

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 88 of 2010

Reserved on 25.3.2014

Pronounced on 15th day of April, 2014

Hon'ble Sri Navneet Kumar , Member (J)

Hon'ble Ms. Jayati Chandra, Member (A)

Hari Narayan Verma aged about 52 years son of late Kali Charan r/o
Type IV/2, BSNL Telecom Colony, Lakhanpur, Kanpur

Applicant

By Advocate: Sri R.C. Saxena

Versus

1. Bharat Sanchar Nigam Limited, through its Chief Managing Director, Bharat Sanchar Bhawan, Harishchandra Mathur Lane, Janpath, New Delhi-1.
2. General Manager , Telecom, Telecom District , BSNL, Doorsanchar Bhawan, Mall Road, Kanpur (UP).
3. Chief General Manager Telecom , U.P. (East), Telecom Circle, Hazratganj, Lucknow.

Respondents

By Advocate: Sri G.S. Sikarwar

ORDER

BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

The present Original Application is preferred by the applicant u/s 19 of the AT Act, with the following reliefs:-

The Hon'ble Tribunal may graciously be pleased to quash the impugned suspension order dated 31.7.2009, order 26.10.2009 and the order dated 23.1.2010 extending the periods of suspension passed by respondent No.2 and the appellate order dated 28.1.2010, rejecting the appeals passed by respondent No. 3, directing the respondents to treat the entire period of suspension as duty for all purposes holding he applicant also entitled for all consequential benefits.

2. The brief facts of the case are that the applicant was initially appointed as Telecom Office Assistant , was promoted as Junior Engineer and thereafter again promoted as Telecommunication

Engineering Service Group 'B' and finally promoted to Senior Time Scale of ITS Group 'A' w.e.f. 28.2.2003. By means of order dated 31.3.2004, the applicant was absorbed in BSNL w.e.f. 1.10.2000 as TES Group 'B' and continued to have the post of Divisional Engineer. The learned counsel for the applicant argued that the work and conduct of the applicant was always satisfactory despite that the applicant was placed under suspension as there exists no legal and valid material or any evidence to establish that the applicant has committed any misconduct whatsoever. The learned counsel for the applicant has also pointed out that the impugned suspension order discloses "failure in observance of Rules and Regulations in provisions of ISD (Bulk connections) in respect of M/s Vertix Global Kanpur but the suspension order does not specify any specific rule or regulations and also pointed out that the providing of ISD facility on mobile connections is not the exclusive duty and responsibility of the applicant and as per the prevailing practice on the application of the party concerned, the concerned SDO submits his physical verification report and after due checking of the papers/ documents makes the onward submission of the file which was ultimately to be sanctioned by the authority i.e. General manager (Telecom) and while granting the above ISD facilities, the procedure was duly followed and then the sanction was accorded by the competent authority. The learned counsel for the applicant has also relied upon the BSNL (Conduct, Disciplinary and Appeal) Rules, 2006 and also pointed out that as per Rule 30(1), the authority competent to pass the suspension order is provided and appointing authority of the applicant is Director who is subordinate to the CMD, BSNL and the disciplinary authority regarding major penalty, is the Chief General Manager Telecom UP are competent to take decision regarding disciplinary action and to place the applicant under suspension which has not been done by the competent authority.

Not only this, it is also submitted on behalf of the applicant that the

extension of suspension period is quasi judicial Act and the reasons are necessary to be recorded in the order itself showing in what manner the review committee applied its mind to the material on record and also to provide an opportunity of hearing to the applicant before passing the order of extension which has not been done as such violates the provisions of Article 311 of the Constitution of India. Therefore, the extension of suspension period, is absolutely arbitrary, and was passed without any legal and valid material. Not only this, the appellate order dated 28.1.2010 was also passed without any reason or lawful consideration. It is also argued on behalf of the applicant that the order of suspension was passed when the stage of contemplation of disciplinary proceedings has not reached and he was not informed about the memorandum of charges despite long gap from the date of suspension order was passed. Not only this, the applicant has also taken a ground that the review is contrary to the suspension as contained in circular letter dated 17.9.2004.

3. Learned counsel appearing on behalf of the respondents filed their reply as well as Supple. Counter Reply. The learned counsel for respondents has also filed second Supple. CA. Through Counter reply, it was indicated by the respondents that the committee was formed by the General Manager, Telecom, District Kanpur for investigation about irregularities for providing ISD facility on mobile connection to M/s Vertex Global Kanpur but reason of suspension of the applicant is in failure in observance of rules and regulations and provisions of posts paid mobile connection with ISD. The learned counsel for respondents also submitted that Rule 30(1) of BSNL (Conduct, Discipline and Appeal) Rules, 2006 provide that the Disciplinary Authority may place an officer under suspension as the General Manager is the Disciplinary Authority for minor penalty of adhoc STS and the applicant being adhoc STS, as such he was competent to suspend the applicant and it is also revealed that due to the applicant the misuse of ISD facility by

M/s Vertex Global, Kanpur, the BSNL has suffered huge loss of Rs. 1,29,04,164/- and the case is still under investigation by Circle Vigilance cell . The extension of suspension period by the disciplinary authority is based on the recommendations of the review committee following the guidelines of Rule 30(5)(B) of the Rules which is wholly just proper and in accordance with law and there is no illegality in extension of period of suspension. The appeal submitted by the applicant was also considered by the appellate authority and there is no illegality in passing the order by the appellate authority. Through, Supple. CA, the learned counsel for the respondents has relied upon the amendments in the existing rules, 2006 regarding review committee and has also pointed out that the decision of the review committee is legal and there is no illegality in the recommendations of the review committee.

4. Learned counsel for applicant himself has filed an application for taking on record the order dated 12.7.2011, whereby the order of suspension dated 30.7.2009 was revoked. The learned counsel for the respondents has also filed another Supple. CA by Brijendra Swaroop Shukla and through Supple.CA it was indicated that through order dated 9.8.2011, the respondents have appointed Presenting Officer to present the case and also appointed inquiry officer to enquire into the charges framed against the applicant and also indicated this fact that since the suspension order was passed by the competent authority in Exercise of Power conferred upon under Rule 30(5) of BSNL CDA Rules, 2006 and the extension of suspension period also does not suffer from any illegality , the applicant is not entitled for full pay and allowances w.e.f. 31.7.2009 to 11.7.2011 . Apart from this, it is also indicated by the learned counsel for the respondents that subsequently, the charge sheet was issued on 16.7.2012 to the G.M. who is O.P. No. 2 in the Original Application.

5. Learned counsel for the applicant has filed Rejoinder Reply/ Supple. Rejoinder Reply to all the counter/ Supple CA s filed by the respondents and has also filed an application for taking on record the order dated 12.7.2011 revoking the suspension order dated 31.7.2009 as well as also filed the charge sheet issued to the applicant vide order dated 12.7.2011. It is once again reiterated by the learned counsel for the applicant that the impugned order is bad in the eyes of law and is liable to be struck down as the same has not been passed in accordance with BSNL Rules, 2006 and the extension order was also not passed by the competent authority. As such, it requires interference by the Tribunal.

6. Heard the learned counsel for the parties and perused the record.

7. The applicant who was initially appointed in the respondents organization was promoted and subsequently absorbed in the BSNL and continued to the post of Divisional Engineer and also to be pointed out that after the enforcement of BSNL CDA Rules, 2006, the services of the applicant is governed by the aforesaid Rules. On account of certain irregularities, the applicant was placed under suspension in terms of sub rule 1 of Rule 30 of BSNL Rules, 2006. Vide order dated 31.7.2009, the said order of suspension was extended by the review committee by an order dated 26.10.2009 and thereafter, again it was extended vide order dated 23.1.2010. The applicant approached this Tribunal by filing an O.A. No. 533/2009 challenging the order dated 31.7.2009 and 26.10.2009 and while deciding the O.A., it was indicated by the learned counsel for the applicant that an appeal dated 5.12.2009 was filed against the suspension order and also submitted that the purpose of this original application would be served if a direction is issued to the appellate authority to dispose of the same by passing a reasoned and speaking order and providing a copy of order to the applicant. The Tribunal decided the original application

and accordingly, the respondents i.e. the appellate authority disposed off the appeal. The appellate authority also observed that since the GMTD, Kanpur is also the disciplinary authority for minor penalty and integrity of the appellant was under cloud and as such the remedial steps of placing the applicant under suspension so as to safe guard official documents and record and found that the suspension order passed by the authority is not incorrect, and after considering the material on record the appeal of the applicant was also rejected. The applicant feeling aggrieved by the said order as well as the order of suspension and the extension order, preferred the present O.A. It is also to be seen that the applicant himself has filed an order dated 12.7.2011 revoking the suspension order of the applicant dated 31.7.2009 which was passed by the Chief General Manager who is opposite party No. 3 in the O.A. and has also filed the charge sheet dated 12th July, 2011 which provided a statement of imputation of misconduct and misbehavior of Article of charges along with list of documents. The bare perusal of rule 30 of BSNL CDA Rules, 2006 provides as under:-

Rule 30: SUSPENSION


(I) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the Management by general or special order, may place an employee under suspension-

- (a) Where a disciplinary proceedings against him is contemplated on pending or
- (b) Where, in the opinion of the authority aforesaid he has engaged himself in activities prejudicial to the interest of the company ; or
- (c) Where as case against him in respect of any criminal offence is under investigation or trial;

(2) An employee who is detained in custody, whether on a criminal charge or otherwise for a period exceeding 48 hours, shall be deemed to have been otherwise, for a period exceeding 48 hours, shall be deemed to, have been suspended with effect from the date of detention by an order of the competent authority and shall remain under suspension until further orders. Similarly an employee who has been convicted for an offence, has been sentenced to a term of imprisonment exceeding forty eight hours and is not forthwith dismissed or removed or compulsory retired consequent of such conviction shall deemed to have been placed under suspension from the date of his conviction by an order of the competent authority and shall remain under suspension until further orders.

(3) Where a penalty of dismissal or removal from service imposed upon an employee under suspension is set aside on appeal or on review under these rules and the case is remitted for further inquiry or action or with any other direction the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal or removal and shall remain in force until further orders.

(4) Where a penalty of dismissal or removal from service imposed upon an employee is set aside or declared or rendered void in consequence of or by a decision of a court of law and the competent authority on consideration of the circumstances of the case decides to hold a further inquiry against him on the allegation on which the penalty of dismissal or removal was originally imposed, the employee shall be deemed to have been placed under suspension by the competent authority from the date of the original order of dismissal or removal and shall continue to remain under suspension until further orders.



Rule 30 , sub Rule 5(a) also provides for modification or revocation by the authority and the said rule reads as under:-

(2) (a) An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority, which made or is deemed to have made the order or by any authority to which that authority is subordinate.”

8. Not only this, it is also to be seen that even Rule 2006 was amended vide order dated 12th May 2009 and the certain amended provisions are reproduced below:-

Existing Rule No. & provisions in BSNL CDA Rules 2006	Approved amended in BSNL CDA Rules 2006 (by BSNL Board in its 119th meeting)
<p>Rule 30(5)(a): An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority, which made or is deemed to have been made the order or by any authority to which that authority is subordinate.</p> <p>Rule 30(5)(b): The authority which made or deemed to have made the order of suspension shall review periodically whether continuance of suspension of the employee is justified or not. The first review shall be done before expiry of 90 days on the recommendations of the review committee considered for the purpose and pass orders either extending or revoking the suspension. Then further review can be done on six monthly basis. These are only guidelines and the disciplinary authority is fully competent to review the suspension whether it is felt that continuance of suspension is not justified having regrd to the circumstances of the case.</p>	<p>Rule 30(5)(a): Subject to the provisions contained in 30(5)(e) an order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.</p> <p>Rule 30(5)(b): where an employee is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceedings or otherwise) and any other disciplinary proceedings is commenced against him during the continuance of that suspension , the authority competent to place him under suspension may, for reasons to be recorded by him in writing direct that the employee shall continue to be under suspension until the termination of all or any of such proceedings.</p>
<p>**(Guideliens issued vide No. 257-4/05O.M. 17, dated 17.9.2004 for composition of Review Committee may be followed till further orders. However, in place</p>	<p>Rule 30(5)(e): An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority, which made or its deemed to have made the order of by any authority to which that authority is subordinate.</p> <p>Rule 30(5)(d): As order of</p>

of Sr. DDG (O&M) now CVO (Head of Vigilance Branch) in BSNL,CO, would be the Member).

suspension made or deemed to have been made under this rule shall be reviewed by the authority which is competent to modify or revoke the suspension before the expiry of ninety days from the date of order of suspension on the recommendations of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. Subsequent revision shall be made before the expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding one hundred and eighty days at a time.

Rule 30(5)(e): An order of suspension made or deemed to have been made under sub rule 30(1) or 30(2) of this Rule shall not be valid after a period of ninety days unless it is extended after reviews, for a further period before the expiry of ninety days.

Provided that no such review of suspension shall be necessary in the case of deemed suspension under sub rule 30(2), if the employee continues to be under detention at the time of completion of 90 days period in such case will count from the date the employees detained in custody is released from detention or the date on which the fact of his release from detention is intimated to his Appointing Authority, whichever is later.

**(Guidelines at Para (4) issued by CVO vide their letter No. 212-52/2007-VM V dated 17th August, 2007 for composition of Review Committee may be followed till further orders).

9. The provision as provided under Rule 51 of the aforesaid rules provides for consideration of appeal and sub rule 1 of Rule 51 reads as under:-

Rule 51. CONSIDERATION OF APPEAL

(I) In the case of an appeal against an order of suspension , the appellate authority shall consider whether in the light of the provisions of Rule 30 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

10. It is explicitly clear that the suspension order was revoked and not only the applicant but the O.P. No. 2 i.e. GMTD, Kanpur has also been issued the charge sheet. The order of suspension dated 31.7.2009 clearly provides that a disciplinary proceedings against the applicant is deemed/pending, as such he was placed under suspension. There are three kinds of suspension:-

- i) suspension as a punishment;
- ii) suspension during or in contemplation/disciplinary proceedings or on enquiry;
- iii) suspension in the sense that the employee may merely be forbidden for discharging his duties during pendency of an enquiry against him.

11. As observed by the Hon'ble Apex Court in the case of **V.P. Gidroniya Vs. State of M.P., reported in AIR 1970 SC 1494**, the Hon'ble Apex Court enunciated the law as follows:-

“Three kinds of suspension are known to law. A public servant may be suspended as a mode of punishment or he may be suspended during the pendency of an enquiry against him if the order appointing him or statutory provisions governing his service provide for such suspensions. Lastly, he may merely be forbidden from discharging his duties during the pendency of an enquiry against him which act is also called suspension. The right to suspend as a measure of punishment as well as the right to suspend the contract of service during the pendency of an enquiry are both regulated by the contract of employment or the provisions regulating the conditions of service. But the last category of suspension referred to earlier is the right of the master to forbid his servant from doing the work which he had to do under the terms of the contract of service or the provisions governing his conditions of service, at the same time keeping in force the master's obligations under the contract. In other words, the master may ask his servant to

refrain from rendering his service but he must fulfill his part of the contract."

12. The Hon'ble Andhra Pradesh High Court in the case of **B.Srinivasulu Vs.Secretary ,State Legislature ,Govt. of A.P.** reported in 1994(8) SLR 359 has been pleased to observe as under:-

"Whenever a departmental enquiry is contemplated or pending against a civil servant or where a case against a civil servant in respect of any criminal offence is under investigation, enquiry or trial , the rules authorize the disciplinary authority to place the concerned civil servant under suspension. The object of placing a civil servant under suspension is to keep him away from a position where he can interfere with the conduct of the enquiry of tamper documentary or oral evidence in any manner or where, having regard to the nature of the charge against him, it is felt that it could be unsafe to continue to vest in him the powers of his post. It is for the disciplinary or the competent authority to consider all the facts and circumstances of the case and in its discretion to place a civil servant under suspension. Whether the employees should or should not continue in their office during the period of enquiry is a matter to be assessed by the authority concerned and ordinarily, the court should not interfere with the orders of suspension unless they are passed mala fide and without there being even a prima facie evidence on record connecting the employees with the misconduct in question."

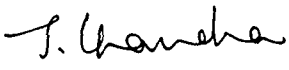
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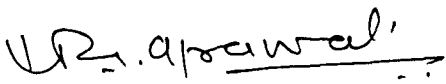
13. The Hon'ble Bombay High Court in the case of **Durukumar Shambhulal Chandnani Vs. Shri Chittahtosh Mookerjee the Chief Justice, High Court , Bombay and others** reported in **1992(4) SLR 98** observed as under:-

“7. In the present case, on the basis of the material which was before the Chief Justice, he was prima facie satisfied that the allegations require to be enquired into in a departmental inquiry. He has passed the order of suspension in exercise of powers under Rule 3(1)(a) in contemplation of such a departmental inquiry. In these circumstances, we do not see how the order of suspension can be faulted.

14. In the instant case, since subsequently, his suspension order was revoked by means of an order dated 12.7.2011 and the respondents also issued the charge sheet upon the applicant, as such we do not find any justified reason to say that the impugned suspension order is bad in the eyes of law. We are not inclined to interfere in the present O.A.

15. Accordingly, O.A. is dismissed. No order as to costs.


(JAYATI CHANDRA)
MEMBER (A)


(NAVNEET KUMAR)
MEMBER (J)

HLS/-