

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

Original Application No. 291/00387/2014

Order Reserved on : 08.12.2015

Date of Order: 12th January 2016

CORAM

Hon'ble Ms. Meenakshi Hooja, Administrative Member

Parmanand Sharma S/o Shri Laxminarayan Sharma, aged 65 years, (Senior Citizen) resident of 345, Shri Gopal Nagar, Gopalpura Bye pass, Jaipur retired from the post of CSS (ST 206) from SD

O Phones Triveni Nagar, BSNL Jaipur and presently as an advocate of Rajasthan High Court, Jaipur.

.....Applicant

(By Advocate Mr. Amit Mathur)

VERSUS

1. The Chairman & Managing Director, BSNL 12 Khamba Road, New Delhi.
2. The Principal General Manager, Telephones Distt. BSNL, MI Road, Opp. GPO, Jaipur
3. The Divisional Engineer Phones, Bharat Sanchar Nigam Ltd. Durgapura, jaipur
4. The Sub-Divisional Officers Phones, Ist Bharat Sanchar Nigam Ltd. Durgapura, Jaipur

.....Respondents

(By Advocate Mr. K.S. Sharma)

ORDER

This OA has been filed u/s 19 of the Administrative Tribunals Act, 1985 seeking the following relief :

"In conspectus of above state of facts and chronicle account of applicant's consistent harassment for denial of the relief asked by the applicant as per his legal notice. It is prayed to Hon'ble Tribunal that this Hon'ble Tribunal may very graciously be pleased allowed this OA and thereby the impugned order dated 31.08.2009 under which regular pension DCRG and commuted value of pension was withheld this part of the order may kindly be set aside and quashed and consequently respondents be directed to make the payment of interest @ 24% p.a. from 01.09.2009 to 29.04.2011 on the amount of withheld by the respondents on 31.08.2009 and special damages and compensation of Rs. 15.00 lacs for the consistent harassment on account of false and fabricated case.

The proceedings of 30.04.2011 be set aside and quashed and in which including connected charge sheet dated 28.08.2004, 21.02.2004, 11.03.2004, 09.05.2008 and

14.10.2008 be also quashed and set aside and consequently refund of Rs. 212/- may kindly be ordered to be refunded to the applicant which he has deposited on 24.01.2013. The expenditure of the notice and expenditure of OA may also be awarded in favour of applicant.

2. When the case came up for consideration and hearing on 08.12.2015, learned counsel for the applicant, inter alia, submitted that vide Annexure A/2 dated 30.04.2011, the applicant who had already superannuated on 31.08.2009, was imposed a penalty of 'Censure' along with depositing of Rs. 211.20. In this context he submitted that earlier the applicant was issued a charge sheet on 28.08.2004 (Annexure A/15) for minor penalty under Rule 16 of CCS (CCA) Rules, 1965. At that time the CCS (CCA) Rules, 1965 continued to be applicable to the BSNL which was formed out of the Department of Telecom in the year 2000. Further, in this disciplinary proceeding the applicant was awarded a penalty by order dated 15.01.2005 and the appeal was also dismissed vide order dated 24.10.2005. The aforesaid orders of disciplinary authority and appellate authority were challenged in the civil court and the Additional Civil Judge, after due consideration of the case, vide order dated 29.10.2007 (Annexure A/8) observed that the penalty order and appellate order are not in accordance with the principles of natural justice and set aside the same, but gave liberty to the respondent department to proceed against the applicant on the basis of charge sheet issued as per Rule 16 of CCS(CCA) Rules, 1965 for enquiry and to further pass orders as per law after giving due opportunity of defence and hearing to the applicant. However, the respondent authority, instead of making further inquiry on the already issued charge sheet dated 28.08.2004 (Annexure A/15), issued a fresh charge sheet on 14.10.2008 (Annexure A/19) under BSNL CDA Rules, 2006 without withdrawing

the earlier charge sheet. Counsel for the applicant contended that the fresh charge sheet is not maintainable because in the order dated 29.10.2007 of the Additional Civil Judge the respondents had the liberty to conduct further enquiry only on the basis of charge sheet already issued. He further submitted that a bare perusal of the two charge sheets i.e. 28.08.2004 (Annexure A/15) and 14.10.2008 (Ann.A/19), show that the charges are identical and relate to sale of IT cards PSN Nos.84476, 90797 from CSC, Bajaj Nagar and counsel for applicant contended that issuing a fresh charge sheet on same grounds without withdrawing the earlier charge sheet is void and not sustainable in eyes of law. He further submitted that even for this fresh charge sheet, the respondents did not conduct a proper enquiry, as may be seen from letter dated 11.05.2009 (Ann.A/22). It was mentioned in this letter in point 8 and 12 that such investigation report are not available on record, and copies of note sheet were also not supplied being official documents as may be seen at points no. 5, 6, 9, 14 and 15. He further pointed out that in the point No. 1 and 2, it was mentioned that no record is available with reference to ITC PSN No. 84476 and ITC PSN No. 90797 as these cards were not procured by CO (CSC), Bajaj Nagar, though in the charge sheet, it has been mentioned that they were purchased by Shri Ramesh Chand and Shri Vijay Kumar Bhalla from CSC, Bajaj Nagar, Jaipur respectively. Without providing necessary documents and records and by mentioning at point no. 3 that the copy of investigation report already supplied, the order of penalty dated 30.04.2011 (Annexure A/2) was passed without following the proper procedure and giving an adequate opportunity of defence. In the said penalty order, it was simply

observed that the applicant committed gross misconduct and failed to maintain integrity and devotion to duty and thereby lowered the image of the Company in the public eye but taking a lenient view, as the official retired from service, a punishment of 'Censure' was awarded along with depositing of Rs. 211.20. Ld. Counsel for the applicant contended that the charge sheet dated 14.10.2008 (Annexure A/19), the disciplinary proceedings, and the order dated 30.04.2011 (Annexure A/2) are therefore completely contrary to law and principles of natural justice and deserve to be set aside. The applicant filed D.B. Civil Writ Petition No.11858/2011 against the penalty order dated 30.04.2011 and the same was permitted to be withdrawn by the order dated 19.07.2012 (Annexure A/14) of Hon'ble High Court with a liberty to avail an appropriate remedy against the order of penalty dated 30.04.2011 in accordance with law. Counsel for applicant submitted that the applicant then filed an OA in CAT, Jaipur Bench but only the pensionary benefits were released. He, therefore, prayed that penalty order 30.04.2011 (Ann.A/2) be set aside, being against the laid down procedure and violative of principles of natural justice.

3. Counsel for the applicant further contended that order dated 31.08.2009 (Annexure A/1), vide which the DCRG and the commuted value of pension, and regular pension was withheld in respect of the applicant till the conclusion of the vigilance/ disciplinary cases as per CCS (Pension) Rules, 1972 and only provisional pension was sanctioned is also not sustainable in the eyes of the law. As brought out in the OA, pension is a fundamental right of the applicant who has served for long years and there is no provision to withhold the pension and other retiral

benefits merely on the basis of a pending disciplinary proceeding and enquiry, and which itself is also not in accordance with law. Thus, he contended that the order dated 31.08.2009 (Ann.A/1) be set aside and 24% interest p.a. be granted on the delayed payment of DCRG, commuted value of pension and release of regular pension because of the said illegal order and prayed for the OA to be allowed.

4. Per contra, counsel for the respondents submitted that the OA is time barred and delayed because Annexure A/2 was passed on 30.04.2011 and this OA has been filed in July, 2014 almost after 3 years and there is not even an application for condonation of delay. Counsel for the respondents also submitted that the applicant had earlier filed OA No. 657/2012 which was disposed of on 17.01.2013 with the direction to the respondents to release all the retirement benefits after the applicant deposits Rs. 211.20 with the respondents, even if it done under protest. In this OA, the applicant only sought relief for payment of retirement benefits with 24% interest p.a. but did not challenge penalty order dated 30.04.2011 (Annexure A/2) in the said OA. Thereafter the applicant filed another OA No. 126/2014 praying for payment of interest at the rate of 24% p.a. from 30.04.2011 to 02.03.2013 and the same was disposed of by order dated 08.01.2015. In this OA also, the applicant never challenged the penalty order dated 30.04.2011. Counsel for the respondents specifically brought to notice the direction of Hon'ble High Court dated 19.07.2012 (Annexure A/14) in DB Civil Writ Petition No.11858/2011 by which the applicant was allowed to withdraw the petition with the liberty to avail the appropriate remedy against the order of penalty dated 30.04.2011 in accordance with law but even after the

order of the Hon'ble High Court, the applicant never challenged the order though he filed 2 above referred OAs i.e. 657/2012 and 126/2014 after that. Counsel for respondents, thus contended that the applicant has challenged penalty order dated 30.04.2011 only in the present OA that too after more than 3 years and did not challenge it in the aforesaid OAs No.657/2012 and 126/2014, though the order was very much there at the time of filing the said OAs, which were filed after the order of the Hon'ble High Court dated 19.07.2012 (Annexure-A/4). He contended that filing different OAs for matters which are related to and connected—clearly the penalty order dated 30.04.2011 was given in the pending disciplinary proceedings and certain retiral benefits were withheld in accordance with CCS(Pension) Rules, 1972 in view of the pending disciplinary proceedings – is against the letter & spirit of order II Rule 2 of the CPC and hence the OA is liable to be dismissed on these preliminary grounds only.

5. On the merits of the case, counsel for respondents submitted that the fresh charge sheet dated 14.10.2008 (Annexure A/19) has been issued under the rules framed for the BSNL (and by which time the CCS (CCA) Rules were no longer applicable to BSNL) and the charges, as even admitted by the counsel for the applicant, are the same as those in the earlier charge sheet dated 28.08.2004 (Annexure A/15) and merely on the technical grounds that the earlier charge sheet was not withdrawn, the disciplinary proceedings and the penalty order does not deserve to be set aside. Counsel for respondents further submitted that the documents and specially the investigation report was already made available to the applicant as is evident from letter dated 09.05.2008

(Annexure-A/18). He contended that penalty order dated 30.04.2011 has been passed after providing adequate opportunity of defence, and letters of the applicant were replied to and therefore there are no grounds for setting it aside.

6. With regard to order dated 31.08.2009 (Annexure-A/1) counsel for respondent submitted that as brought out in the reply, the DCRG & CVP and regular pension were withheld in accordance with CCS (Pension) Rules, 1972 in view of the pending disciplinary proceedings and provisional pension was released. After passing of penalty order dated 30.04.2011 and depositing of penalty of Rs. 211.00 by the applicant (that too under protest only after passing of order dated 17.01.2013 in OA No.657/2012) all retiral benefits were released on 03.05.2013 and therefore, no question arises of payment of interest on the retiral benefits at the rate of 24% p.a. from 01.09.2009 to 29.04.2011 as sought for in the OA. He thus submitted that OA lacks merit, the same is liable to be dismissed and prayed for its dismissal.

7. Rebutting the arguments of the counsel for respondents, counsel for the applicant submitted that the order dated 30.04.2011 is also bad in law because in the charge sheet dated 14.10.2008 (Annexure-A/19), it has been stated that IT Cards PSN No.84476 and 09797 were purchased from CSC, Bajaj Nagar where the applicant was working but in the reply dated 11.05.2009 (Annexure-A/22) it has been mentioned that these cards were not procured by CO (CSC) Bajaj Nagar and this is a major discrepancy. He further reiterated that copies of note sheets were not supplied only on the grounds that these are official documents which is

not valid as per law and the entire proceedings were not conducted properly according to procedure. In this regard he referred to judgments in the case of LIC of India & Anr. Vs Ram Pal Singh 2010 (2) Supreme 444 regarding opportunity of hearing and supply of documents and adherence to principles of natural justice, and to UOI & Others Vs B.V. Gopinath AIR 2014 (Supreme Court) 88 regarding approval of charge sheet and Nirmala J. Jhala Vs State of Gujarat and another AIR 2013 SC 1513 in support of his contentions.

8. He also submitted that the applicant having retired on 31st August, 2009, first filed OA No. 657/2012 and the OA 126/2014 to get the DCRG, commuted value of pension, and regular pension released and could only challenge the penalty order dated 30.04.2011 after having adequate resources and thus prayed for the OA to be allowed. He contended that the case cannot be termed as delay, as payment of pension is a service related claim which was unfairly denied and therefore a continuing wrong and in support of his contentions he relied upon judgments in the case of Jamuna Bai Vs Union of India and Others WLC 2010 (HC)197, Union of India Vs. Tarsem Singh 2008(8) SCC 648 and Pooran Singh Vs Union of India and Ors. 2014 (1) SLR 621.

9. In the context of the contention of the counsel for respondents regarding violation of order II Rule 2 of CPC, counsel for applicant contended that CPC does not apply and the Tribunal lays down its own procedure as per Section 22 of the Administrative Tribunals Act, 1985. He thus concluded that there is no force in the arguments of the counsel for respondents and the OA deserves to be allowed.

10. Considered the aforesaid contentions and perused the record. It is noticed that the applicant filed a civil suit in the court of Additional Civil Judge, Jaipur Div. Jaipur City, Jaipur to quash and set aside the charge sheet dated 28.08.2004, and the order of the disciplinary authority dated 15.01.2005 whereby a penalty of stoppage of one annual grade increment for 02 years without cumulative effect was imposed along with recovery of Rs. 540, and the order of the appellate authority dated 24.10.2005 whereby the order of the disciplinary authority was upheld. The Additional Civil Judge vide order dated 29.10.2007 (Annexure A/8) set aside the order of penalty dated 15.01.2005 and appellate order dated 24.10.2005 on the grounds of non-adherence to principles of natural justice but gave the liberty to the respondent department to proceed with the inquiry on the basis of the charge sheet dated 28.08.2004 issued for minor penalty under Rule 16 of CCA (CCA) Rule, 1965 and thereafter pass an order in accordance with law after giving adequate opportunity of defense and hearing to the applicant.

11. The applicant then submitted an appeal against the said order before the Hon'ble District and Sessions Judge and the same was dismissed because the jurisdiction no longer vested with the District Court. Thereafter the applicant filed an OA 246/2009 before the CAT, Jaipur Bench, Jaipur and the said OA was dismissed on 17.02.2011. The Review Petition filed by the applicant was also dismissed.

12. Thereafter, with reference to penalty order dated 30.04.2011 (Annexure A/2) passed in disciplinary proceedings initiated vide charge

sheet dated 14.10.2008 (Annexure-19), the applicant filed a D.B. Civil Writ Petition No. 11858/2011 in the Hon'ble Rajasthan High Court, which was withdrawn by the applicant and as per the order of Hon'ble High Court dated 19.07.2012 (Annexure-A/14), the petition was allowed to be withdrawn with the liberty to avail of an appropriate remedy against the order of penalty dated 30.04.2011, in accordance with law. In this context, it is noticed that after the passing by the order of the Hon'ble High Court on 19.07.2012 (Annexure A/14), the order of penalty dated 30.04.2011 was not challenged by the applicant in the OAs filed subsequently in related and connected matters before the Tribunal i.e. OA No. 657/2012 decided on 17.01.2013 and OA No. 126/2014 decided on 08.01.2015. The penalty order dated 30.04.2011 has now been challenged only in the present OA which has been filed on 07.07.2014. Thus the order dated 30.04.2011 has been challenged after a delay of more than three years from passing of the orders and more than 2 years after the order of the Hon'ble High Court. It was also not challenged in the OAs 657/2012 and 126/2014 when relief was sought in related matters regarding release of pensions, DCRG and other benefits which were withheld on account of passing of the pending disciplinary inquiry. Thus, there is force in the contention of the counsel for the respondents that the applicant failed to challenge the penalty order dated 31.04.2011 in the 02 earlier connected OAs No.657/2012 and 126/2014 filed in this Tribunal after passing of the order by the Hon'ble High Court on 19.07.2012, and now has filed another 3rd OA challenging the same.

13. In this regard counsel for the applicant has relied upon judgment of the Hon'ble Rajasthan High Court Jaipur Bench, Jaipur in Jamuna Bai vs. Union of India Others in DB Civil Writ Petition No.10/2002 decided on 08.12.2009 wherein the Hon'ble High Court relying upon a judgment of the Supreme Court in the case of Union of India Vs. Tarsem Singh reported in 2008 SCC, 648 wherein it has been upheld that where a service related claim is based on an continuing wrong it can be granted even if there is delay in seeking remedy, and that this principle has also been upheld by the Delhi High Court in its judgement in the case of Puran Singh vs. Union of India & Ors in DBPC No.247/2002 decided on 25.01.2013. However, it is seen that in the present OA, it is not a question of mere delay but also the fact that the applicant did not challenge the penalty order dated 30.04.2011 in two OAs No.657/2012 and 126/2014 filed by him subsequent to the order of the Hon'ble High Court, though the said order of penalty i.e. order dated 30.04.2011 was very much connected with the reliefs sought in these two OAs. Therefore, facts of the present case are different from those that were considered by the Hon'ble Rajasthan High Court and Delhi High court and do not support the claim of the applicant.

14. With regard to the aforesaid penalty order dated 30.04.2011(Annexure A/2), it has been one of the main contentions of the counsel for the applicant that without withdrawal of the earlier charge sheet dated 28.08.2004 (Annexure A/15) given under the then applicable CCS (CCA) Rules, a fresh charge sheet was issued on 14th October, 2008 (Annexure A/19) under the BSNL CDA Rules, 2006 and therefore, the charge sheet is itself invalid and hence the penalty order

passed on 30.04.2011 cannot be sustained in the eyes of law. In this regard it is seen that vide order of Additional Civil Judge dated 29.10.2007 (Annexure-A/8), only the penalty order dated 15.01.2005 and appellate order dated 24.10.2005 were set aside, the charge sheet dated 28.08.2004 was not set aside and respondents were given the liberty to proceed with the inquiry and pass orders in accordance with law after giving the applicant an opportunity of defence and hearing. It appears from a perusal of the record that the charge sheet dated 14.10.2008 (Annexure A/19) and charge sheet dated 28.08.2004 (Annexure A/15) relate to the same allegations regarding misuse of IT Cards PSN No. 84476 and 90797 by the applicant and the charge sheet dated 14.10.2008 has been issued under Rule 35 of BSNL CDA Rules, 2006 as the said rules became applicable by that time. There is force in the contentions of the learned counsel for the respondents that issuing of charge sheet dated 14.10.2008 without withdrawing earlier charge sheet dated 28.08.2004 is only a technical defect, as the charges are same and further in the order of Additional Civil Judge dated 29.10.2007 the charge sheet was not set aside, and therefore there appear no justifiable grounds to set aside the charge sheet dated 14.10.2008 (Annexure A/19).

15. During the hearing, counsel for the applicant also submitted that order dated 30.04.2011 is not sustainable in the eyes of law because proper and relevant documents were not supplied to the applicant and had especially referred to letter dated 11.05.2009 in this regard (Annexure-A/22). However, it is noticed that during the pendency of the earlier charge sheet a copy of the vigilance investigation report was

already supplied to him as appears from letter dated 09.05.2008 (Annexure A/18). Counsel for the applicant also referred to judgment of the Hon'ble Apex Court in LIC of India vs. Rampal Singh 2010 2 Supreme 44 that the proceedings can be vitiated by non adherence to the principles of natural justice and judgment in the case of Nirmala J. Jhala vs. State of Gujrat AIR 2003 SC 1513 in this regard. It is seen in the present case the Additional Civil Judge had already set aside order dated 15.01.2005 and 14.10.2005 of the Disciplinary Authority and Appellate Authority with reference to charge sheet dated 28.08.2004 on the ground of non adherence to the principles of natural justice. However, after issue of the fresh charge sheet dated 14.10.2008, the letters submitted by the applicant were replied to (refer Annexure A/21 and Annexure A/22) and the investigation report was already supplied to him during the pendency of the earlier enquiry as evident from letter dated 09.05.2008 (Annexure A/18). Further the proceedings were under minor penalty and after considering all aspects of the case, a lenient view was taken by the disciplinary authority imposing only a penalty of censure and recovery of a small amount of Rs. 211.20 was imposed vide order dated 30.04.2011. Thus it cannot be accepted that principles of natural justice were grossly violated or that the applicant was denied adequate opportunities of defence and the aforesaid rulings are therefore not really applicable or support the case of the applicant. Counsel for the applicant had also contended that there is discrepancy in the charge sheet and the letter of the respondents dated 11.04.2009 (Annexure-A/22). In the said letter in point Nos.1 & 2 it has been mentioned that cards No.ITC PC No.84416 and 90797 were not procured by CO (CSC) Bajaj

Nagar and therefore record is not available with CSC Bajaj Nagar while on the other hand the charge sheet stated that they were sold from CSC Bajaj Nagar when the applicant was working there. However, from a perusal of the charge sheet dated 14.10.2008 (Annexure A/19) and the aforesaid letter dated 11.05.2009 (Annexure A/22) there does not appear to be any discrepancy because while letter dated 11.05.2009 only refers to procurement of the said cards and the charge sheet referred to the sale of those cards from CSC Bajaj Nagar and there is no reason to presume that the cards which are sold from the particular Centre also have to be purchased there itself and hence the case regarding the discrepancy is not made out.

16. Counsel for the applicant contended that CPC is not applicable to the proceedings under Administrative Tribunals Act and Section 22 provides for the Tribunal to frame its own procedure. However, it is noticed that the applicant though consciously filed 2 OAs No. 657/2012 and 126/2014 relating to pension and other retiral benefits after the order of the Hon'ble High Court dated 19.07.2012 (Annexure A/14) but he did not challenge the penalty order dated 30.04.2011 thought it was a related order and very much available at the time of filing the said OAs. There is not much more force in the contention of the counsel for the applicant that he challenged the order dated 30.04.2011 only after he got the retirement benefits, because he could have easily challenged the said orders in those OAs also. Though the Tribunal has the power to frame its rules under Section 22, the fact is that there was inaction on the part of the respondent to challenge the penalty order dated 30.04.2011 even after he was granted the liberty by the Hon'ble High Court vide order

dated 19.07.2012 (Annexure A/14) and even though he filed two OAs thereafter on related matter.


17. It is further noticed that from penalty order dated 30.04.2011 (Annexure A/2) that the disciplinary authority has already taken a lenient view and only a penalty of 'Censure' along with depositing of Rs. 211.20 for misuse of IT Card bearing PSN No. 84476 and 90797 on the basis of the complaints received from the subscribers and that the misuse was made from the Telephone No. 0141-2502954 which was in the name of the applicant. Thus there are no grounds to set aside the penalty order dated 30.04.2011 (Annexure A/2) on merits and further against which the OA has been filed after considerable lapse of time and even after 2 OAs i.e. 657/2012 and 126/2014 in related matters were filed after the order of the Hon'ble High Court dated 19.07.2012 (Annexure A/14).

18. The applicant has also prayed to set aside the order dated 31.08.2009 (Ann.A/1) under which regular pension, DCRG and commuted value of pension was withheld and has claimed payment of interest at 24% from 01.09.2009 to 29.04.2011. In this context, it is seen that when the order was passed, a disciplinary inquiry was pending against the applicant and in view of that, the DCRG, commuted value of pension were withheld under CCS (Pension) Rules, 1972 and provisional pension was sanctioned in place of regular pension. After the passing of the order dated 30.04.2011, the applicant did not pay even the small amount of Rs. 211.20 and only deposited the same under protest, in pursuance of order dated 17.01.2013 in OA No. 657/2012. Counsel for the applicant, though has submitted that the pension is a fundamental

right but he has failed to show any provisions or rules by which all the retirement dues including DCRG, Commuted value of pension and regular pension are required to be sanctioned even when disciplinary proceedings and enquiry are pending. As the same are stated to have been withheld on account of provisions of the statutory CCS (Pension Rules) 1972 as per Annexure A/1, therefore the judgements of the Hon'ble Apex Court in State of Jharkhand & Ors. Vs Jitendra Kumar & Anr. does not come to the rescue of the applicant.

19. Thus in view of the pending disciplinary proceedings on the date of superannuation of the applicant i.e. 30.01.2009 and finalization of the same vide order dated 30.04.2011 there appears no ground for considering setting aside order dated 31.08.2009 (Annexure A/1) or to direct the respondent to pay 24% interest per annum from 01.09.2009 to 29.04.2011 on the amount DCRG, commuted value of pension, and regular pension so withheld.

In view of the aforesaid analysis there are no grounds to grant the reliefs as prayed for in the OA. Accordingly the OA lacks merit and the same is dismissed with no order as to costs.


(MS.MEENAKSHI HOOJA)
MEMBER (A)

Badetia/