and facilitate proper adjudication of this case.
- (iii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (iv) That the costs of this application may be awarded.

2. The brief facts to adjudicate the case, as averred by the applicant, are that the applicant was initially appointed to the post of Junior Telecom officer on 17.09.1974 and promoted to the post of SDO Phones w.e.f. 05.05.2000 and absorbed in BSNL. The applicant is presently posted at Bhilwara. During the years 1997-98, 1998-99 and

1999-2000, when the applicant was working as SDOT Bhilwara/SDE (GE) Shahpura, certain cable laying works were got done through contractors and the applicant carried out 50% check of the same as per rules in force. All the works were found satisfactory and the competent authority issued requisite certificates of satisfactory completion and there was no complaint during the prescribed period of 6 months after tender period, from any corner. One local leader of Bhartiya Janta Yuva Morcha named Shri Ladu Lal Teli, calling himself Zila-Adhyaksh of said party, made a written complaint on 02.03.2001 and on the basis of aforesaid complaint a vigilance inquiry was ordered in the matter for physical assessment of the work. A vigilance team carried out a sample check for assessing the verification of work done by the said contractor but the applicant was not associated with the same. The physical check seems to have been carried out without properly verifying with MB book and also without adhering to the instructions and guidelines. The applicant was issued with notices dated 03.08.2001 and 08.08.2001 wherein he was asked to submit his explanation. The applicant was asked to come to the office and inspect the records and he expressed his difficulty and submitted that it was not feasible due to the records being kept at different places. Thereafter, there was no movement in the matter and the applicant felt that the matter has been given a quietus. In any case, the complaint was regarding non-standard work done by the contractors, there were lots of cable faults, resulting in disturbance to the smooth functioning of telephones in the city, but there was no allegation of any wrongful gain to the applicant or wrongful loss to the state. The applicant was issued a charge sheet under rule 14 of

CCS (CCA) Rules 1965 vide memo dated 17.08.2004 (Annex. A/1) containing five draft statement of Articles of Charges mentioned alleging violation of Rule 3(1) (i) (ii) and (iii) of CCS (CCA) rules, 1965. The applicant submitted statement of defence and denied the draft charges. The applicant was furnished with a copy of Inquiry report vide letter dated 02.01.2008 by which and the draft statements of Articles of charge No. 1 to 2 have been held as proved, 4 & 5 as partially proved and charge No. 3 not proved. The applicant submitted a detailed, self contained and exhaustive representation against the findings of the Inquiry Officer on the draft charges No. 1,2,4 & 5 on 21.01.2008 but the 3rd respondent inflicted the penalty of reduction by two stages in the time scale of pay for a period of one year with immediate effect with the direction that he will not earn increment during the period of reduction and the reduction shall have effect of postponing of his future increments of pay. The applicant preferred an appeal before Appellate Authority but the same has been abruptly rejected. Therefore, the applicant has filed this OA seeking reliefs mentioned in para No. 1.

3. By way of reply, the respondents have averred that on receipt of complaint regarding irregularity in cable laying in Bhilwara SSA, the case was investigated by Circle Office Vigilance Team of the Vigilance cell and this team carried out sample checks and verified the facts properly alongwith independent officers of Bhilwara SSA. Sufficient opportunity was given to the applicant and his reply was taken into consideration before initiation of disciplinary proceedings as per the prescribed rules and provisions and thorough examination



of all the relevant records and documents etc. The representation of the applicant was considered by the disciplinary authority. The facts submitted by the applicant have already been discussed in the inquiry proceedings by the inquiry officer and no new facts were submitted by the applicant. The Disciplinary Authority gave due cognizance to the finding of the Inquiry Officer, the representation of the applicant, records and overall circumstances of the case. On arriving at definite conclusion, the penalty was imposed duly approved by the appointing authority at BSNL Corporate Office. The punishment order is explanatory and speaking order. The Appellate Authority decided the appeal of the applicant taking into account the records of the case, the findings of inquiry authority and on an objective assessment of the facts and overall circumstances of the case in its entirety. It has also been averred in the reply that it is a judicial review of the process not of the decision and as far as the process adopted by the respondents is concerned, that is strictly in accordance with the relevant provision and neither any lacuna or irregularity was committed during the process nor the same has been pointed out by the applicant at any stage. Therefore, respondents pray to not to re-appreciate the entire evidence like an Appellate Authority and have prayed to dismiss the OA.

4. Heard both the parties. Counsel for the applicant contended that the charge sheet Annex. A/1 issued by the competent disciplinary authority shows that it is a draft statement of articles and charges framed against the applicant and where the draft statement

of articles of charges have been served upon the applicant, it cannot be said that disciplinary authority has applied his mind in issuing the charge sheet and the charge sheet proposed by the CVC has been approved without application of mind of the disciplinary authority. Counsel for the applicant contended that there is complete failure of application of mind and appreciation of facts. Thus, it is a failure on the part of disciplinary authority to not to apply or consider the facts in the light of misconduct committed by the applicant and the charge sheet cannot be said to be legal one and in these circumstances the charge sheet Annex. A/1 requires to be set aside.

5. Per contra, counsel for the respondents contended that the disciplinary authority after receiving the draft charge sheet examined and considered it in detail; the matter was put up in file No. Vig. 2-327/04 and he also contended that he has brought the original file of the applicant in which the Disciplinary Authority ordered to issue the charge sheet.

6. We have perused the note sheets of the above file and are hereby quoting the relevant para from page 31-32.

N-31

As per approval of CGMT on 28/N charge sheets/R warning of the following more officers are to be issued.

- (1) Shr B.C. Joshi SDE Rule-14 -(P118/C)
- (2) Shri V.K. Agrawal SDE Rule-14 -(p119/C)

XXXXXX

Original draft C/s which were forwarded to TCHq are placed as per following details:

- (1) XXX
- (2) Shri B.C. Joshi 87/c
- (3) XXXXX
- (4) Shri V.K. Agrawal 85/c



After discussion the locations/pits where the cable depth was found 85 cm or above removed and modified draft c/s are placed at (P118/c to P122/c).

N-32

Again as discussed and approved in file Vig. 2-326/04 the article containing charge regarding less/non standard supply of stone slabs have been removed because from available documents this charge was not sustainable.

Final modified draft c/s are placed with memorandum at P/123/c to P. 126/c for kind perusal and approval please.

AGM (Vig)

GM (Vig)

In continuation of 28/N, the draft C/s are placed from 123 to 126 for signature pl.

CGMT.

With reference to above note sheet counsel for the applicant contended that the disciplinary Authority did not order to issue charge sheet with application of mind or appreciation of the entire facts of the case and he has not applied his mind in issuing the charge sheet. However, in view of the notes of page No. 31-32 of the file, it is clear that the Disciplinary authority, although signed the draft charge sheet after approval, but it is clear that the signatures were made after application of mind, and inadvertently charge sheet issued to the applicant referred the word draft in the charge sheet which is just an inadvertent error. In our considered view, therefore, the argument of counsel for the applicant that the charge sheet was a draft and was issued without application of mind, does not carry any force. The photo copy of the page 31 and 32 of the above file are being placed on record.



7. The applicant also challenged the legality of the punishment order as well as order passed by the Appellate Authority averring that the order of Disciplinary Authority i.e. punishment order Annex. A/2 and the order of the Appellate Authority Annex. A/3 are completely non-speaking order and they have not considered the entire facts submitted by the applicant in his representation Annex. A/7 or the appeal at Annex. A/8 . Counsel for the applicant contended that the punishment order Annex. A/2 issued by the Disciplinary Authority discussed only the contents of the charge sheet upto para 3 and in paras No. 4 to 5, having total 12 lines, the entire facts have been analyzed and described whereas the representation submitted by the applicant Annex. A/7 itself runs into about 28 pages. All the facts in the representation have not been considered by the Disciplinary Authority and he simply ordered that the copy of the inquiry report has been provided to the applicant and the disciplinary authority came to the conclusion that most of the points raised by the charged officer in the representation have already been taken into consideration by the IO during the inquiry proceedings and reply filed by the CO was not found convincing. Counsel for the applicant contended that such 5 lines, without appreciation of the facts, cannot be said to be a speaking order on the basis of which the Disciplinary Authority passed the order of punishment. Per contra, counsel for the respondents contended that when the copy of the inquiry report was provided to the applicant and the entire facts of the charge sheet have been referred in the punishment order, there was no necessity to pass a further detailed order and the order cannot be said to be non-speaking.

8. In our considered view, argument advanced by the counsel for the respondents is fallacious and does not carry any force because it is the Disciplinary Authority who is required to come to the conclusion after discussion and IO is only inquiring the facts on behalf of the Disciplinary Authority. It is a fundamental rule of the inquiry proceedings that disciplinary authority has to apply the mind while considering the inquiry report in passing any order adverse to the delinquent official and further it is clear from the penalty order Annex. A/2 that points averred in the representation have not been discussed and decided in a comprehensive and reasoned manner as would be required and only reference has been made that IO has already considered the points and thus clearly, it is a non-speaking order. Further the order of Appellate Authority also did not consider the entire case elaborately, therefore, we cannot say that even the appellate order Annex. A/3 is a speaking order. The arguments advanced by the counsel for the respondents are not convincing to us, therefore, order Annex. A/2 and A/3 cannot be said to be legal or just orders and being non-speaking ones, require to be set aside.

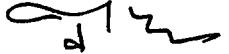
9. In view of the discussions hereinabove made, while upholding the legality of the charge sheet Annex. A/1, we set aside Annex. A/2 and Annex. A/3 and the respondents are directed to pass appropriate orders after considering the entire objections raised by the applicant vide his representation dated 20.01.2008 as at Annex. A/7. The Disciplinary Authority shall complete the entire process within 2 months from the date of receipt of this order. If any occasion arises



to the applicant to file any appeal then he shall file the appeal as per law and the appellate authority shall decide the appeal within 3 months from the date of filing the same.

10. In terms of above directions, OA is partly allowed and parties are left to bear their own costs.


(MEENAKSHI HOOJA)
Administrative Member


(JUSTICE K.C.JOSHI)
Judicial Member

SS/

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26/5/14

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most likely
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27/5/14