

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Original Application No.290/00134/2014
With MA No.290/00210/2014 & 290/00215/2014

Jodhpur, this the 9th day of May, 2014

CORAM

HON'BLE MR. JUSTICE KAILASH CHANDRA JOSHI, JUDIL. MEMBER
HON'BLE MS. MEENAKSHI HOOJA, ADMINISTRATIVE MEMBER

Hemraj s/o Girdhari Lal Bhati (Meghwal), aged about 46 years, resident of Plot No.28, Mahaveer Nagar, Near Goreshwar Bherunath Mandir, Kudi Bhagtasani Housing Board, Jodhpur – presently working as Sub-Divisional Engineer (Phones) (South), Bharat Sanchar Nigam Limited, Basni, Jodhpur.

.....Applicant

By Advocate : Mr. S.K.M.Vyas

Vs.

1. Bharat Sanchar Nigam Ltd. through its Chief M.D. Corporate Office, 4th Floor, Bharat Sanchar Bhawan, New Delhi.
2. The Chief General Manager, Rajasthan Telecom Circle, Bharat Sanchar Nigam Ltd. Sardar Patel Marg, C-Scheme, Jaipur (Raj.)
3. Bharat Sanchar Nigam Limited (A Govt. of India Enterprises) through Office of Senior General Manager, TELECOM District Jodhpur, Subhash Nagar, Pal Road, Jodhpur.

...Respondents

By Advocate : Mr. Rajesh Shah and Mr. Aditya Singhi

ORDER (ORAL)

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

By way of this OA the applicant has challenged the suspension order dated 31.3.2014 (Ann.A/1) and prayed that the

impugned suspension order dated 31.3.2014 passed by the Additional General Manager (Planning & Administration), Office of Senior General Manager, Telecom District, Jodhpur may be quashed and set aside and the respondents may be directed to allow the applicant to continue as Sub-Divisional Officer Phones (South), BSNL, Basni, Jodhpur.

2. Brief facts of the case, as stated by the applicant, are that the applicant was discharging duties of Sub-Divisional Officer Phones (South), Basni, Jodhpur. One Shri Om Prakash working as Telegraph Messenger in the office of Sub Divisional Officer, Phones (South) was ordered to discharge his official duties, but the said official did not discharge his duties. Therefore, he was reminded on 25.3.2014 and on 26.3.2014 and it was directed by the applicant that proper compliance has not been made. Shri Om Prakash, used un-parliamentary language and made certain remarks about his caste against the applicant in the chamber. The hot exchange of words culminated into quarrel and Shri Om Prakash slapped and brutally beat the applicant. The entire matter was forwarded to the higher authorities and it was requested to initiate disciplinary proceedings against Shri Om Prakash. The applicant submitted entire report to the Assistant General Manager (External), Basni, Jodhpur alongwith statement made by employees working in the office who were

eye-witnesses and present. Vide order dated 27.3.2014, the Additional General Manager (Administration and HR) ordered that the applicant working as SDOP (S), Jodhpur is competent to place the official under suspension. In pursuance to above letter, the Sub Divisional Officer Phones (South), Basni, Jodhpur passed order dated 27.3.2014 by which Shri Om Prakash was placed under suspension and his Head Office was made in the office of Junior Telecom Officer, Phalodi. The applicant has also stated that the incident of beating and abusing the applicant comes within the purview of Schedules Caste and Schedules Tribe (Prevention of Atrocities) Act for which FIR was lodged by the applicant on 27.3.2014. The applicant has further stated that he is discharging his duties with utmost sincerity and no finger has been raised regarding his duties and complete report was submitted before the authority about the incident of 26.3.2014 and vide order dated 27.3.2014, the SDOP (S), Jodhpur was directed to place the official under suspension and as per direction the same was done but now the applicant himself has been placed under suspension without issuing any charge sheet or memo of allegation in this regard vide order dated 31.3.2014, therefore, he has filed this OA.

3. In the reply to the OA, the respondents have submitted that the applicant has himself engaged in the activities

prejudicial to the interest of the company. The fight took place between the applicant and Shri Om Prakash and both are equally liable for the same. The disciplinary proceedings against the applicant are under investigation/contemplated, therefore, it satisfies the condition prescribed in Rule 30 of the BSNL (DA) Rules, 2006. The applicant commented on the caste based and provocative sentence on Shri Om Prakash Sen, Tele Messenger and that lead to the fight between them. Provocation to commit an offence is also punishable under the India Penal Code and when it comes to service, both should be punished. The respondents, have further submitted that as soon as the incident came to the knowledge, a Committee was constituted to investigate the matter and on the basis of the report of the Committee contemplating disciplinary action, the applicant was suspended vide letter dated 31.3.2014 and it is nowhere mentioned in the rules that before suspension, any notice of allegation or issue of charge sheet is necessary. Therefore, action of the respondents is perfectly valid and is in accordance with the rules and regulations.

4. The applicant has filed rejoinder to the reply filed by the respondents alongwith MA No.290/00210/2014. The said MA is allowed and the rejoinder is taken on record. In the rejoinder the applicant has reiterated the averments made in the OA.

5. Heard both the parties. Counsel for the applicant contended that although the chargesheet has not been issued to the applicant and it may be under contemplation, but the incident took place in the office premises in which a subordinate staff of the respondent-department viz. Mr Om Prakash Telegraph Messenger used unparliamentarily language and certain remarks of the applicant's caste were made and he ultimately slapped and brutally beaten the applicant on his neck and mouth by fist-blows. In spite of this, the respondent-department after considering report of the three member committee dated 31.03.2014 suspended the applicant. The Committee was constituted on 28.03.2014 and reported the matter on 31.03.2014. Counsel for the applicant further contended that even the Committee's report does not indicate any grave misconduct of the applicant and the Committee has opined in its report as under :

1. It becomes clear that Shri H.R. Bhati commented on cast (sic caste) based and provocative sentences on Shri Om Prakash Sen, Tele. Messengers.
2. Shri Om Prakasan Sen, Tele Messengers man-handled with Shri H.R. Bhati, SDOP (S) and he knocked two punches on the face of Sh. H.R. Bhati, SDOP (S)
3. Shri H.R. Bhati, SDOP (S) had not man-handled with Shri Om Prakash Sen, Tele. Messengers.

Counsel for the applicant contended that in view of the opinion expressed by the Committee that Shri H.R. Bhati, the applicant, did not man-handle Shri Om Prakash but Shri Om Prakash man-handled the applicant and knocked two punches on the face of the applicant and the applicant only commented on caste based and provocative sentences made by Shri Om Prakash. Counsel for the applicant contended that the applicant is working as SDOP (S) and in hierarchy he is much higher than Shri Om Prakash and he is officer-in-charge of Telephone Exchange. He contended that although the respondents have the power under rule 30 of the BSNL Conduct, Discipline & Appeal Rules, 2006 to suspend the applicant but the way in which and evidences on which the applicant was suspended can only be said to be maligning the applicant amongst the entire staff of the respondent-department and contended that under the pressure of the Union the respondent-department has acted to suspend the applicant. Counsel for the applicant further contended that sometimes order of suspension can have more grave affect than even removal or termination because the officer is working with the same staff i.e. several subordinates or junior staff. In these circumstances the action of the respondents requires to be set aside. He also contended that although the applicant is not averring any obliqueness and motive in his OA, but the entire action taken by

the respondent-department amounts to maligning the applicant which is more severe than the result of disciplinary inquiry itself.

6. Per contra, counsel for the respondents contended that the disciplinary authority suspended that applicant as per the report of the Committee as in the report of the Committee it has been referred that the applicant commented on the caste based and provocative sentences on Sh. Om Prakash and the disciplinary authority was well within its powers under rule 30 of the BSNL Conduct, Discipline & Appeal Rules, 2006 to suspend the applicant, even in a contemplated inquiry. Although, the charge sheet has not been issued but the inquiry is under contemplation. Counsel for the respondents further contended that suspension is not a punishment.

7. We have considered the rival contentions of both the parties. It is well settled principle of law that suspension is not a punishment and the disciplinary authority has all the powers to suspend an employee. In this case, in view of the rule 30 of BSNL Conduct, Discipline & Appeal Rules, 2006 the disciplinary authority has the power to suspend the applicant, but in this case we have to visualize the Committee report and the entire incident. In our considered view, the Committee opined the

simple misconduct on the part of the applicant that he commented on caste based and provocative sentences on Shri Om Prakash and further opined that Om Prakash used criminal force and made caste based and provocative sentences towards the applicant. Looking to the entire facts and circumstances of the case, particularly the fact that the applicant has not man-handled Shri Om Prakash, we are convinced that the action on the part of the respondents to suspend the applicant is a maligning act and also rather somewhat more excessive use of administrative powers. Although sometimes in order to maintain discipline in the staff some action is required to be taken in such situations, but after taking stern action against Shri Om Prakash, the respondents also suspended the applicant, which in our view, requires reconsideration by the disciplinary authority.

8. In view of the discussions hereinabove made, we intend to dispose of this OA with following directions:-

- (a) The applicant is directed to submit a representation to the disciplinary authority within 2 weeks' time from the date of receipt of this order praying to review the order in the light of observations made by us alongwith any further submissions which the applicant may deem fit.

- (b) The respondent-department shall decide the representation of the applicant within one month from the date of receipt of such representation and
- (c) The interim relief granted to the applicant vide order dated 04.04.2014 shall remain effective till disposal of representation of the applicant by competent authority of the respondent-department.

9. In view of the above order passed in the OA, MA No. 290/00215/14 filed by the respondents, for vacation of stay order, is also disposed of accordingly.


(MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER


(JUSTICE K.C. JOSHI)
JUDICIAL MEMBER

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For S.K.M. UYPB
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