

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Original Application No. 209/2013
With MA No.95/2013

Jodhpur, this the 17th day of July 2014.

CORAM

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

P.L.Jingar s/o Shri Mohan Lalji, aged about 57 years resident of 5-B-30, Naya Housing Board, Shastrinagar, Bhilwara, at present holding the post of Divisional Engineer (QA), BSNL, Silvassa (D and NH Union Territory).

.....Applicant

By Advocate: Mr. J.K. Mishra, counsel for the 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

By Advocate : Mr D.P. Dhaka, on behalf of Mr Vinit Mathur

ORDER (oral)

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

The present application has been filed by the applicant challenging the Memo containing charge sheet Ann. A/1 dated 12.08.2004, order of penalty passed by the Disciplinary Authority Ann. A/2 dated 18.10.2008, order of the Appellate Authority Ann.A/3 dated 30.9.2010 and the order of the Revising Authority Ann.A/4 dated 2.4.2012 and has prayed for the following reliefs:-

(Signature)

- (i) That impugned charge sheet dated 12.08.2004 (Annexure A-1), penalty order dated 18.10.2008 (Annexure A/2), imposing the penalty of reduction by two stages in time scale of pay for one year with future effect, by 3rd respondent, appellate order dated 30.9.2010 (Annexure A/3), rejecting the appeal and order dated 26.4.2012 enclosing order dated 4.4.2012 (Annexure A/4) rejecting the review petition, 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 Telephone Operator on 16.11.1974 and promoted to the post of TTA, JE, JTO, SDE as per channel of promotion. He got his last promotion to the post of Divisional Engineer w.e.f. 13.10.2010 and at present holding the post of Divisional Engineer (QA), BSNL, Silvasssa (D& NH Territory). During the years 1999-2000 and 2000-2001, when the applicant was working as SDOT, Bhilwara 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 asked to submit his explanation and was asked to come to the office and inspect the records. He submitted a detailed explanation and 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 sub-standard work done by the contractors as 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 12.08.2004 (Annex. A/1) containing two draft statement of Articles of Charges 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 18.01.2008 by which the draft statements of Article of charge No. 1 to 2 have been held as partially proved. The applicant submitted a detailed, self contained and exhaustive representation against the findings of the Inquiry Officer on the draft charges No. 1 to 2 on 29.02.2008 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 also preferred an appeal before Appellate Authority but the same has been rejected vide order dated 30.9.2010 (Ann.A/3). Thereafter, the applicant filed a Review Petition on 2.12.2010, but the same was also

rejected by a non-speaking order vide order dated 2.4.2012. Therefore, aggrieved of the action on the part of the respondents, the applicant has filed this OA seeking reliefs mentioned in para No. 1 above

3. By way of reply, the respondents have averred that on receipt of complaint regarding irregularity in laying of underground cable and other irregularities in Bhilwara Telecom District, the case was investigated by the Vigilance Cell, Circle office, Jaipur. Sufficient opportunity was given to the applicant and his reply dated 4.9.2001 was taken into consideration before initiation of disciplinary proceedings. 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 and the punishment order is explanatory and speaking order. The appeal preferred by the applicant was concluded after taking into consideration all records of the case, finding of the inquiring authority and on an objective assessment of facts and overall circumstances of the case in its entirety and the Appellate Authority observed that there was as negligence and lack of devotion to duty on the part of the applicant. Thereafter the reviewing authority observed that there was lapse on the part of the applicant. Therefore, after taking into consideration all records of the case, findings of the inquiry authority submissions of the applicant and on an objective assessment of the facts and overall circumstances of the case, the competent authority rejected the review petition preferred by the applicant. Therefore, respondents pray to dismiss the OA.

4. The applicant has filed a rejoinder while reiterating the points raised in the OA.

5. Heard on the Misc. Application No.95/2013 for condonation of delay in filing the present OA. After considering the contentions made by the parties, in the interest of justice, the same is allowed.

5. Heard both the parties on merit of the OA. Counsel for the applicant contended that the charge sheet Ann. A/1 issued by the competent Disciplinary Authority shows that it is a draft statement of articles of 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 by the Disciplinary Authority. Counsel for the applicant contended that there is a complete failure of application of mind and appreciation of facts. Thus, it is a failure on the part of Disciplinary Authority 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 Ann. A/1 requires to be set aside.

6. Per contra, counsel for the respondents contended that the Disciplinary Authority after receiving the draft charge sheet examined and considered the same.

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

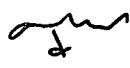
Disciplinary Authority i.e. punishment order Annex. A/2 and the order of the Appellate Authority and the Reviewing Authority (Ann.A/3 and A/4) are completely non-speaking orders and they have not considered the entire facts submitted by the applicant in his representation Ann. A/7 or the appeal at Ann. A/8. Counsel for the applicant contended that the punishment order Ann. 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 not been analyzed and described whereas the representation submitted by the applicant Ann. A/7 itself runs in about 24 pages. All the facts in the representation have not been considered by the Disciplinary Authority and he simply ordered 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.

9. 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 his mind while considering the inquiry report in passing any order adverse to the delinquent official and further it is clear from the penalty order Ann. 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 although Appellate Authority has tried to discuss some of the points but the defence taken by the delinquent has not been considered in detail, therefore, we cannot say that even the appellate order Ann. A/3 is a speaking order. The arguments advanced by the counsel for the respondents are not convincing to us, therefore, order Ann.A/2 and appellate order Ann. A/3 being non-speaking ones, require to be set aside. As we are setting aside the original penalty order passed by the Disciplinary Authority as well as the Appellate Authority, therefore, the order Ann.A/4 passed by the Reviewing Authority cannot be sustained because it is the review of the original punishment and appellate order Ann.A/2 and A/3 and some points have been considered by the Reviewing Authority but at the same time he failed to consider entire material facts. Therefore, Ann.A/4 also requires to be set-aside.

10. In view of the discussions hereinabove made, while upholding the legality of the charge sheet Annex. A/1, we set aside penalty order Annex. A/2, appellate order Annex. A/3 as well as the order passed by the Reviewing Authority Ann.A/4 and the respondents are directed to pass appropriate orders after considering the entire objections raised by the applicant vide his representation dated 29.02.2008 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

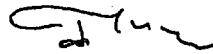


any appeal then he shall file the appeal as per law and the Appellate Authority shall decide the appeal within 3 months from the date of filing the same.

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


Meenakshi Hooja
(MEENAKSHI HOOJA)

Administrative Member


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

Judicial Member

R/

RL
22/7/17
for VIK Mathur
for

RKG
22/7/17
for