

CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.

Original Application No. 220 of 2011

Reserved on 6.4.2015

Pronounced on 9.4.2015

Hon'ble Ms. Jasmine Ahmed, Member-J
Hon'ble Mr. U.K. Bansal, Member-A

Hari Narayan Verma, aged about 54 years, S/o late Kali Charan, R/o Type IV/2 BSNL Telecom Colony, Lakhnupur, Kanpur.

.....Applicant
By Advocate : Sri R.C. Saxena

Versus.

1. Bharat Sanchar Nigam Limited through its Chief Managing Director, Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi.
2. Chief General Manager, Telecom U.P. (East) Circle Hazratganj, Lucknow.
3. Director (HRD), Bharat Sanchar Nigam Limited, Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi.
4. Sri Anal Kumar Sharma, S/o late R.M.L. Sharma, Retired Sr. ADT (Mktg.), O/o CGMT, U.P. (E) Telecom Circle, Lucknow through CGMT U.P. (E) Telecom Circle, Lucknow.

.....Respondents.

By Advocate: Sri G.S. Sikarwar

ORDER

By U.K. Bansal, Member-A

The applicant in this O.A. was posted as JTO (JE) for the period from November, 1989 to 12.7.1994 at Telephone Exchange, Farrukhabad. He was subsequently promoted as SDO (Phones) at Farrukhabad itself. Later, he was transferred from Farrukhabad to Auraiya and handed over charge to one Sri J.N. Shukla (SDE {I/D} on 20.12.1996.

2. The applicant was issued a Memorandum of charge dated 5.8.2005 by respondent no.2 proposing to hold an inquiry under Rule 14 of CCS (CCA) Rules, 1965. It was alleged that while the applicant was working as JTO (P) (Indoor), Farrukhabad during the period from November, 1989 to July, 1994, he had taken over charge of 08 WACs. Though the charged officer was promoted as



SDE in the same location and remained at Farrukhabad upto 20.12.1996 when he moved out on transfer, but even at the time of transfer, he did not hand over charge of these 08 WACs with malafide intention. An inquiry report, dated 28.2.2008, was submitted by the Inquiry officer. It has been submitted by the applicant that he was clearly exonerated of the charge leveled against him. However, respondent no.2, by way of his letter dated 16.5.2008, issued a disagreement note. The applicant submitted his representation on 13.6.2008, in respect of disagreement note and the findings of Inquiry officer. Respondent no.2 proceeded to pass the punishment order dated 14.10.2009. The applicant proceeded to file an appeal dated 13.11.2009 against this order and the appellate order was passed by the respondent no.3 on 4.5.2011, modifying the punishment order of 14.10.2009 and reducing the punishment as follows:-

"the pay of Sri H.N. Verma, the then JTO (P) Indoor, Farrukhabad now DE, O/o GMTD, Kanpur be reduced by one stage for the period of one year in the time scale of pay, with the direction that during the period of such reduction, he will not earn increment of his pay and after expiry of such period, the reduction will not have the effect of postponing the future increment of his pay."

3. The applicant, herein, is seeking the following relief(s):-

"The Hon'ble Tribunal may graciously be pleased to quash the impugned punishment order dated 4.5.2011 passed by respondent no.3, contained in Annexure no.15 so far it relates to the imposition of modified penalty i.e. the pay of Sri H.N. Verma, the then JTO (P), Indoor, Farrukhabad, now D.E. O/o GMTD, Kanpur be reduced by one stage for the period of one year in the time scale of pay with the direction that during the period of such reduction, he will not earn increment of his pay and after expiry of such period, the reduction will not have the effect of postponing the future increment of his pay."

4. Briefly some other relevant and un-controverted facts of the case are that while the applicant was working as SDO (P), Farrukhabad, Sri M.N. Khan, JTO was posted under him during the period from 5.5.1995 to 4.8.1995 and he was directly looking after the Farrukhabad Indoor Exchange (ILT-2048 Exchange). After posting of Sri J.L. Shukla as SDE (Indoor), Farrukhabad on 5.8.1995, Sri M.N. Khan, JTO (Indoor) (mentioned above) started reporting to Sri Shukla from that date, onwards till 30.10.1996. The 8 WACs, in question, were installed in the Indoor Telephone Exchange, Farrukhabad. The aforesaid Telephone Exchange was



dismantled in the year 1998 and at that time Sri J.L. Shukla, SDE (I/D) was posted as Incharge of both ILT-2048 Exchange and outdoor Farrukhabad. A complaint was made by the National Federation of Telecom Employees (BSNL), Farrukhabad (dated 14.2.2003) wherein misappropriation of these 08 WACs was mentioned, besides the other irregularities. A preliminary inquiry was conducted into this complaint. During this preliminary inquiry, Sri M.N. Khan, the then JTO (I/D), Farrukhabad had stated that from the time he took over charge of JTO (I/D) till 30.10.1996 when he was promoted and posted out, the 08 WACs, in question, were intact and working. During the period from 5.8.1995 to 30.10.1996 ILT-2048 Exchange was being looked after by Sri M.N. Khan and he was reporting to Sri J.L. Shukla, SDE and not to the applicant. Subsequent to 30.10.1996 when Sri Khan was promoted and transferred, he was relieved by Sri J.L. Shukla himself who continued to look after and be in-charge ILT-2048 Exchange till July 1998 where-after the Exchange was dismantled.

5. It has been submitted on behalf of the applicant in his pleadings that the charges leveled against him are false and baseless. The Inquiry officer had clearly found the applicant not responsible for the alleged loss or misappropriation of 08 WACs and had gone to the extent of mentioning that the applicant was relieved on transfer out of Farrukhabad on 20.12.1996 and after that ILT-2048 Exchange was continuously being cooled and working with the existing WACs till July, 1998. This clearly implies that the WACs were present at their place of installation even after the applicant moved out on transfer. It has, further, been submitted that the Inquiry Officer has found Sri J.N. Shukla as totally responsible for the unaccounted 08 WACs installed at ILT-2048 Exchange. In these circumstances, it is the averment of the applicant that there is a deliberate attempt to shield the real culprit by fixing blame on the applicant. In his pleadings, the learned counsel for the applicant has also pointed out to the letter of disagreement dated 16.5.2008 issued by the respondent no.2 where it was mentioned that the disciplinary authority has observed "as such charges are proved." In these circumstances, the opportunity for making any representation, which was given



by this letter, loses its meaning. It has also been pointed out that this disagreement note does not specify whether the disciplinary authority disagrees with the entire inquiry report or that any specific part of the findings. No tentative reasons for recording the disagreement note have been mentioned and hence it is against the mandatory provisions of Rule 15(2) of CCS (CCA) Rules, 1965.

6. It has also been pointed out, on behalf of the applicant, that the punishment order dated 14.10.2009 has not taken into consideration the important points raised in the representation of the applicant dated 13.6.2008, and only vague observations have been made in the punishment order. The respondents have not been able to produce any document to prove that the applicant did not hand over charge of 08 WACs installed in ILT-2048 Exchange after handing over the responsibility of the Exchange. There has been no report, complaint or FIR regarding missing or ~~unavailability~~ of 08 WACs due to non-handing over of the same by the applicant even after his transfer.

7. In their Counter Affidavit, the respondents have stated that the applicant had taken charge of 08 WACs from Sri Balak Ram on 8.4.1991 and that he did not hand over charge of these WACs either at the time of his promotion or when he moved out on transfer on 20.12.1996. They have cited exhibit S-1 to establish that 08 WACs were handed over to the applicant. It is their contention that the applicant has not produced any documentary evidence to prove that he had made over the said WACs to his successor. It is also stated that the inquiry has been conducted and concluded according to rules and keeping the principles of natural justice, in mind. The impugned punishment order dated 14.10.2009 has been passed after consideration of the representation given by the applicant dated 13.6.2008 as has been stated in the order itself. Hence there is no infirmity in the departmental punishment proceedings.

8. A rejoinder Affidavit has also been filed on behalf of the applicant where assertions made in the O.A. have been largely repeated and emphasized.



9. During the course of hearing, counsels on both sides argued largely on the lines of their pleadings. The counsel for the applicant drew attention to the detailed representation made by the applicant in response to the findings of the Inquiry report and pointed out that none of the points raised, therein, have been addressed while issuing the punishment order.

10. The documents before us were closely examined. The respondents have referred to exhibit S-1, a copy of which has been annexed by the applicant himself (Annexure -10 to the O.A.). This document was examined and surprisingly it does not mention the handing over charge of 08 WACs. The name of the work is "wiring of WACs unit for ILT" and later states that this work has been completed on 21.3.1991 and "window type Air conditioners is being handed over to Sri H.N. Verma, JTO....." Inventory also does not mention 08 window type ACs.

11. The disagreement note issued by the respondent no.2 was also examined closely and the contentious portion is reproduced below:-

"Disciplinary authority is not agreed with the I.R. and has observed that :

Ex. S-1 clearly indicate that 8 WAC were handed over to the charged officer but the same were not handed over to any one by the charged officer. Charged officer also failed to produce any documentary evidence that he had made over the said WAC to his successor.

As such the charge are proved."

It is relevant to mention the contents of Rule 15 (2) of CCS (CCA) Rules, 1965 which while dealing with the action to be taken on inquiry report, states " the Disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the Disciplinary Authority or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of"

12. It is clear that the objective and import of this Rule is that the finding of Inquiry report should be given to the charged officer

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with **tentative reasons for disagreement, if any**. We find that in the present case while disagreement has been mentioned, the details of tentative reasons do not find any mention in the letter dated 16.5.2008. The fact that the respondent no.2 has also mentioned that the disciplinary authority has observed that the charge is proved, shows a mental pre-disposition on behalf of the respondents without waiting the response of the party charged by way of his representation. Coupled with the fact that exhibit S-1 itself is highly ambiguous, the disagreement note appears to suffer from apparent infirmities.

13. It is also observed that while the applicant was alleged, not to have submitted any document to prove that he actually handed over the charge of 08 WACs at the time of his promotion or transfer from the station, the respondents have also not been able to produce any document to the contrary. It is a usual practice that in offices such as that of the applicant a charge report is made out by way of handing over and taking over of important documents and equipments. In-case the applicant, who is being accused of not handing over charge of 08 WACs, is to be authentically charged in this respect, the respondents should have been able to produce the charge report of handing over charge of the applicant, which does not make a mention of 08 WAC. This has not been done in this case.

14. We also find that the applicant has submitted a detailed representation dated 13.6.2008. However, in the punishment order dated 14.10.2009, this representation has not been discussed by the disciplinary authority even in a cursory manner. A simple statement that the representation has been considered cannot be considered as sufficient consideration or application of mind on the part of the disciplinary authority. A plain reading of the inquiry report also indicates that the inquiry has been concluded by stating that the **article of charge is fully disproved**. The respondents have also not been able to establish that if the 08 WACs were removed or misappropriated during the period when the applicant was holding the charge of ILT-2048 Exchange, then how did the Exchange keep functioning at all in the absence of compulsory air-conditioning for the satisfactory functioning of the Exchange.

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15. Based on the above analysis, we find that note of disagreement dated 16.5.2008 and initial punishment order dated 14.10.2009 are erroneous in rules and lacking in true compliance of principles of natural justice. As regards the appellate order dated 4.5.2011 issued by the respondent no.3, we find that the appellate authority has held as follows:-

"Hence part of the charge that 8 WACs were not made over to any officer with malafide intention is not proved, but there was a lapse on the part of the charged officer as he has failed to make over 8 WACs, when he was transferred to Etawah SSA."

Clearly the appellate authority does not impute any malafide against the applicant and is basing a modified penalty on the conclusion that the charge report of 08 WACs was not prepared at the time when the charged officer was transferred out of Farrukhabad. However, as discussed earlier, this has also not been proved conclusively by any document on behalf of respondents and hence this conclusion does not appear to be sustainable. Further, since the initial punishment order itself is found erroneous under rules and procedure, we quash and set-aside the impugned order dated 4.5.2011. The respondents are directed to allow all consequential service benefits to the applicant as a result of quashing of this punishment order. No order as to costs.



(U.K. Bansal)
Member-A



(Ms. Jasmine Ahmed)
Member-J