

## CENTRAL ADMINISTRATIVE TRIBUNAL

## ERNAKULAM BENCH

ORIGINAL APPLICATION No.537 OF 2012

TODAY, THIS THE 25<sup>th</sup> DAY OF NOVEMBER, 2014

HON'BLE SHRI U. SARATHCHANDRAN ... MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN ...MEMBER (A)

P.K. Narayanan Kutty, Aged 48 years, S/o Chandukutty Nambiar, E.P (Late),  
Sub-Divisional Engineer (I & E.G.), BSNL Telephone Exchange Taliparamba,  
R/at Palakkal Kannadath, Aduthila, Payangadi, Kannur – 670 303.

Applicant

(By Advocate Mrs. R. Jagada Bai)

Vs.

1. The Chief General Manager, Telecom, BSNL, Kerala Telecom Circle, PMG Junction, Trivandrum – 695 033.
2. The General Manager, Telecom, Kannur, BSNL Bhavan, Kannur – 670 002.

Respondents

(By Advocate Mr. Biju for M. Johnson Gomez)

ORDERHon'ble Shri Prasanna Kumar Pradhan, Member (A) :

This OA is filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:

1. Quash Annexures-A/3 and A/11 with all consequential benefits ;
2. To issue such other appropriate orders or directions as deemed fit, just and proper in the circumstances of the case including cost.

The facts of the case in brief are as follows:

2. The applicant, while working as Sub Divisional Engineer ( I & E.G), Taliparamba Telephone Exchange, was served with a show cause notice by Respondent No.2 on 07.07.2011 (Annexure-A/1), directing him to show cause why action should not be taken against him in regard to the complaint dated 05.07.2011 received from Sri Lakshmanan, P., Sub Divisional Engineer (I & B), Office of the GMT, Kannur. The applicant submitted a representation denying the allegation in the letter of complaint (Annexure-A/2). The applicant was then



served with a charge memo under Rule 35 of BSNL Conduct, Discipline and Appeal Rules, 2006 (BSNL CDA Rules, 2006) issued by the respondent No.2 under No.X-2/GMT-CNN/DISC/2010/2010-12 dated 15.09.2011 (Annexure-A/3). The charge memo contained two charges. One, the alleged wordy dual over phone with P. Lakshmanan, Sub Divisional Engineer ( I & B), Office of the GMT Kannur on 05.07.2011 for which the explanation was sought for from the applicant vide Annexure-A/1 and the other that he had abused and threatened Sri K. Krishnan, SDE (Intl), Taliparamba on 29.01.2011. The second charge was not raised earlier. The applicant submitted a detailed representation dated 20.10.2011 to the respondent No.2 denying the charges in toto with a request to conduct a detailed inquiry in accordance with the provisions in Rule 36 of BSNL CDA Rules, 2006 (Annexure-A/4). The prayer of the applicant for a detailed enquiry was summarily rejected by the respondent No.2 vide letter No.X-2/GMT-CNN/DISC/2010-2012 dated 31.10.2011 (Annexure-A/5). Along with Annexure-A/5 certain copies of the statements alleged to have been recorded by the Vigilance Officer were also supplied to the applicant. The applicant then preferred an appeal dated 09.11.2011 to the respondent No.1 to consider his prayer for a detailed inquiry as required by Rule 36 of BSNL CDA Rules, 2006 (Annexure-A/6). The appeal was rejected by respondent No.1 vide memo No.HR-III/3-Appeal/Narayanakutty/2011 dated 02.01.2012 (Annexure-A/7). The applicant then submitted his representation dated 20.01.2012 upon the charge memo (Annexure-A/3) to respondent No.2 denying all the allegations with a prayer to drop the proposed action against him. (Annexure-A/8). The respondent No.2 issued final order in the matter vide Memo No.X-2/GMT-CNN/DISC/2010-2012 dated 31.01.2012 (Annexure-A/9), imposed a punishment of "barring one increment for a period of one year without cumulative effect with effect from 01.12.2012". Aggrieved by the order, an appeal dated 27.02.2012 was preferred by the applicant to respondent No.1 with a specific request for a personal hearing (Annexure-A/10). The appellate Authority without appreciating the grounds adduced by the applicant or affording him an opportunity to explain

his defence through a personal hearing, rejected the appeal through his order No.HR-III/3-Appeal/Narayanakutty/2012, dated 10.05.2012 (Annexure-A/11).

3. The applicant in his application has further submitted that the charges in Annexure-A/3 stand solely based on an investigation conducted behind the back of the applicant by the Vigilance Officer who also hails from the same rank as that of the applicant. The reason adduced in Annexure-A/5 in support of rejection of the request for a detailed inquiry runs as follows:

“...In this connection the undersigned felt that it is not appropriate to hold an enquiry at this stage. Therefore, it is decided to not to hold an oral inquiry in this case. Moreover, there is no provision for an oral inquiry in Rule 35 cases under CDA Rules, 2006”.

The applicant also submitted that as allegations raised in the charge memo (Annexure-A/3) rotates in and around alleged wordy dual over phone and use of abusive language could not be rebutted with documentary proof, it would have been only proper on the part of the Disciplinary Authority (Respondent No.2) to afford an opportunity to the applicant for putting up an effective and reasonable defence through a detailed inquiry as required by Rule 35 (1-A) of BSNL CDA Rules, 2006. The action on the part of respondent No.2 is nothing but a denial of minimum requirement of principles of natural justice. This Tribunal while allowing OA No.445/2009 on 01.02.2010 discussed the above matter in detail (Annexure-A/13) and passed an order which fully covers the case of the applicant. The applicant further submits that as per Rule 33 (A) (c) of BSNL CDA Rules, 2006 (Annexure-A/14) the Disciplinary Authorities are empowered only to withhold the increments of pay with or without cumulative effect. In the case of the applicant, one increment was barred for a period of one year without cumulative effect. But, in the Disciplinary Authority has thus erred in imposing a penalty other than the one specified under Rule 33 (A) of BSNL CDA Rules, 2006. Hence, the order of punishment is liable to be set aside as null and void ab-initio.

4. The respondents in their reply submitted that a complaint against the applicant from Sri P. Lakshmanan, SDE (I&B) working in the office of the



respondent No.2 was received by the respondent No.2 on 06.07.2011 stating that the applicant has shouted against him calling him as 'Nayintemon' and abused him using filthy words in Malayalam during an official conversation over mobile phone (Annexure-R/1). The respondent No.2 issued notice on 07.07.2011 to the applicant to show cause as to why disciplinary action should not be initiated for the alleged misconduct. In his explanation, the applicant denied all charges. As his explanation was not satisfactory, the respondent No.2 ordered the Vigilance Wing of Kannur SSA to inquire and investigate into the genuineness of the case. The inquiry was conducted by the Vigilance Officer who is a Divisional Engineer, a rank above the post of applicant. He had obtained statements from various officials who had suffered the misconduct of the applicant in the past and from the officer and staff working in the office of the complainant Sri P. Lakshmanan, SDE, and from the applicant also which led to his observation that the applicant had committed the alleged misconduct (Annexures-R/2 to R/7). It was therefore, decided to issue charge sheet under Rule 35 (Procedure for imposing Minor Penalties) of BSNL CDA Rules 2006 on 15.09.2011.

5. The respondents further submitted that the applicant was given an opportunity to make his representation within 15 days of receipt of said Memorandum. But he submitted a letter on 29.08.2011 denying all the charges and requesting for extension of time for 30 days to submit an effective and detailed written statement which was readily granted by GMTD, Kannur. The applicant has not asked for any detailed further inquiry in this letter (Annexure-R/8). On 20.10.2011, the applicant submitted Annexure-A/9 representation stating that there is a need to verify the various statements obtained by the DE, Vigilance, and wanted to have a detailed inquiry in accordance with Rule 36 of BSNL CDA Rules, 2006. After detailed study of this representation, the respondent No.2 has readily supplied the copies of all the statements obtained by DE Vigilance and other documents in connection with the said charge sheet to the applicant and gave 10 more days for making his representation if any to



prove his innocence. It was also communicated to the applicant that the Disciplinary Authority, after going through his representation felt that it was not appropriate to hold an oral inquiry in this case at this stage and decided not to hold an oral inquiry. There is also no provision for the charged officer to ask for an oral inquiry as per BSNL CDA Rules, 2006. Rule 35 (1-A) reads that "Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against an employee, he should hold an inquiry in the manner laid down in sub rule (2) to (22) of Rule 36". In the instant case, the disciplinary authority has already investigated the case with the help of Vigilance Wing and got their observation.

6. The respondents further submit that on 09.11.2011, the applicant submitted an Appeal before respondent No.1 quoting the rules under Rule 45(4)(b) and 48 of BSNL CDA Rules, 2006. Rule 45 of BSNL CDA Rules, 2006 pertains to the orders against which appeal lies. No order was issued in the instant case. Rule 45(4)(b) is about an order which interprets to the disadvantage of the provisions of any such rule or agreement. As no orders were issued, Rule 45 cannot be invoked in the instant case. However, the Disciplinary Authority waited for the decision of the respondent No.,1 the Appellate Authority. The respondent No.1 herein has carefully examined the appeal submitted by the applicant and other records and has come to the conclusion that the appeal does not deserve any consideration and as such, passed order to uphold the decision of the Disciplinary Authority not to hold inquiry in the instant case. This order was conveyed to the applicant on 13.01.2012. The applicant then submitted his representation on 20.01.2012. In the representation, he denied the charge under case-1. In the case-1, he further stated that he had telephonic conversation with Lakshmanan on official matters on electricity deposit confirmation. During that talk all his replies and queries were in friendly manner. He never intended to hurt Lakshmanan. In his representation, he didn't mention anything regarding the case-2. The applicant has not unambiguously denied all the charges as seen from Annexure-A/8. After



careful examination of his representation, original complaint, various statements, reports, the charge sheet, the facts and circumstances of the case and after applying his mind, the Disciplinary Authority came to the conclusion that the charges against the applicant were proved beyond doubt and imposed a punishment to bar one increment for a period of one year without cumulative effect from the date of next increment.

7. The applicant preferred appeal against the order. After a detailed study of the case on the basis of reasons and facts, the respondent No.1 came to the conclusion that there is no violation of the Rules by the Disciplinary Authority, the appeal does not have any points for consideration, the penalty imposed is not severe, it was not proposed to either enhance or reduce the penalty already imposed and the appeal was thus rejected. The administration was constrained to warn him in the past on several occasions for his negative attitude towards work, non-cooperation, no support to subordinates and for gross negligence of duty. Letter No.GMT/BSNL/CNN/DISC CASES/2010-11/5 dated 13.12.2010 was issued by the respondent No.2 to the applicant (Annexure-R/9). The charge sheet was issued under Rule 35 (Minor Punishment) of BSNL, CDA Rules, 2006. Rule 35(1-A) states that *"whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against an employee, he should hold an inquiry in the manner laid down in sub rule (2) to (22) of Rule 36"*. In the instant case, the Disciplinary Authority, after going through the representation of the applicant and in the light of the facts and circumstances of the case, has come to an opinion that there was no ground to hold an inquiry as laid down in Rule 36 and therefore, decided not to hold an oral inquiry. However, copies of all documents including the statements taken by the Vigilance Officer from the officers and co-workers of the applicant were supplied to him to prepare his representation, if any. The Disciplinary Authority has approached the case objectively with an open mind. Reasonable opportunities have been extended to the applicant to defend his case as detailed below within the rules.



1. After issuing charge sheet, the applicant was given opportunity to make his representation within 15 days of receipt of the memorandum;
2. the applicant denied both the charges, as per Annexure-R/8, he asked for 30 days extension of time to submit an effective and detailed written representation which was readily granted;
3. copies of all the documents based on which charge sheet was prepared were supplied to him and again given 10 more days to make representation, if any.

There is no procedural infirmity or failure to observe the principles of natural justice. The grounds raised by the applicant that "barring of increment" or "withholding of increment" for one year without cumulative effect has the same operative effect on the pay of the applicant. The applicant loses an amount equal to one increment of pay for a period of one year only and after the punishment period of one year, the applicant will get both the increments together. The operative portion of various orders shown in the booklet "Disciplinary Proceedings" published by DOT for the internal circulation mentions the punishment as "Barring Increment" (Annexure-R/10).

8. The applicant has committed grave misconduct by abusing his co-workers at different places. The applicant is holding a supervisory position in the company. Naturally the company expects a decent and courteous and model behavior from him in all official dealings. The punishment awarded to him is not severe and it is awarded with a view to improve his conduct. In view of the above submissions, the original application is devoid of merits and therefore, the respondents pray that the OA may be dismissed with costs.

9. In the rejoinder filed, the applicant has reiterated the facts mentioned in the OA and submitted that the charge sheet speaks of conversation over phone made by the applicant with the complainant on 05.07.2011 at about 11.00 hours and submits that it is an admitted fact that the applicant had contacted Sri Lakshmanan P over telephone No.2202330 on 05.07.011. A copy of the detailed call report of telephone No.2202330 for the period from 01.07.2011 to 13.07.2011 is produced as Annexure-A/17. The said call was connected at 11.00 hours, 06 minutes and 56 seconds on 05.07.2011. The call duration is 209



seconds. The discrepancy in time of incidence as it appears from Annexure-A/3, Annexure-R/1 and Annexure-R/5 contradict each other when examined in the light of Annexure-A/17. In Annexure-R/5, it has been alleged that the wordy dual between the applicant and Sri K. Lakshmanan over phone had continued till 11.14 hours on 05.07.2011. This version appears to be false when read with the data available at Annexure-A/17. The call made by the applicant from Taliparamba Telephone No.2202330 to Mobile No.9447707600 at Kannur commence at 11:06:56, the call duration was 209 seconds (3 minutes 29 seconds), which means the call was terminated at 11:10:25 hours. From this it is evident that the respondents have relied upon the evidence which is contradictory and concocted to see that the applicant is fixed for his challenge against the red tape. As the allegation raised in the charge memo (annexure-A/3) rotates in and around alleged wordy dual over phone and use of abusive language could not be rebutted with documentary proof, it would have been only proper on the part of the Disciplinary Authority to afford an opportunity to the applicant for putting up an effective and reasonable defence through a detailed inquiry. The applicant has denied the allegation and hence, it attains the status of a cross complaint which warrants a detailed inquiry. In this case, the opportunity given to the applicant is merely illusory and not real. The decision of the Disciplinary Authority in awarding the punishment (Annexure-A/9) is influenced by the statement of Shri C. Krishnan, Assistant General Manager who is working in the office of the Disciplinary Authority.

10. Heard the learned counsel for the parties. The learned counsel for the applicant highlighted the contentions made in the OA and the rejoinder and submitted that the request for holding a detailed inquiry was not considered by the Disciplinary and the Appellate Authorities and it amounts to denial of natural justice to the applicant as he was not given an opportunity to cross examine the persons who made allegations against him in order to bring out the truth in both the cases. The learned counsel also referred to the call details saying that the call duration was only 209 seconds and hence, all the allegations made against

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the applicant and the timings mentioned by the respondent authorities did not substantiate the allegations against him. The learned counsel also referred to the judgment passed by this Tribunal in OA No.218/2009 and OA No.445/2009, where the punishment orders were set aside as similar demand for detailed inquiry was disallowed even though these were minor penalties and it was held that the applicants therein were not allowed natural justice to defend themselves. The learned counsel for the applicant has also alleged that the Vigilance Officer who inquired into the matter is holding the same rank, but it has been denied by the respondents who stated that the Vigilance Officer is of the rank of Divisional Engineer and holding one rank above the post of the applicant. Therefore, the learned counsel prayed for setting aside the punishment order.

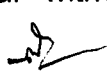
11. The learned counsel for the respondents reiterated the facts mentioned in the reply and submitted that in this the proceeding was for a minor penalty under Rule 35 and therefore holding an inquiry is not mandatory. Only when the Disciplinary Authority is of the view that it is necessary to hold an inquiry to find out the truth of any imputation of misconduct or misbehavior against the employee, he should hold inquiry in a manner laid down in sub-rule (2) to (22) of Rule 36. In this case, the Disciplinary Authority had got an inquiry already done through the Vigilance Wing and was therefore of the view that there is no necessity for holding a detailed inquiry. This decision was also upheld by the Appellate Authority. Further, copies of all the statements obtained by the Disciplinary Authority from vigilance wing during their inquiry were provided to him. The detailed reply submitted by the applicant to the charges does not justify the need for holding a detailed inquiry. Therefore, it cannot be said that natural justice was denied to the applicant. The departmental proceeding did not suffer from any infirmity as alleged by the applicant. The facts and circumstances in the OAs referred to by the applicant were also completely different and cannot be made applicable in this case. Therefore, the OA does not have any merit and it should be dismissed with costs.



12. We have carefully considered the facts of the case and also the submissions made by either side.

13. It is an admitted fact that an incident took place between the applicant and one Shri Lakshmanan on 05.07.2011 and based on the complaint made by Shri Lakshmanan, a show cause notice was issued to the applicant. After considering the reply submitted by him, the respondent authorities got an inquiry conducted by the Vigilance Wing and the Vigilance Officer, after examining several persons submitted a report based on which the charge memo for minor penalty was issued to the applicant. Based on the report of the vigilance Officer and based on the statement made by one Shri K. Krishnan alleging similar incidence of abuse by applicant during the inquiry of Vigilance Officer, another charge pertaining to an incident that took place on 29.01.2011, where the applicant allegedly threatened Shri K. Krishnan was added in the charge memo. It is to be noted that for this incident of 29.01.2011 initially no complaint was made by Shri K. Krishnan against the applicant and this allegation came to surface only during inquiry conducted by the Vigilance Officer. In the statement submitted to the Vigilance Officer, Shri K. Krishnan submitted that he kept mum about the incident as he was afraid of any consequences from the applicant as he was physically very strong.

14. On receipt of the charge memo, the applicant initially sought extension of time by one month to submit his representation. Thereafter, he submitted a request for holding a detailed inquiry under Rule 36 of the BSNL CDA Rules, which was turned down by the Disciplinary Authority. Thereafter, he made an appeal to the Appellate Authority which was also turned down and he was asked to submit a detailed representation to the charge memo. Thereafter, he submitted a representation against the charge memo in which he rebutted the charge No.1 but did not mention anything regarding the 2<sup>nd</sup> charge. The Disciplinary Authority thereafter, imposed a penalty of withholding of one increment for a period of one year without cumulative effect. He further



submitted an appeal before the Appellate Authority against this penalty which was rejected.

15. The main ground put forth by the applicant in this case is the denial of natural justice since the detailed inquiry sought for by him was not allowed. He had also cited other technical flaws such as the Vigilance Officer who was entrusted the inquiry by the respondent authorities was of the same rank as him and the penalty of "barring one increment" is not one of the punishments specified in the BSNL CDA Rules. The respondents have submitted that the Vigilance Officer was a Divisional Engineer and is one rank above the applicant. Therefore, this contention of the applicant does not hold ground. On the penalty, the respondents submitted that barring one increment and withholding of increment conveys the same meaning and the operative portion on various orders mentioned in the BSNL CDA Rules mentions of barring an increment and this has been used in that context. This is purely a technical point raised by the applicant and does not hold any substance as barring an increment and withholding an increment conveys the same meaning.

16. In this case, a view needs to be taken as to whether by not holding a detailed inquiry by the respondent authorities as sought for by the applicant amounts to denial of natural justice. In this particular case, the departmental proceeding initiated was for a minor penalty under Rule 35 of the BSNL CDA Rules. Rule 35 1-A) provides as follows:

*"whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against an employee, he should hold an inquiry in the manner laid down in sub rule (2) to (22) of Rule 36".*

This provision of holding a detailed inquiry in case of minor penalty proceeding is not a mandatory one, but gives option to the Disciplinary Authority to hold such inquiry when the authority is of the opinion that there are adequate grounds for holding a detailed inquiry to ascertain the truth of any imputation or misconduct

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or misbehavior against an employee. Therefore holding such an inquiry depends upon the facts and circumstances of a particular case and only when the Disciplinary Authority is convinced for the necessity of the same. In this case, based on the complaint against the applicant, the respondent authorities first got an inquiry conducted by the Vigilance authority to ascertain the facts. The Vigilance Officer examined the applicant also and obtained his statement. Based on the inquiry made by the Vigilance authorities and his observations which also revealed another incident that took place earlier the charge memo was issued and it included the other incidence that took place on 29.01.2011 as one of the charges. The representation of the applicant before the Disciplinary Authority for holding a detailed inquiry was quite cryptic and did not mention specific grounds based on which a detailed inquiry was considered necessary.

17. When the request for holding a detailed inquiry was turned down by the Disciplinary Authority as well as by the Appellate Authority, the applicant submitted a detailed reply to the charge memo vide his representation dated 21.01.2012. In the said representation, the applicant admitted that there was a telephonic conversation between him and Shri Lakshmanan, but denied the allegation of abusing him. However, he also mentioned that he never intended to hurt him in any way and added that if at all he felt hurt, the applicant has no hesitation to state that he regrets very much for it. This very admission of the fact that the applicant never intended to hurt him indicates that what he said or done may not be appropriate. Further, in the said reply to the charge memo, he did not make any reference or even contradict the incident that took place on 29.01.2011 though this was one of the two charges. If such an incident had not taken place or the statement of the persons accusing him of the charges were not true, then logically the applicant should have rebutted the charge. He did not contradict the statement made by Shri Krishnan or the other witness on the second charge. Further, no facts or grounds have been highlighted by the applicant in his detail reply which would indicate that he might be a victim of



circumstances and a wronged person and a further inquiry is essential to ascertain the truth. The main reply of the applicant to the charge memo does not provide any justification to arrive at a conclusion that a detailed inquiry is necessitated in this particular case.

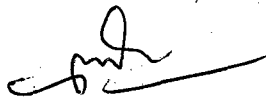
18. It has to be borne in mind that provision of rule 35 (1-A) is not a mandatory one and the charged employee cannot demand holding a detailed as a matter of right. It depends upon the facts and circumstances of the case and it would be necessitated only when based on circumstances, a conclusion can normally be drawn that a detailed inquiry is indeed necessary to ascertain the truth. A reference is made by the learned counsel for the applicant to OA No.218/2009 and 445/2009, where, in a case minor penalty proceeding, not holding a detailed inquiry as requested was considered as denial of natural justice. However, the justification for holding a detailed inquiry in a minor penalty proceeding would vary from case to case and cannot be made applicable in an uniform manner. The facts and circumstances in this case do not justify that by not holding a detailed inquiry as requested, natural justice has been denied to the applicant. The respondent authorities had held a fact finding enquiry and provided to the applicant copies of all the statements obtained by the Vigilance authority during the enquiry. Further, the applicant had not rebutted or contradicted any of the statements in his detailed reply to the charge memo or provided any material justifying need for holding a detail enquiry.

19. After considering the entire facts and circumstances of the case we are of the view that the applicant has failed to establish that by not holding a detail enquiry as requested by him, he has been denied natural justice in this case. Therefore, we are of the view that in this case of disciplinary proceeding leading to award of a minor penalty by the Disciplinary Authority which was also upheld



by the Appellate Authority does not call for any interference by this Tribunal.

20. Therefore, we hold that this OA is liable to be dismissed and accordingly the OA is dismissed. No order as to costs.



(P.K. PRADHAN)  
MEMBER (A)



(U. SARATHCHANDRAN)  
MEMBER (J)

psp.