

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 278/2010

Jodhpur, this the 12th day of March, 2014

CORAM

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

Braham Puri Goswami s/o Shri Kewal Puri Goswami, agd about 59 years, r/o 95, Vivekanand Nagar, Pal Basni Link Road, Jodhpur, at present employed on the post of Dy General Manager Finance, in the office of Sr. GMTD BSNL, Subhash Nagar, Pal road, Jodhpur.

.....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- 110 001.
2. The Director (Finance), Bharat Sanchar Nigam Ltd., Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi.

.....Respondents

By Advocate : Mr S.K.Mathur.

ORDER (Oral)

The present OA has been filed by the applicant against the Memorandum dated 18.8.2010 (Ann.A/1) with the following prayers:-

- (i) That impugned charge sheet dt. 18.8.2010 (Annexure-A-1) issued by 2nd respondent, and all subsequent proceedings thereof may be declared illegal and the same may be quashed and the applicant allowed with all the consequential benefits as if the impugned order were never in existence.
- (ii) That the respondents may be directed to produce the relevant records/case file of disciplinary proceedings/file containing noting leading to decision to pass the impugned order at the time of hearing of this case, for

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perusal by this Hon'ble Tribunal so as to unfold the true facts.

- (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. Brief facts of the case, as averred by the applicant, are that the applicant was initially appointed to the post of TS Clerk on 1.5.1972. In due course, he earned promotion to the post of JAO, AAO, AO, Senior AO and Chief Accounts Officer. He got time bound promotion to the grade of CAO STS w.e.f. 1.10.2004 and became CAO in May, 2006 on regular basis and also the time bound promotion to the grade of Dy. G.M.(F) w.e.f. 1.10.2009. The applicant was working as CAO and IFA at Barmer in the year 2003-04. In the year 2008, he was issued some questionnaire by AGM (Vig) BSNL, Jaipur regarding procurement of stores during the said period and the applicant submitted factual position. It is averred by the applicant that he was promoted from the post of CAO STA level to the grade of Dy. General Manager vide order dated 28.4.2010 but after a gap of about four months, he was ordered to be reverted vide order dated 24.8.2010, therefore, he has challenged the reversion order before this Tribunal in OA No.251/2010 and the same was stayed vide order dated 8.9.2010. Thereafter the applicant was served a chargesheet on 14.9.2010 for major penalty under Rule 36 of BSNL CDA Rules, 2006 vide memo dated 18.2010 for violation of rule 4(1)(a) (b) (c) of the Rules of 2006. It is alleged by the applicant that CVC advice has not been supplied alongwith the chargesheet and that applicant was one of the link i.e. IFA in the channel of processing the various purchases and during the period 2003-2004 he was posted as CAO and IFA in O/o the TDM Barmer. He tendered financial concurrence as per

the rules in force and the BSNL has prescribed specific schedule of Financial Powers fo Area Directors/Telecom Distt. Manager, 2001, for regulating the various financial transactions in BSNL and thus the normal General Financial Rules have no application to that extent. It is further averred that purchases of items are being made form DGS&D and PSUs without tendering by various offices in BSNL not only in SSA Barmer but also throughout the country and during the period 2003-2004 there were number of persons associated with the purchases but were left with displeasure as per CVC advice. The applicant has further averred that the chargesheet came to be issued on 18.8.2010, i.e. after six years of the alleged incident. Therefore, the applicant has averred that he has not committed any misconduct but he did his duty with best of his efficiency and ability without any ill will or bad intention and the chargesheet and subsequent proceedings are liable to be quashed.

3. By filing reply to the OA, the respondents have denied the right of the applicant submitting that the applicant was provided promotion on the post of Deputy GM (F) purely on temporary basis and vide order dated 24.8.2010 he was reverted on the substantial post of STS. It has further been submitted that the chargesheet was issued on 18.8.2010 after issue of reversion of the applicant as CAO, which is in order and copy of first CVC advice is not necessary to be supplied to the applicant vide Rule 36 of BSNL CDA Rules. In the reply, the respondents have submitted that the applicant has tendered financial concurrence for procurement of store from PSU on quotation basis in lacs of rupees on each occasion whereas the financial power of TDM for purchase of stores items on quotation basis was Rs. 10,000 only, therefore the specific provisions and schedule of the financial powers are violated by the applicant. It has further been stated that the

applicant will be given full opportunity as per rules and regulations during the course of inquiry proceedings. It has also been submitted that in the present case the CVC has thoroughly examined the case of the applicant and has thereafter advised that the applicant should be charged for the irregularities committed and the CVC has taken this decision after considering the role, official position and status of the applicant. Further submitted that the investigation of the case started in December 2007 and thereafter questionnaire were sent to the applicant and after receiving the advice of the CVC the chargesheet was issued in August, 2010, therefore, there is no abnormal delay in issuing the chargesheet to the applicant. The representation of the applicant has already been replied vide letter dated 11.10.2010 and delivered to the officer on 8.11.2010/23.10.2010. The applicant has failed to place any material to substantiate the allegations made, and therefore, the said contentions of the applicant are liable to be rejected and 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. Counsel for the applicant contended that this chargesheet has been issued without jurisdiction as the applicant was working on the Junior Administrative Grade and the charge sheet was issued by the Director (Finance), BSNL, who is not the competent authority, because in the case of the applicant, the CMD is the only competent authority to issue the charge sheet. He further contended that the act of the applicant does not fall within the definition of misconduct or misbehaviour and he never acted with ill motive because he was one of the link i.e. IFA in the channel of processing the various purchases and gave his advice in good faith as per rules in force

and his action has been approved by the higher authority before purchasing the articles referred in the charge sheet. It has been further contended that the items were purchased from Public Sector Undertakings and during the year 2003-04 itself and there were number of persons associated with the purchases, but were left with displeasure as per CVC advice, and in the case of the applicant the respondent department issued the Memo of chargesheet, which shows discrimination on the part of the respondent department. He further contended that the charge sheet has been issued in the year 2010 i.e. after six years as the purchase related to 2003-04 and even that has been signed on the letter head of the Chief Vigilance Officer. Counsel for the applicant contended that in view of the above facts, the chargesheet issued to the applicant as Annexure-A/1 may be quashed.

6. Per contra, counsel for the respondents contended that the applicant has tendered the financial concurrence for procurement of store from PSU on quotation basis (Single quotation) in lacs of rupees on each occasion whereas the financial power of TDM for purchase of store items on quotation basis was Rs.10,000/- only vide BSNL HQ letter No.6.15/2000-EB dated 04.10.2001 and as per letter No.6-15/2000-EB dated 28.02.2002, the exercises of financial power is subject to strict observation of rules, orders, instructions/ guidelines issued by DOT/DTS/DTO & BSNL from time to time and there is no provision for any relaxation or deviation from usual tendering procedure as per rules. Therefore, the applicant violated the specific provisions and schedule of the financial powers and for this misconduct he served the charge sheet. Counsel for the respondents further contended that several questions of facts are involved in this application that whether the applicant tendered advice for procurement of goods as per the specific provisions or not, and these issues cannot be decided in this application

because these question raised in the application or issues or objection taken in the application regarding the departmental enquiry can only be decided after submission of the reply by the applicant to the competent authority. He further contended that out of the findings of the disciplinary authority, the applicant has a right to file the appeal and then a review as per the disciplinary proceedings rules. Therefore, the application filed by the applicant carries no force and he further contended that at this initial stage the Court or Tribunal should not interfere with the proceedings at the initial stage where further administrative actions are still required to be taken as per the procedural law, by the competent authority.

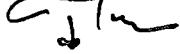
7. We have considered the rival contentions of both the parties and also perused the relevant records, while as per the applicant, he has tendered the financial concurrence for purchase of the goods as per the rules and there is no misconduct but there is specific denial on behalf of the respondents that the financial concurrence tendered by the applicant was in violation of the rules. In our considered view, this issue regarding the misconduct can only be taken before the Disciplinary Authority and the Disciplinary Authority can decide all questions in the light of the evidence tendered by both the parties. Further, whether the charge sheet was issued by the competent authority or not, this objection can also be raised by the applicant by way of reply before the Disciplinary Authority or Inquiry Officer. Therefore, in our considered view, there is no reason to interfere with the order of the departmental authority regarding issuance of the charesheet merely on the ground that the Disciplinary Authority signed the memo of charge sheet on the letter pad of the CVC and this ground can also be taken by the applicant before the Disciplinary Authority. As the applicants' counsel

submits that the applicant has retired from service in the year 2011, therefore we intend to dispose of this OA with certain directions.

8. Accordingly, the respondents are directed to conclude the enquiry within a period of six months from the date of receipt of a copy of this order, and if any further time is required, they have to seek permission from this Tribunal after serving the notice on the counsel for the applicant or the applicant. The applicant is also directed to cooperate with the departmental proceedings. After decision on the enquiry proceedings, if any, grievance remains with the applicant he will have the right to approach this Tribunal.

9. The OA stands disposed of accordingly with no order as to costs.


(MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER


(JUSTICE K.C. JOSHI)
JUDICIAL MEMBER

R/rss

Received copy
on behalf of the missing
Professor —

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Sudhir Damodar
19/3/14