

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 141/2011

Jodhpur, this the 16th day of February, 2015

CORAM

Hon'ble Justice Mr K.C. Joshi, Judicial Member

Hon'ble Ms. Meenakshi Hooja, Administrative Member

J.P. Prajapat S/o Shri Ghisa Ram, aged about 55 years, resident of Plot No. 60; Geejgarh Vihar, Hava Sarak, Jaipur, at present employed on the post of Dy. GM (F) in the office of Principal General Manager Telecom (P), Opp. GPO, MI Road, Jaipur.

.....Applicant

By Advocate: Mr. J.K. Mishra

Versus

1. Bharat Sanchar Nigam Ltd, through its Chairman & Managing Director, Corporate Office, Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi-110001.
2. Chief General Manager Telecom, Rajasthan Telecom Circle, Jaipur.

.....Respondents

By Advocate : Vinit Mathur.

ORDER (ORAL)

Per Justice K.C. Joshi

By way of this application, the applicant has challenged the charge-sheet Annex. A/1 dated 26.04.2011 issued by the respondent No. 2 i.e. The Chief General Manager Telecom, Rajasthan Telecom Circle, Jaipur and he has prayed for the following reliefs:-

- (i) That impugned order dated 26.04.2011 (Annexure A/1) and all subsequent proceedings thereof, may be declared illegal and the same may be quashed. The applicant may be allowed with all consequential as if the impugned orders were never in existence.
- (ii) That the respondent 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 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. The relevant brief facts to adjudicate the matter, as averred by the applicant, are that the applicant was initially appointed to the post of TOA (G) on 26.11.1975 at Bikaner. The applicant was promoted from the post of CAO STS level to the post/grade of Dy General Manager equivalent of JAG as per BSNL MS Recruitment Rules and post in Rajasthan Telecom Circle vide order dated 29.09.2010 (Annex. A/2). He was posted at Jaipur at his own cost following his request. The applicant has averred the promotions have been made after following the established procedure i.e. after considering the candidature by DPC and making recommendations and this promotion has been said to be on officiating capacity purely on temporary and ad hoc basis which is nothing but a misnomer. The applicant was ordered to be reverted vide reversion order dated 15.02.2011 after a gap of about 4 months which he challenged before the CAT Jaipur Bench in OA No. 87/2011 and the reversion order was set aside and the OA was disposed of with observations by the CAT Jaipur Bench vide order dated 28.04.2011 (Annex. A/3). The applicant has averred that when the respondents found difficult to justify the reversion order dated 15.02.2011 before CAT Jaipur Bench, the respondent No. 2 issued a charge sheet for major penalty under Rule 36 of BSNL CDA Rules 2006 to fill up the lacuna in their action, vide memo dated 26.04.2011 (Annex. A/1). The designation of the applicant in the

charge sheet has been indicated as CAO instead of Dy GM (F) despite the fact that his reversion order never came into effect. The applicant had worked as CA & IFA in the office of GMTD Churu during the period from 13.04.2004 to 06.06.2007 and he was issued some questionnaire there vide communication dated 25.09.2007 by AGM (Vig) BSNL, Jaipur regarding procurement of stores during the said period of his stay at Churu and he submitted the factual position of the same vide letter dated 04.10.2007 alongwith the details of CST/RST etc. and nothing was heard thereafter and the applicant was given an impression that matter was set at rest. During the aforesaid period the applicant tendered financial advices as per rules in force and the BSNL has prescribed specific Schedule of Financial Powers of Area Directors/Telecom District Manager, 2001, for regulating the various financial transactions in BSNL and thus the normal General financial Rules have no application to that extent. However, still violation of GFR has been alleged against the applicant despite the fact that there is specific provision in those matters and there is no rule for tendering in case of the purchases to be made from the Public Sector Undertakings and in the case of the applicant all purchases were made from DGS&D and PSUs only. The applicant referred the manner of noting/advices given by him for procurement purposes as well as logic to substantiate his noting/advices in para 6, 7 & 8 of the OA. The applicant has also averred that there are anomalies in the rules prescribed by the BSNL regarding purchases and similar advices, as have been given by the applicant, have also been given by similarly situated officers, therefore, persons doing the same act at the same place during the same time in identical situation have to be given similar treatment. The subject

matter of the charge sheet relates to the year 2004-2007 and charge sheet came to be issued on 26.04.2011 i.e. after expiry of over six years of the alleged incident. Therefore, the applicant has prayed for the relief as extracted above.

3. By way of reply, the respondents have averred that the applicant is presently working as C.A.O. in the office of P.G.M.T., Jaipur. As per note 5 under Schedule 1A of Recruitment Rules, it is given that *after publication of this BSNLMS RR, Group B executives shall be promoted/regularized on STS vacancies of their quota as per the provisions of the RRs. Those who have been working as STS on adhoc basis may after their regular promotion as STS be given adhoc promotion as JAG depending upon JAG vacancies.* Hence, the contention of the applicant that promotion has been said to be on officiating purely on temporary and adhoc basis is nothing but a misnomer and is nowhere mentioned in the Recruitment Rules. The CAT Jaipur Bench vide order dated 28.04.2011 passed in OA No. 87/2011 while directing the respondent-department to quash the reversion order dated 15.02.2011 has also given liberty to the pass a fresh order as and when enquiry is initiated against the applicant. Accordingly, the order of reversion to the grade of STS regular has been modified and given effect from 13.06.2011 i.e. only after the charge sheet was issued on 28.04.2011, therefore, there is no irregularity. The respondents while replying to issuance of communication dated 25.09.2007 have averred that the reply filed by the applicant to questionnaire and queries was considered and examined. However, the same was not found convincing as per the prevailing rules, provisions, procedure on the matter, therefore, the

case was preceded for further action. The respondents have further averred that the applicant is reverted to his substantive post i.e. CAO (STS) because it has already been decided by the respondent-department to hold an enquiry under rule 36 of BSNL CDA Rules. The investigation for the case under reference is in process since September, 2007 and it is well known to the applicant, therefore, the applicant's allegation that the charge sheet is issued for filling up the lacuna of reversion is not correct and beyond the actual facts. After completion of the investigation, the case is concluded by various departments i.e. DOT/BSNL/CVC etc. and on receipt of final outcome for initiation of the proceedings under rule 36, the applicant was reverted to his substantive post i.e. CAO. While the applicant has already been reverted to his substantive post i.e. CAO then designation for the applicant is used as CAO because reversion order was stayed by this Hon'ble Tribunal on 28.04.2011 and the charge sheet was issued on 26.04.2011, therefore, the designation used in the charge sheet for the applicant as CAO is correct. The respondents with regard to the averment made by applicant that items were purchased from DGS&D and PSUs without tendering by various offices in BSNL not only in Churu SSA but throughout the country, the respondents have stated that the applicant cannot escape from his responsibilities by citing the irregularities committed by others with respect to the items pointed out by the applicant i.e. legal charges, electricity bills, bank charges, petrol-diesel, lease money, Govt. land and building, road cutting charges etc. can never be subjected to tendering. Separate financial power has been delegated at various level to deal with the above items and these items are dealt accordingly but purchase in lakhs of rupees without coded

procedure from PSUs cannot be compared with the above items. It is a clear intention of the applicant for not following the procedure specified by the department. The respondents have also averred that the applicant cannot escape from his responsibilities by citing the irregularities committed by others and there is no restriction on time limit for serving employees to issue charge sheet. Lastly in their reply the respondents have averred that the points raised by the applicant are matter of inquiry proceedings to be conducted in this case and the full opportunity as per the rules and provisions will be given to the applicant during course of inquiry proceedings as the same comes in the category of quasi judicial proceedings.


4. By way of rejoinder, the applicant while reiterating the points raised in the OA, challenged the interpretation of rules/procedure by the respondents in their reply.


5. By way of additional affidavit, the respondents while reiterating the reply and denying the averments made in rejoinder, have stated that the rules and orders issued from time to time regarding procurement of material as well as delegation of financial powers are very clear and there is no ambiguity. The interpretation taken by the Vigilance Cell of this circle is clarified by the CVO (Annex. R/2) and guidelines issued by the CVC or CVO have to be followed scrupulously by a Govt. servant and no new rule is framed by CVO in this case, it was only the reiteration of earlier information/guidelines/financial powers issued by BSNL/DOT/DTS/DTO etc. Moreover, all the points raised by the applicant the matter of inquiry proceedings to be conducted in the case

and the ample opportunity as per the rules and provisions will be given to the applicant during course of inquiry which is a quasi judicial proceedings. Therefore, the valuable time of Hon'ble Tribunal is being wasted by the applicant. Thus, respondents have prayed to dismiss the OA.

6. Heard both the parties. Counsel for applicant contended that by way of this OA , the applicant has challenged the legality of the charge sheet dated 26.04.2011 (Annex. A/1). The respondent-department has concluded/almost finalized the disciplinary proceedings as no stay was granted in favour of the applicant. Counsel for applicant submits that so far as final part of disciplinary proceedings is concerned, it is pending and the copy of the inquiry report has not been provided to the applicant, therefore, a direction with regard to time limit may be issued from this Tribunal to the respondents to conclude the disciplinary proceedings to which counsel for respondents have no objection.

7. In view of the submission made by counsel for applicant, we intend to dispose of this OA with the directions that the respondent-department shall complete the disciplinary proceedings within 3 months from the date of receipt of this order. After final disposal of the disciplinary proceedings and availing remedies available under the rules, if any grievance remains to the applicant he may approach appropriate forum, if so advised. There shall be no order as to costs.


(MEENAKSHI HOOJA)
Administrative Member
Ss/


(JUSTICE K.C.JOSHI)
Judicial Member

RL
3/15
Revised Case
2/3/15
for V.K. MATTHEW