

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
CAMP: NAGPUR

ORIGINAL APPLICATION NO.: 895 of 1998.

Dated this Wednesday, the 11 day of February, 2004.

Aniruddha Pancham Gondane,

Applicant.

Shri M. K. Deshpande,

Advocate for
Applicant.

VERSUS

Union of India & Others,

Respondents.

Shri Govind Mishra,

Advocate for
Respondents.

CORAM : Hon'ble Shri Anand Kumar Bhatt, Member (A).

Hon'ble Shri S. G. Deshmukh, Member (J).

(i) To be referred to the Reporter or not ?

(ii) Whether it needs to be circulated to other Benches of the Tribunal ?

(iii) Library.


(S.G. DESHMUKH)
MEMBER (J).

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Aniruddha Pancham Gondane,
R/at P & T Colony,
Quarter No. 5,
Near Kasturchand Park P.O.,
Civil Lines,
Nagpur - 440 001.

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Applicant.

(By Advocate Shri M. K. Deshpande)

VERSUS

1. Union of India,
Department of Telecommunication
through its Chairman and
Secretary, Telecom Commission,
Sanchar Bhavan,
20, Ashoka Road,
New Delhi - 110 001.

2. Chief General Manager,
Maharashtra Telecom Circle,
2nd Floor, G.P.O. Building,
Mumbai - 400 001.

3. Deputy General Manager (East),
(Redesignated as Area Manager),
Department of Telecommunication,
Nagpur Telecom,
C/o. Itwara Telephone Exchange,
Nagpur.

4. General Manager,
Telecom, Department of
Telecommunications,
Zero Mile Stone,
Nagpur - 440 001.

... Respondents.

(By Advocate Shri Govind Mishra).

ORDER

PER : Shri S. G. Deshmukh, Member (J).

The present O.A. is filed for a declaration that the order dated 07.10.1996 passed by the Respondent No. 3 withholding the increment of the applicant for three years and order dated

05.03.1998 passed by the Respondent No. 4 reducing the applicant by one stage for a period of three years as illegal and arbitrary and for a declaration that Rule 14 of the Central Civil Services (C.C.A) Rules is ultra-vires being violative of Articles 14 and 16 of the Constitution of India.

2. The applicant was appointed as a Repeater Station Assistant on 17.10.1975. This post has been subsequently redesignated as Transmission Assistant. He was promoted as a Junior Engineer in the scale of Rs. 425-700/- on 21.03.1980 and was posted to work at Mumbai. On 22.11.1988 the applicant was transferred to Nagpur on his own request. On 17.12.1994 he was served with a charge-sheet under Rule 14 of the Central Civil Services (C.C.A.) Rules, 1965. The applicant, on 25.01.1995 submitted his reply to the charge-sheet and demanded copies of certain documents. The Presenting Officer submitted his written brief on 15.02.1996. The applicant submitted his written brief on 08.03.1996. The Enquiry Officer submitted his report on 14.03.1996 holding that the charges levelled against the applicant are proved. The applicant, on receipt of the report, submitted his reply. By order dated 07.10.1996 the Disciplinary Authority imposed the penalty of withholding of one increment for three years on the applicant. The applicant preferred an appeal on 18.10.1996. The Appellate Authority issued a show cause notice on 05.09.1997 stating that the punishment imposed is inadequate. The Applicant submitted his reply on 16.10.1997. On 05.03.1998 the General Manager, Telecom, passed the order of reducing the applicant by one stage from Rs.7300/- to Rs. 7100/- in the time scale of Rs. 6,500-10,500/- for a period of three years w.e.f. 07.10.1996. Being aggrieved by the order, the applicant filed this O.A. The applicant contended that Rule 14 of the C.C.S. (C.C.A) Rules, 1965, is violative of Article 14 and 16 of the Constitution of India.

3. The respondents filed their counter affidavit and contended that relevant documents were supplied to the applicant and he was given reasonable opportunity. The report and findings are based on actual records. After considering all the aspects involved in the case and the material available on record, the enquiry officer submitted his report on 14.03.1996 concluding that the charges levelled against applicant stand proved. The D.G.M. being the Disciplinary Authority has correctly passed the punishment order dated 08.10.1996. Thereafter, the Appellate Authority has considered the case and after consideration the Appellate Authority finally came to the conclusion that the punishment earlier imposed by the Disciplinary Authority is not just sufficient in respect of gravity of the guilt committed by the applicant. After considering all the aspect the Appellate Authority has rightly and legally enhanced the punishment as per Rule 27 (2)(f) of C.C.S. (C.C.A) Rules, 1965, that too after giving the reasonable opportunity to the applicant to defend himself. Whatever action taken by the respondents are no way violative of any rules, law, guidelines or principles of natural justice. Respondents deny that Rule 14 of the C.C.S. (C.C.A.) Rules is a violative of Articles 14 and 16 of the Constitution of India and hence pray for dismissal of the O.A.

4. The applicant also filed the rejoinder and reiterated the averments in the O.A.

5. Heard the Learned Counsel for the Applicant, Shri M. K. Deshpande and Shri Govind Mishra, Learned Counsel for the Respondents.

6. The Learned Counsel for the Respondents submitted that the Department of Telecommunication is converted into Bharat Sanchar Nigam Limited and its employees are transferred to

B.S.N.L. and the Tribunal has no jurisdiction and, therefore, the O.A. is required to be dismissed for want of jurisdiction.

7. The Government of India has taken a policy decision of converting its Department of Telecommunications into Limited Company and, therefore, established B.S.N.L. and transferred its employees to the said B.S.N.L. w.e.f. 01.10.2000. From that date onwards the employees of the Department of Telecommunications became employees of B.S.N.L. In case of B.S.N.L. there being no notification under Section 14 (2) of the Administrative Tribunals Act, 1985, the Tribunal has no jurisdiction to consider such applications. We cannot direct the Department of Telecommunications i.e. B.S.N.L. to comply our order. B.S.N.L. is a body Corporation registered under the Companies Act, 1956. It not being notified under Section 14(2) of the Administrative Tribunals Atc, 1985, the Tribunal has no jurisdiction to entertain the application.

8. The Division Bench of the Bombay High Court in Bharat Sanchar Nigam Limited V/s. A.R. Patil & others [2002 (3) ATJ 1] has held that the Tribunal has no jurisdiction to entertain the application filed by an employee of B.S.N.L. relating to his grievance on service matters.

9. In Phuleshwar Prasad Singh V/s. Union of India & Others [2003 (3) AI SLJ Vol. X page 162] the Division Bench of Central Administrative Tribunal at Chandigarh has observed in para 11 of the judgement that "the decision in the case of Bishwanath Banerjee (supra) which was decided on 9th April, 2001 by a Division Bench of the Calcutta High Court, was perhaps not brought to the notice of the Bombay High Court, in the case of A.R. Patil (supra) which is decided on 01.08.2002. If earlier decision of the Calcutta High Court in Bishwanath Banerjee's case

was cited before the Bombay High Court in the case of A.R. Patil (supra), the tone and tenure of the decision and its result would have been entirely different. We are, thus, confronted with two opposing decisions, one of the Division Bench of the Calcutta High Court and the other of the Division Bench of Bombay High Court. The law of precedent is that the earlier decision (not noticed in the later decision) will have the binding force."

10. In Bishwanath Banerjee V/s. Union of India & Others [2002 (2) RSJ 485] it is observed that Tribunal was not justified in holding that it had no jurisdiction to entertain the petition. The Tribunal has a jurisdiction to entertain the application which was filed before it by the applicant who continues to be an employee of the Union of India.

11. In Andhra Pradesh State Electricity Board & Others V/s. M.A. Hai Azami & Others [1992 SCC (L&S) 533] it has been held "A.P. Administrative Tribunal Order, 1975 - Para 6 - Jurisdiction of Tribunal - UDC under State Govt. of A.P. (respondent) on deputation to A.P. State Electricity Board placed in charge of Accountant Post but given salary of UDC - Claiming promotion to and pay of Accountant - Held, Tribunal has no jurisdiction to entertain his claim."

12. It is well settled that the later decision rendered in ignorance of the earlier decision has to be regarded as per incurium, not binding on the Court in subsequent cases. It appears that the decision in M.A. Hai Azami's case delivered by the Apex Court was perhaps not brought to the notice of the Calcutta High Court in Bishwanath Banerjee's case. The decision in A.R. Patil's case rendered by the Bombay High Court is exactly parallel to the decision of the Apex Court.

13. B.S.N.L. is a Body Corporation registered under the Companies Act, 1956. It not being notified under Section 14 (2) of the Administrative Tribunals Act, 1985, the Tribunal has no jurisdiction to entertain the application as per Apex Court decision in M.A. Hai Azami's case and the decision of Bombay High Court in A.R. Patil's case. Thus, the O.A. is required to be returned to the applicant for appropriate action in view of the fact that Tribunal has no jurisdiction to entertain the application.

14. O.A. be returned to be applicant for filing before the appropriate forum. No costs.

S. G. Deshmukh
(S. G. DESHMUKH)
MEMBER (J).

Anand Kumar Bhatt
(ANAND KUMAR BHATT)
MEMBER (A).

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