CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 402/2012

Thursday this the 3rd day of December, 2015

CORAM

Hon'ble Mr. Justice N.K.Balakrishnan, Judicial Member
Hon'ble Mrs. P. Gopinath, Administrative Member

N. Narayanan S/o Late Parameshwaran Nair,
aged 47 years, Group D Office of the Sub Divisional Engineer, BSNL, Telephone Exchange, Amalanagar, Thrissur residing at Nandilath House, Kaiparambu PO, Thrissur District -680546.

...Applicant

[By Advocate Mr. M.R. Hariraj]

Versus

1. Bharath Sanchar Nigam Ltd. Represented by its Chairman and Managing Director, Sanchar Bhawan, New Delhi.

2. Chief General Manager, Telecom, BSNL, Kerala Circle, Trivandrum.33.

3. Principal General Manager, Telecommunications, Bharat Sanchar Nigam Limited, Sanchar Bhawan, Thrissur-22.

4. Area Manager (North), Office of Principal General Manager, Telecom, BSNL, TUDA Road, Thrissur-22.

5. Divisional Engineer Phones III, Thrissur, BSNL-680001.

...Respondents

(By Advocate Mr. George Kuruvila)

This application having been finally heard on 23.11.2015, the Tribunal on .03.12..2015 delivered the following:

O R D E R

Per: Justice N.K.Balakrishnan, Judicial Member

This OA has been filed by the applicant to quash Annexure A1

the order passed by the disciplinary authority by which his scale of pay was reduced by two stages for two years without cumulative effect. The finding of guilt entered against the applicant was confirmed by the appellate authority as per Annexure A2 but the penalty imposed as per Annexure A1 was reduced to one stage for a period of one year without cumulative effect. An alternative prayer is also made in this original application for a declaration that the applicant is entitled to be promoted as Telecom Mechanic on expiry of the period of penalty; reckoning the date of penalty as 16.5.2000 and to issue direction to the respondents to consider the applicant for promotion with effect from 16.5.2001.

2. The case of the applicant is stated in brief as follows:

The applicant commenced his service as Group D in Trichur Telecom District. He passed the qualifying screening test on 25.6.1994. He was selected as Telecom Mechanic and was deputed for training for eight weeks from 3.8.1998. On completion of the training the applicant was directed to join his erstwhile unit as Group D. While the applicant was sent for training Annexure A6 Charge Memo dated 20.3.1997 was issued. The applicant submitted A7 representation denying the allegations made therein. In the inquiry it was found that Article I (Charge No.I) was partly proved and Article-II (Charge No.2) was not proved. Copy of the report was forwarded to the applicant. The applicant made representation against the adverse finding made against him. The disciplinary authority differed with the inquiry officer and held that both charges levelled against the applicant stood proved. The appeal filed by the applicant was rejected as

per Annexure A12. The revision petition filed by him was also rejected. The applicant then filed WP 11251/2007 before the High Court. The matter was then transferred to this Tribunal and was pending before this Tribunal as TA 74/2008. This Tribunal while allowing the TA quashed the penalty order, appellate order and revision order but the disciplinary authority was given liberty to proceed in accordance with sub rule 2 of Rule 15 of CCS (CCA) Rules, 1965 vide Annexure A13 order. Pursuant to Annexure A13 the applicant was furnished with a copy of the inquiry report along with the reason for disagreement recorded by the disciplinary authority, to which the applicant submitted representation. Rejecting the contentions raised by the applicant Annexure A1 order imposing the penalty as stated earlier was passed. The applicant challenges the finding entered by the disciplinary authority, confirmed by the appellate authority and revisional authority.

3. The applicant contends that the evaluation of evidence by the disciplinary authority shows that it was prejudiced and pre determined; there was no independent witness to corroborate the evidence given by the complainant. While the Inquiry Officer found the accused not guilty of the second charge the disciplinary authority disagreed with the same stating that there is every possibility of the accused deserting his allotted work. It is not based on any evidence on record. The applicant was denied promotion though he had qualified in the Screening Test for promotion in 1994. Even if the period of penalty of one year remained as a cloud, the applicant should have been promoted w.e.f. 16.5.2001, If the penalty of reduction of one stage for one year is reckoned w.e.f. 16.5.2000. The

applicant should have been promoted on completion of the period of penalty. Hence an alternative prayer is also sought by the applicant that he is entitled to be promoted as Telecom Mechanic on expiry of the period of the penalty, reckoning the date of penalty as 16.5.2000 and accordingly the respondents should be directed to consider the applicant for promotion from 16.5.2001.

4. The respondents stoutly opposed the claim contending as follows. After compliance of the order of this Tribunal Annexure A14 ntoice was issued to the applicant calling for his objection, if any, to the disagreement recorded by the disciplinary authority with the finding of the Inquiry Officer. The applicant submitted Annexure A15 representation dated 31.7.2010. After carefully considering the report of the Inquiry Officer and the disagreement recorded by the disciplinary authority, as also the Annexure A15 representation, Annexure A1 order was passed by the disciplinary authority as per rules. The appellate authority though confirmed the finding of disciplinary authority, took a lenient view having regard to the fact that the disciplinary proceedings has been pending from 1997, modified the penalty granting a lesser penalty reducing the pay of one stage, that too only for one year without cumulative and thereby reducing his pay to Rs. 13750/- from the stage of Rs. 14170/ wef. 1.6.2011. The applicant could not be promoted since the disciplinary proceedings were initiated against him on 20.3.1997 was pending. CCS (CCA) Rules do not provide for any sort of promotion during the pendency of the disciplinary proceedings. The applicant was not eligible for promotion till

the completion of the disciplinary proceedings. Therefore, the respondents contend that the applicant is not entitled to get any relief as sought for.

5. A rejoinder was filed by the applicant contending that the evidence given by the complainant and witnesses do not support the view taken by the inquiry officer and the disciplinary authority regarding the finding of guilt. The contentions raised in the OA are seen reiterated in the rejoinder filed by him.

6. An additional reply was filed by the respondents refuting the averments raised in the rejoinder.

7. The points for consideration are (i) whether the finding of guilt and penalty imposed on the applicant are liable to be set aside as sought for by the applicant (ii) whether the alternative prayer that the applicant is entitled to be promoted as Teleocm Mechanic on the expiry of the period of penalty reckoning the date of penalty as 16.5.2000 and (iii) whether the respondents are to be directed to consider the applicant for promotion w.e.f. 16.5.2001?.

8. We have heard the learned counsel for both parties and have also gone through the pleadings and documents produced by the parties.

9. The following are the charges framed against the applicant:

> ***"Article I:-*** *That the said Shri N.Narayanan while functioning as Gr.D from 6.10.1993 attached to Shri PR Haridas, SI on 11.1.97 & 31.1.97 is alleged to have misbehaved with Smt. Jyothi Menon, JTO. By his above act Shri N.Narayanan has committed misconduct of unbecoming of a Government Servant thereby violating sub rule (iii) of Rule 3(1) of CCS (Conduct) Rules, 1964.*

Article II: *That the said Shri Narayanan while functioning as Gr.D attached to Shri P.R.Haridas, SI, on 11.1.97 is alleged to have failed to perform his duty assigned to him by his superior Shri Haridas and that he intruded to the Cabin of JTO, EIV without permission. By his above act Shri N.Nrayanan, Gr.D has exhibited lack of devotion to duty and acted in a manner unbecoming of a Government servant, thereby violating sub rule (ii) and (iii) of Rule 3(1) of CCS (Conduct) Rules, 1964."*

10. Statement of imputations narrating the misconduct and misbehaviour alleged against the applicant are appended to the memorandum of articles of charges (Annexure II).

11. It is alleged that the applicant who was working as a Group D from 6.10.1993 and who was supposed to do the work assigned to him by his immediate superior to whom he was attached on 11.1.1997, he was directed to attend the faults/interruptions. At about 3 pm on that day the applicant entered the office of JTO EIV Kanattukara and abused Mrs. Jyothi Menon, JTO EIV (applicant's superior) abusing her using vulgar language. The further allegation is that on 31.1.1997 the applicant followed Mrs. Jyothi Menon, JTO from West Fort Jn to the office blocking her way and harassing her, while she was proceeding to the office. It was alleged that the applicant abused Mrs. Jyothi Menon along the way to her office in an amorous style. The two aforestated acts of the applicant, according to the respondents, amount to grave misconduct and that the applicant acted in a manner unbecoming of a government servant violating CCS (Conduct) Rules.

12. The next charge is that the applicant, on 11.1.1997 was given the duty of attending interruptions (faults). His duty time was 9 am to 5 pm. The applicant left the work spot on his own and came back at about 3 pm

and misbehaved towards the complainant Mrs. Jyothi Menon (who was then JTO). The applicant was not permitted to leave the work spot on 11.1.1997 and thus the applicant failed to maintain devotion to duty and thereby violated Rule 3(1) (iii) of CCS (Conduct) Rules, 1964.

13. Annexure-III to Annexure A1 shows the list of documents relied upon by the prosecution to prove the charges levelled against applicant. Annexure-IV shows the list of wittinesses by whom the charges levelled against the applicant were sought to be proved. Annexure A1 is the order passed by the disciplinary authority on 31.5.2011. Annexure A2 is the order of the appellate authority dated 30.7.2011. As stated earlier the appellate authority confirmed the finding entered against the applicant but reduced the penalty, reducing the scale of pay by one stage for a period of one year only without cumulative effect.

14. It is vehemently argued by the learned counsel for applicant that there is no cogent and convincing evidence to hold the applicant guilty of charges levelled against the applicant. Though in the list of documents furnished in the charge, the statement of Shri CS Velayudhan and Shri AR Mohanan were furnished, those two officers who were stated to have given statement were not examined but the authorities simply relied upon those two statements which were not proved by examining those witnesses. Thus according to the applicant an illegal procedure was followed and thereby the applicant was denied justice.

15. It is also pointed out that though the Inquiry Officer did hold that Charge No.II could not be proved the disciplinary authority disagreed with

the same and found the applicant guilty of both the charges. The learned counsel for the applicant would submit that there was material discrepancies in the evidence given by the witnesses but the authorities below did not advert to those aspects while appreciating the evidence. According to him legally impermissible statements and evidence were relied upon by the authorities to find the applicant guilty.

16. Earlier the applicant had filed Writ Petition before the Hon'ble High Court. That was made over to this Tribunal and it was considered as TA 74/2008. Annexure A13 is the order dated 25.1.2010 passed by this Tribunal in that TA. The order passed by the disciplinary authority confirmed by the appellate authority and revisional authority were set aside. But the disciplinary authority was directed to discharge his statutory duties strictly in accordance with sub rule (ii) of Rule 15 of CCS (CCA) Rules. The disciplinary authority was directed to specify his own tentative reasons for disagreement with the findings of the Inquiry Officer. Further, the disciplinary authority was directed to provide an opportunity to the applicant to make a representation against the reasons furnished for disagreeing with the finding of the Inquiry Officer. The disciplinary authority was directed to pass appropriate orders untrammeled by the events which had already taken place. Pursuant to Annexure A13 order, admittedly the applicant was furnished with a copy of the inquiry report along with reasons for disagreement by the disciplinary authority as evidenced by Annexure A14.. Annexure A15 is the representation given by the applicant challenging the correctness of Annexure A14. The disciplinary authority

did not agree with the contentions raised by the applicant in Annexure A15. After considering the entire matter, disciplinary authority passed Annexure A1 order imposing the penalty of reduction of the applicant's pay by two stages w.e.f. 1.6.2011. As stated earlier his appeal was dismissed, evidenced by Annexure A12, modifying the penalty.

17. The learned counsel for the applicant has relied upon the decision of Supreme Court in ***Hardwari Lal Vs. State of UP and others – (1999) 8 SCC 582*** in support of his submission that the inquiry held against the applicant is unsustainable due to violation of natural justice. The main ground urged by the applicant is that two witnesses were not examined by the prosecution, but the statement of those two witnesses recorded earlier were simply relied upon by the authorities and based on those two statements the applicant was found guilty of the charges. The facts dealt with in Hardwari Lal are totally different. Though the applicant's counsel is perfectly justified in contending that the proof of two statements, the statements of S/shri Velayudhan and Mohanan, is one thing but proof of the contents is quite different. There is no doubt that the other witnesses might have had the opportunity to see the handwriting and signatures of those two witnesses S/shri Velayudhan and Mohanan and so they may be competent to state that the two statements contained the signature of Velyaudhan and Mohanan. But the proof of contents of those two statements is quite another. The probative value of those two statements would depend upon the evidence given by those witnesses. Those deponents should have been examined before the Inquiry Officer in

which event the delinquent officer would have got the opportunity to challenge the correctness or otherwise of that statement. No reason was stated for not examining those two witnesses to prove their previous statements (4 and 5) mentioned in Annexure AI charge. Simply because those two statements were shown to have been signed by Mr.Velyaudhan and Mr. Mohanan it cannot be said that the contents therein could be proved, That could have been proved only by examining those two witnesses.

18. It is argued by the learned counsel for the applicant that mere production of documents is not enough but the contents of the documents have to be proved by examining the witnesses, in support of which the learned counsel has relied upon the decision of the Supreme Court in ***Roop Singh Negi Vs. Punjab National Bank and others – (2009) 2 SCC 570***. It has already been found that though the two statements of S/Shri Velayudhan and Mohanan could be formally proved as the statements of those two witnesses the contents of the same could not be proved against the applicant. But the contention that if those two statements are eschewed from consideration, the whole finding rendered by the authorities should be set aside is found to be too tenuous to be countenanced.

19. The learned counsel for the respondents would submit that the two charges framed against the applicant could be proved by the evidence given by PW3 (the complainant) and other witnesses. Though the learned counsel for applicant has pointed out certain factors, which according to him are inconsistencies we are not inclined to hold that those

inconsistencies are so vital in nature so as to discard the evidence given by PW3 Mrs. Jyothi Menon (complainant) and the statement of PW2 Smt.Indira. Much has been argued pointing out the inconsistency with respect to the actual time of the incident. Such inconsistencies do occur when witness are asked to narrate the incident after so many months. Those inconsistencies will not go to the root of the matter so as to cast incredibility on those witnesses. On the contrary, such minor inconsistencies would only vouch for the truthfulness of the witnesses and not otherwise.

20. It is pointed out by the learned counsel for the respondents that one of the witnesses was not inclined to divulge the whole statement as given by him earlier presumably because he wanted to help the applicant/charged officer and/or was won over by the accused officer. Be that as it may, the question is whether the allegation of misbehaviour or amorous style of using vulgar language against the complainant (PW3) could be proved. When the victim PW3 herself has given a graphic account of the incident unless there is acceptable cogent and convincing material it would not be just or proper for this Tribunal to interfere with the finding entered by the authorities below. We have gone through the deposition of PW3 (the complainant – Mrs Jyothi Menon). She has stated that on 31.1.1997 the applicant had followed her and waylaid her and used unparliamentary and vulgar language in amorous style and harassed her . When a public servant uses words in a lewd and lascivious tone against another public servant, that too his superior officer, it cannot be said that

such allegations were made by PW3 with ulterior motives. The contention that there was union rivalry and so such a complaint was made does not stand to rhyme, reason or common sense. No woman would make such allegations based on such union rivalry, even if such a rivalry had been there. It is seen to be only a reason trotted out by the applicant to wriggle out of the situation.

21. It is argued by the learned counsel for the applicant that the evidence of Smt. Indira does not radiate confidence. We have gone through the deposition of that witness as well. She has stated that PW3 – Jyothi Menon was seen coming out weeping and she immediately told PW2 and others that the applicant abused her using vulgar language. That is a circumstance so proximate in time and place. The words so spoken by PW3, when it has proximity of time and place and continuity of the action and when it communicated the design, intention or which transpired immediately preceding those words, or gestures so connected to the fact in issue is a conduct relevant even in a criminal trial. Hence that evidence cannot be ignored by the authority who is to accept the evidence on that point. It was rightly accepted by those authorities. The argument vehemently advanced by the learned counsel for the applicant that it is easy for a woman to make such an allegation against a man and to wreak vengeance is not acceptable here, as the evidence was found otherwise credible. The evidence given by PW3 gets corroboration from the evidence of PW2 and the circumstances pointed out earlier. The standard of proof required in a departmental inquiry is not such as required in a criminal trial.

22. The decision of the Supreme Court in ***Noida Enterpreneurs Association Vs. Noida and others – (2007) 10 SCC 385*** has been relied upon by the learned counsel for the respondents in support of the same. The test of wednesbury principle of reasonableness is to be applied to find out whether the decision rendered by the disciplinary authority, confirmed by the appellate authority was illegal or whether it suffered from procedural impropriety or is it one, which a sensible decision maker could on the material before him or within the frame work of law could arrive at. In support of that the learned counsel for the respondents relied upon the decision in ***Union of India Vs. G. Ganayutham – (1997) 7 SCC 463***. It is submitted by the Learned counsel for the respondents that on going through the entire evidence and finding rendered by the disciplinary authority, it can be seen that no irrelevant matters had crept into the mind of the disciplinary authority so as to find fault with him. There is nothing to show that the decision suffers from absurdity or perversity. It is not for the Tribunal to go into the correctness of the choice made by the decision making authority even if it is possible for the Tribunal to take another view also. The Tribunal cannot substitute its own decision to that of the administrator/decision making authority. The decision in Ganayutham (supra) was followed by the Supreme Court in **PC Kakkar's case (2003) 4 SCC 364**.. Drawing inspiration from the decisions of the Supreme Court cited supra, the learned counsel further argues that the Tribunal cannot interfere with the finding unless the decision rendered by the disciplinary authority is illogical or suffered from impropriety or was shocking to the

conscience of the court that it was totally in defiance of logic or moral standards.

23. It is vehemently argued by the learned counsel for the applicant that the finding was entered by the disciplinary authority on mere surmises and conjunctures. We are not persuaded to accept that argument also. Reasonable deductions or inferences made on the accepted credible statements given by the complainant or witnesses does not tantamount to nor is it akin to surmises suppositions or conjunctures. From proved facts reasonable inferences and deductions can certainly be drawn by the authority competent to decide the issue. That is how a decision is to be taken from the proved facts and circumstances. It falls within the realm of decision making process. Such inferences cannot be brushed aside stating that they are only surmises or conjunctures. On going through the statement of PW3 (complainant) and PW2 (Smt. Indira) we are certain that there is nothing artificial or incredible in the statements given by them.

24. We are also reminded of the fact that judicial review by the Tribunal is not akin to adjudication on merit by re-appreciating the evidence as an appellate authority. The Court/Tribunal is denuded of the power to re-appreciate the evidence and to come to its own conclusion on the proof of a particular charge. The scope of judicial review is limited to the process of making the decision and not against the decision itself and in such a situation the Court cannot arrive on its own independent finding (see the decisions of the

Hon'ble Supreme Court in ***High Court of Judicature at Bombay through its Registrar*** v. ***Udaysingh S/o. Ganpatrao Naik Nimbalkar & Ors.*** – ***AIR 1997 SC 2286***, ***Govt. of A.P. & Ors.*** v. ***Mohd. Nasrullah Khan*** – ***AIR 2006 SC 1214*** & ***Union of India & Ors.*** v. ***Manab Kumar Guha - 2011 (11) SCC 535***).

25. Regarding Charge No.II (that the applicant did not show devotion to duty), learned counsel for applicant has pointed out certain discrepancies as to the time when the applicant was stated to have left the work spot. Even according to him he left at 4 00pm (he was expected to be at the work spot upto 5 pm). The learned counsel for applicant further states that there was reason to leave the place at 4.00 pm. Be that as it may, that charge is only ancillary to Charge No.I. The allegation is that the applicant left the work spot even before completion of the work. Since charge No.1 which could be proved is found to be a very serious one it is actually unnecessary to delve deep into the proof of Charge No.II. Though there may be slight inconsistencies given by the evidence witnesses as to the time factor we are not inclined to hold that the finding is vitiated by mlafides or that the decision so rendered is whimsical or capricious so as to upset the same. We are not here to re-appreciate the evidence on that point as well.

26. As stated earlier the main charge against the applicants that he misbehaved towards his superior-lady officer (PW3) and abused her in vulgar and filthy language. It is also proved fact that he followed the complainant on her way to the office and abused using amorous words

against her. There is absolutely nothing to interfere with the finding of guilt entered against the applicant.

27. It is a case where the disciplinary authority awarded only a penalty of reduction of pay by two stages for two years without cumulative effect. According to the learned counsel for the respondents considering the gravity of the offence the penalty imposed by the disciplinary authority was very lenient. Still the appellate authority reduced the penalty by reducing the pay only of one stage, for one year only, without cumulative effect. Therefore, the punishment imposed on the applicant is not shockingly disproportionate to interfere with the same. The challenge against the same is devoid of any merit.

28. The learned counsel for the applicant submits that in any event the a declaration may be granted to the applicant holding that the applicant is entitled to be promoted as Telecom Mechanic on expiry of the period of penalty; reckoning the date of penalty as 16.5.2000. This plea raised by the applicant is strongly resisted by the learned counsel for the respondents. It is pointed out that the disciplinary authority even at the earlier point of time had shown maximum leniency awarding only a penalty of reduction of pay by two stages without cumulative effect. Even as per Annexure A2, the appellate order impugned in this case, the appellate authority showed maximum leniency by causing reduction of pay by one stage for one year only without cumulative effect with the hope that it would lead to a quietus of matter but the applicant unnecessarily dragged on the matter. The applicant cannot now contend that the penalty order must be

deemed to have come into effect on 16.5.2000. As this Tribunal found that the penalty imposed on the applicant is not strikingly disproportionate it will be improper on the part of the Tribunal to fix another date as the date when the penalty is to come into effect. If the request now made by the applicant is accepted it would virtually nullify the effect of penalty, the learned counsel for the respondents submits. It is too late in the day for the applicant to contend that the date of order of penalty should be treated as 16.5.2000 as against Annexure A1 order confirmed by Annexure A2 appellate order. The Tribunal cannot substitute a date to suit the convenience of the applicant as the date of commencement of the penalty. The applicant himself was responsible for the delay, the learned counsel for the respondents submits. Whatever that be, it has already been found that maximum leniency was shown by the disciplinary authority and appellate authority in the matter of penalty. Therefore, we find no justification for altering the date of commencement of the penalty imposed as per Annexure A2. Original Application is hence dismissed. No order as to costs.

(P.Gopinath)
Administrative Member

(N.K.Balakrishnan)
Judicial Member

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