

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

OA No. 90/2012
Jodhpur this the 8th day of January, 2014.

CORAM

**Hon'ble Mr.Justice Kailash Chandra Joshi, Member (J) and
Hon'ble Ms. Meenakshi Hooja, Member (A)**

Uma Ram Parihar S/o Shri Mala Ram, aged about 53 years, by
caste Parihar, R/o C/o Telecom Colony, Sumerpur, Housing
Board Area, Sumerpur, District Pali (Raj.)
Presently working as Telecom Technical Assistant (TTA),
BSNL, Sumerpur.

.....Applicant

(Through Advocate Mr Manoj Bhandari)

Versus

1. The Union of India through the Secretary, Ministry of Telecommunication and Information Technology, Bharat Sanchar Bhawan, Janpath, New Delhi.
2. The Chairman & Managing Director, 304, BSNL, H.C. Mathur Lane, Janpath, New Delhi.
3. The Senior General Manager, BSNL, Telecom District, GMTD, Pali Marwar.
4. The Chief General Manager, Telecom, BSNL, Jaipur.
5. General Manager, District Telecom, GMTD, Pali-Marwar.
6. Dy. General Manager, BSNL, Pali Marwar.

(Through Adv. Mr Mukesh Dave)

.....Respondents

ORDER (Oral)

Per Justice Kailash Chandra Joshi, Member (J)

By way of this application the applicant has challenged the
legality of order passed by the Senior General Manager, BSNL,

Pali Marwar dated 05.09.2011 (Annex.A/1), order passed by the Disciplinary Authority imposing penalty of stoppage of one grade increment without cumulative effect (Annex. A/2) and order dated 09/15.12.2011 passed by the Chief General Manager, Telecom Jaipur.

2. The brief facts of the case as averred by the applicant are that the applicant was appointed as Technician in the year 1987 and subsequently promoted as Telecom Technical Assistant (TTA) in April, 2000 and posted at Rani, District Pali. The applicant was served with Memorandum cum charge-sheet dated 14.12.2010 by the Dy. General Manager, Pali Marwar under Rule 35 of the BSNL (CDA) Rules, 2006. The applicant submitted written reply to the aforesaid memo and averred that charges levelled against him are incorrect and baseless. The applicant specifically submitted in the reply to the chargesheet that the allegations leveled against him are incorrect and baseless and he neither behaved improperly in the meeting nor he submitted any such details which calls for taking action against him. The applicant raised certain issues in the meeting held on 14.12.2010 pointing out the problem in Bisalpur Exchange of Sumerpur-SDCA due to which the complaints were rising. The applicant also informed that ETF Wing in the respondent-department but it did not try anything on its part to correct faults despite the fact that he has written on umpteen number of occasions, therefore, entire burden has been shifted

upon the applicant. The applicant wrote to SDE, Falna that there had been underground faults in the line, but in the absence of any financial support and appropriate guidelines, the underground cables are not being repaired appropriately. The Disciplinary Authority passed an order dated 27.05.2011 whereby penalty of stoppage of one grade increment without cumulative effect for a period of one year was imposed. The applicant approached Appellate Authority against the order of the Disciplinary Authority which was rejected vide order dated 05.09.2011. The applicant again submitted appeal cum revision before the Chief General manager, Telecom, Jaipur which was rejected on the ground that there is no provision of second appeal. Thus, the applicant has filed the present OA seeking following reliefs :

- (i) by an appropriate order or direction, the impugned order dated 05.09.2011 (Annex. A/1) passed by the respondent No. 3 may kindly be declared illegal and be quashed and set aside.
- (ii) by an appropriate order or direction, the impugned order dated 27.05.2011 (Annex. A/2) passed by the respondent No. 6 may kindly be declared illegal and be quashed and set aside.
- (iii) by an appropriate order or direction, the impugned order dated 09/05.12.2011 (Annex. A/3) passed by the respondent No. 4 may kindly be declared illegal and be quashed and set aside.
- (iv) by an appropriate order or direction, the impugned charge-sheet dated 14.12.2010 (Annex. A/4) issued by the respondent No. 6 may kindly be declared illegal and be quashed and set aside.

(iii) any other appropriate order or direction which this Hon'ble Tribunal may deem fit just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.

3. By way of reply, the respondent-department has averred that the applicant is habitual of misbehaving with his superiors and on number of times oral warnings were given to him. When the applicant was posted as JTO and Incharge, Sumerpur, SDCA for maintaining better services, he usually made complaints about exchanges and staff in place of repair or to check the exchanges. The respondents further averred that it is wrong to say that the applicant was threatened by AGM, but it is a part of duty to inform and warn the officer to come with complete information and removing of faults is an important part of duty through line staff/T.M and it is not the shifting of duty from ETF to applicant, it is part of duty of Network Operation. The respondents further averred that usually without cutting and deducting, approval and finance are given, but it is strange that neither the applicant submitted the estimate nor demanded the finance or funds and the applicant submitted communication (Annex. A/6) and wanted to get free from his liability. The respondents have also averred that delaying tactic is in the habit of the applicant and he tried to shift his responsibility, therefore, the penalty imposed by the Disciplinary Authority is legal one.

4. Heard the rival contentions of both the parties.
5. Counsel for the applicant contended that the matter is regarding imposition of minor penalty and vide Annex. A/2, the Disciplinary Authority imposed penalty of stoppage of one grade increment without cumulative effect on the applicant and while imposing the aforesaid penalty the Disciplinary Authority took into consideration two reports regarding status of performance of the applicant received from AGM (NWO) Rural Pali dated 05.03.2011 and SDE (NWOP) Sumerpur dated 23.04.2011. As per the report of the AGM (NOW) Rural Pali, the performance of the applicant was found to be satisfactory, but as per the report of SDE (NWOP) Sumerpur, the applicant was careless to his work. He further contended that the Disciplinary Authority while imposing the penalty also considered the review of fault clearance report and achievement of assigned targets in the month of March, 2011, which is against the law, because the charges leveled against the applicant were in regard to the period from 23.11.2010 to 04.12.2010.
6. Per contra counsel for the respondents contended that the applicant did not care to repair the faults and the number of faults were increased during his tenure and he never tried to get this work completed during the relevant period and hence the chargesheet,

penalty and appellate orders in the disciplinary proceedings are fully justified and are in accordance with law.

7. We have considered the rival contentions of both the parties and also perused the relevant record. As per the Annex. A/2 it is well established that the Disciplinary Authority at the time of holding the applicant guilty and imposing penalty of stoppage of one grade increment without cumulative effect on the applicant considered the letters/report of AGM (NOW) Rural Pali and SDE (NWOP) Sumerpur dated 05.03.2011 and 23.04.2011 respectively which reflect contradictory view points, as while one assessed that the performance was satisfactory, the latter found the charged officer careless towards his duty. The Disciplinary Authority has given no reasons for rejecting the assessment of 'satisfactory' performance and has also taken into consideration fault clearance report and achievement of assigned target in the month of March, 2011, (which could have not be taken into consideration as it did not relate to the period of the charges in the chargesheet i.e. 23.11.2010 to 04.12.2010) while holding the applicant guilty or imposing the punishment thereof. Therefore, the orders Annex. A/1 & A/2 are liable to be set aside, while accepting the OA.

8. Accordingly, in view of the discussion hereinabove made, we set aside the order Annex. A/1 and A/2 passed by the

respondent department. The OA is allowed, as aforesaid, with no order as to costs.

Meenakshi Hooja
(MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER

ss

Justice K.C. Joshi
(JUSTICE K.C. JOSHI)
JUDICIAL MEMBER