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**Central Administrative Tribunal
Jabalpur Bench**

OA No.857/05

Jabalpur, this the 17th day of November 2006.

CORAM

Hon'ble Dr.G.C.Srivastava, Vice Chairman

Hon'ble Shri A.K.Gaur, Judicial Member

S.D.Bind

S/o Shri Shiv Bhushan Bind

Telecom District Manager

Guna (MP).

Applicant

(By advocate Shri Manoj Sharma)

Versus

1. Union of India
Ministry of Communications & IT,
Department of Telecommunications
West Block-1, Wing-2, Ground Floor,
R.K.Puram, Sector-1, New Delhi
Through its Secretary.
2. Bharat Sanchar Nigam Ltd
102-B, Statesmen House
Barakhamba Road
New Delhi.
Through its Chairman and
Managing Director
3. Union Public Service Commission
Dholpur House
Shahjahan Road
New Delhi
Through its Secretary.

Respondents.

(By advocate Shri S.K.Mishra)

ORDER

By A.K.Gaur, Judicial Member

The applicant, an Indian Telecom Service Officer of 1984 batch, joined service as Assistant Divisional Engineer (Telecom) in 1986 and by way of promotions, rose to the present position of Telecom District Manager which is equivalent post of Dy. General

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Manager (DGM). He is presently working in Guna (M.P.). The present controversy pertains to the award of contract work regarding laying of underground cable during the period 2000 to 2003 when the applicant was posted as DGM, Satna. For executing the work, a Notice Inviting Tenders (NIT) was issued by the O/o Telecom District Manager, Satna for six different works of laying of underground cable in Satna Telecom District. Detailed guidelines were circulated by the Chief General Manager Telecom, M.P. Telecom Circle, Bhopal regarding the need for giving wide publicity to NIT through leading newspapers. Alleging violation of the said guidelines in as much as the NIT was got published only in local newspapers, one aggrieved contractor filed a writ petition No.2176/02 (Kamlendra Singh vs. BSNL and others). A Single Bench of the High Court allowed the writ petition and quashed the NIT and directed the respondents to adhere to the prescribed procedure while inviting fresh tenders. The High Court also awarded cost of Rs.5000/- to the petitioners therein, payable by respondents including the applicant in the present OA. The order passed by the Single Bench of the High Court was challenged before a Division Bench by one M/s G.S. Associate in LPA No.612/2002 and the Division Bench vide its judgement dated 2.4.2004 (A-4) quashed the cost aspect as not sustainable in view of the hard work put in by the applicant and his colleagues. It has been averred in the OA that by virtue of doctrine of merger, the order of the lower forum ceased to exist and the same stood merged with the judgement of the Division Bench. The grievance of the applicant is that based upon the order of the Single Bench of High Court dated 20.8.2002 in WP No.2176/02, the respondents issued a charge sheet to the applicant on 13.11.2003 (A-5) along with a statement of imputations of misconduct or misbehaviour, to which the applicant submitted a detailed reply. However, acting on the advice of the UPSC (A-2), the respondents vide its order dated 26th August 2005 (A-1) imposed on the applicant the penalty of reduction of pay by one stage in the time scale of pay, for a period of one year, without cumulative effect and not adversely affecting his pension. The

applicant has prayed for quashing these two orders and for a direction to the respondents to extend all consequential benefits.

2. Learned counsel for the applicant submitted that the impugned orders are perverse and suffer from arbitrariness, malafides, mechanical exercise of power and total non-application of mind. On these grounds, the impugned orders are liable to be set aside. There was no fault on the part of the applicant in the matter of publication of NIT. The Union Public Service Commission was fully convinced that all efforts were made by the applicant to get the NIT published as per norms and the Commission had recorded that the fault lay not with the applicant but with the newspapers. Non-submission of a copy of newspaper by its management to PRO, District Satna cannot lead to the conclusion that the applicant did not adhere to the prescribed norms, as per CGM (Telecom) Guidelines dated 20.7.2001 (A-12). The counsel has further submitted that the guidelines (A-12) are a set of loosely compiled instructions, directive in nature and not mandatory. These aspects have been ignored by the department as well as by the UPSC in the matter of decision making process leading to the impugned order/advice. The learned counsel for the applicant further submitted that the advice of UPSC has ^{not} been supplied to the applicant along with the impugned order of punishment thereby depriving the applicant of an effective opportunity of hearing in the matter of advice of UPSC which is the basis of the impugned order of punishment. The UPSC report was not supplied to the applicant in advance and the department did not seek the applicant's comments on it, thereby the department has violated the cardinal principles of natural justice and condemned the applicant unheard. The counsel also argued that by virtue of doctrine of merger, the order of learned Single Judge does not survive, thus the very basis of the charge memo itself becomes non-existent. Considerable delay which occurred in the departmental proceedings has deprived the applicant of career progression, argued the counsel.

3. The respondents have filed a detailed reply contesting the case. They have contended that the notice inviting tenders was issued with

the approval of the applicant who was the Telecom District Manager. As per the guidelines issued by the Chief General Manager, Telecom, MP Telecom Circle, Bhopal, the applicant as the TDM was entirely responsible for ensuring that wide publicity was given to the NIT and also that the procedure followed was fair and in accordance with the guidelines issued by the Chief General Manager, Telecom. The High Court of Madhya Pradesh vide its judgement dated 20.8.2002 found that ~~the~~ proper publicity had not been given to the NIT and emphasized the need for adherence to the guidelines/rules in this regard in future. The cost awarded was only one element of the charges. The applicant's representations (A-6 & A-7) in response to the memorandum of charges were duly considered both by the UPSC while tendering the Commission's statutory advice in accordance with Article 320 (3)(c) of the Constitution of India and Regulation 5(1) of the UPSC (exemption from consultation) Regulations, 1958 and by the disciplinary authority i.e. the President while imposing penalty as stated in the impugned order. The applicant was considered for adhoc promotion to SAG in the DPC held in December 2003 and his name was included in the promotion order issued on 29.1.2004. Due to the pendency of vigilance case, this promotion order was cancelled later on vide order dated 5.2.2004. Subsequent DPC held in December 2004, although considered the applicant, did not recommend him due to pendency of vigilance case. As for the applicant's averment that UPSC advice ought to have been supplied to him prior to the imposition of penalty, the respondents contended that a copy of UPSC's advice is to be furnished to the charged officer along with a copy of the order in this case, as per Rule 32 of CCS (CCA) Rules 1965. The applicant has admitted the receipt of the copy of the said advice along with the impugned order. Moreover, as per the 42nd amendment to the Constitution, the need for affording opportunity to the charged officer in departmental disciplinary proceedings to show cause against specific penalty proposed to be imposed is no more in existence. The impugned order which has been issued on the advice of

the UPSC and accepted by the President is fully speaking order, contend the respondents.

4. We have heard Shri Manoj Sharma, learned counsel for the applicant and Shri S.K. Mishra, learned counsel appearing for the respondents.

5. It has been contended on behalf of the applicant that non supply of UPSC advice to the applicant has adversely prejudiced the applicant. This is also in violation of the principles of natural justice. In support, he relied on State Bank of India and others vs. D.C. Aggarwal and another (1993) 1 SCC 13. We have gone through this case law. This case is distinguishable on the ground that the order of the disciplinary authority has been held to be vitiated not because of mechanical exercise of powers or for non-supply of the inquiry report but for relying and acting on material which was not only irrelevant but could not have been looked into. Non-supply of documents to the applicant cannot be said to be in violation of the principles of natural justice and fair play. Learned counsel for the applicant also laid great emphasis on the point that the judgement of the single Bench of the High Court has been merged with the judgement of the Division Bench of the High Court. In our view, the principle of merger would not be applicable to the facts of the present case in as much as that in the case of Chandi Prasad and others vs. Jagdish Prasad and others reported in (2004) 8 SCC 724, the Supreme Court has held that when an appellate court passes a decree, the decree of the trial court merges with the decree of the appellate court irrespective of the fact as to whether the appellate court affirms, modifies, or reverses the decree passed by the trial court. The said doctrine applies when a higher forum entertains an appeal and passes an order on merit. In the instant case, one contractor filed a writ petition before the High Court and the same was allowed canceling the award of contracts. Cost of Rs.5000/- was also awarded on the respondents including the applicant. The validity of the order was challenged before the Division Bench. The Division Bench set aside the cost component only and issued certain general directions and

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guidelines, as is seen from A-4. Paragraphs 9(a) to (g) of A-4 are reproduced hereunder:

"9. We would have parted with the case making the costs easy but we intend to give certain guidelines for the future as Mr.R.S.Jha impressed upon this Court that the same should be done for subserving the interest of justice in respect of future action. Accordingly, we proceed to lay down the postulates;

- (a) Whenever underground cable work is to be done, rules which are in force shall be followed in letter and spirit and there should not be any kind of deviation/deviancy.
- (b) If there is any circular in addition to the rules, the same should be given requisite priority so that the circular goes hand-in-hand with the rules in question, as a circular supplements the rules and its role should not be marginalized.
- (c) There should be wide publicity with regard to the work in question keeping in view the quantum, the place and the value of the work. If there is anything in the rules and circulars in this regard, there should be strict compliance with the same.
- (d) Whenever a publication is required to be done, that should be done in accordance with the rules. In addition to the rules to save any kind of future cavil we say that the same should be published in a daily newspaper published from Revenue Divisional Headquarters.
- (e) There should also be a publication in the National Daily Newspaper. However, it is clarified if there is anything in the rules that would prevail, so that unnecessary cost is not incurred and also avoided.
- (f) There should be due publicity through the internet system so that it can be easily made available to the people who are interested to compete. An effort should be made to apprise the contractors who have been regularly working with the BSNL. Such appraisal shall be done by registered post. In addition, it shall be published in two local newspapers which have acceptable circulation.
- (g) The officers of BSNL should act with caution and care in future so that these kinds of litigations do not travel to the Court."

6. A perusal of aforesaid guidelines passed by the Division Bench of the High Court indicates that the order of the single Judge of the High Court has not all been merged with the order of DB of the High court. In our considered view, the case cited by the applicant is not applicable to the facts of the present case. On the other hand, learned counsel for the respondents has relied on Govt. of A.P. and others vs.

Mohd.Nasrullah Khan reported in 2006 2 SCC 373. It has been contended on behalf of the respondents that the High Court while exercising power of judicial review under Article 226 of the Constitution does not act as appellate authority whose jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by re-appreciating the evidence as an appellate authority. Learned counsel for the respondents also placed reliance on decision in Union of India vs. Parma Nanda (1989) 2 SCC 177, B.C.Chaturvedi vs. Union of India 1989 10 ATC 30.

7. We have carefully gone through the records. According to the respondents, copy of the UPSC advice is to be furnished to the charged officer along with the copy of the order passed in the case, as per rule 32 of CCS (CCA) Rules. The applicant has admitted the receipt of a copy of the said advice along with the impugned order. In view of 42nd amendment to the Constitution, the need for affording opportunity to the charged officer in departmental disciplinary proceedings to show cause against the specific penalty proposed to be imposed is no more in existence. This view of the respondents is supported by decisions of Supreme Court in A.N.D'Silva vs. Union of India (AIR 1962 SC 1130), Managing Director, ECIL, Hyderabad vs. B.Karunakar (AIR 1994 SC 1074) and certain other judgements. In our considered view, the advice of UPSC is not material as it is not similar to the inquiry report on the basis of which penalty is to be imposed.

8. Giving our anxious consideration to various aspects of the case, we are inclined to observe that the applicant has failed to indicate any cogent or specific ground calling for our interference with the

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impugned penalty awarded to the applicant. In our considered view, no case has been made out by the applicant and hence the OA is liable to be dismissed. Accordingly the OA is dismissed. No costs.

A.K. Gaur
(A.K. Gaur)
Judicial Member

Dr. G.C. Srivastava
(Dr. G.C. Srivastava)
Vice Chairman

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पृष्ठांकन सं. ओ/न्या. जबलपुर, दि.

प्रतिनिधि अर्थात् :-

- (1) सचिव, उच्च न्यायालय कार (एन.एस.एन. जबलपुर)
- (2) आवेदक श्री/श्रीमती/शु. के काउंसल
- (3) प्रत्यर्थी श्री/श्रीमती/शु. के काउंसल
- (4) जजमाल, वंश. अ. जबलपुर न्यायाधीश
सूचना एवं आवश्यक कार्यवाही हेतु

Manoj Sharma
AN 28

S.K. Mishra
AN 28

Dr. G.C. Srivastava
22/11/08

Dismissed
on 23/11/08
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