

THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

Dated, this the 4<sup>th</sup> day of January, 2013

ORIGINAL APPLICATION No. 164/2009  
with Misc. Application No.110/2009

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)  
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

M.C.Parajapat,  
s/o Shri Suraj Ram  
r/o C-9, New P&T Colony,  
Gandhi Gram, Junagarh at  
present employed on the post of  
Senior Accounts officer in the  
Office of GMTD, BSNL, Junagarh  
(Gujarat), now working at Churu.

.. Applicant

(By Advocate : Shri C.B.Sharma)

Versus

1. Bharat Sanchar Nigam Limited  
through its Chairman and Managing Director,  
Corporate Office,  
Bharat Sanchar Bhawan,  
Harish Chandra Mathur Lane,  
Janpath, New Delhi.
2. The Director (Finance),  
Bharat Sanchar Nigam Limited,  
Corporate Office (Appeal and CC Section),  
Second Floor, B-Wing,  
Statesman House,  
Barakhamba Road,  
New Delhi

3. Member (Finance),  
Telecom Commission,  
Government of India,  
Ministry of Communication and  
Information Technology,  
Department of Telecommunication,  
Room No. 915, Sanchar Bhawan,  
29, Ashoka Road, New Delhi.

.....Respondents

(By Advocate : Shri Tej Prakash Sharma)

### ORDER (ORAL)

The applicant has filed a Misc. Application for condonation of delay in filing the present OA. We have considered the Misc. Application. In view of the averments made in the Misc. Application and in the facts and circumstances of the case, we condone the delay and proceed to decide the case on merit. The Misc. Application No.110/2009 stands disposed of accordingly.

2. Brief facts of the case are that the applicant was initially appointed as Time Scale Clerk on 20.10.1977 at Sriganganagar. From time to time he got promotions and ultimately, promoted on the post of Senior Accounts Officer w.e.f. 15.9.2005 and posted at Junagarh, Gujarat.



3. The applicant, while posted as Accounts Officer (Cash) in the office of TDM at Jhunjhunu, was a member of the Tender Opening Committee for laying underground cable and jointing related work. On 13.8.1999, a tender was opened vide NIT dated 27.7.1999. Out of total five offers received, two were found valid and accordingly the same were processed further. As regards three invalid tenders, one tender submitted by M/s Niyojit Nirman Co. was rejected on the ground that seal of M/s Jai Construction Co. was affixed on it instead of its own seal on other papers under signature. Thus, pay order, known as Earnest Money Deposits (EMD), No.14361 dated 12.9.1999 along with tender form in respect of invalid tender of M/s Niyojit Nirman Co. was returned by the SDE, Planning Cell directly to the concerned firm.

4. One of the dis-satisfied tenderer M/s Nav Nirman Co., Sikar made a complaint regarding issue of tender forms to him against DE and SDE (Planning) to CBI. It is alleged that the applicant was made scapegoat and picked up for disciplinary action. He was issued with a charge sheet under Rule 14 of CCS (CCA) Rules, 1965 vide memo dated 19.4.2001. The applicant denied the charges. The Inquiry Officer examined the witnesses and the documents listed during the inquiry proceedings and held the charge as not proved and submitted report to the Disciplinary



Authority. But the Disciplinary Authority did not agree with the findings given by the Inquiry Officer and observed as under:-

"The I.O. has mainly relied on Rule 21.8. of the CPWD manual vol.II which provides that Earnest Money can be refunded on the same day, as an exception, when the tenders are opened by the Divisional Officer. In this case, there was no exceptional situation for refunding the EMD in the same day."

5. The Disciplinary Authority issued notice to the applicant to submit his representation against the disagreement of the Disciplinary Authority to the report submitted by the Inquiry Officer. The applicant submitted detailed and exhaustive representation against the disagreement note vide letter dated 24.7.2004 (Ann.A/5). Having considered the detailed representation submitted by the applicant, the Disciplinary Authority imposed penalty of reduction of pay by one stage for one year with further direction that he will not earn increments during the period of reduction and on expiry of period the reduction will have effect of postponing his future increments (which means with future) vide letter dated 15.9.2004 (Ann.A/2).

6. Not satisfied with the penalty awarded by the Disciplinary Authority, the applicant preferred appeal to the Appellate Authority on 30.10.2004. The Appellate Authority rejected the appeal filed by the applicant upholding the order passed by the Disciplinary Authority vide order dated 31.5.2007, against which



the applicant preferred review petition to the Reviewing Authority, respondent No.1 vide letter dated 14.8.2007. The Reviewing Authority also by a detailed order rejected the review petition vide order dated 2.4.2009 upholding the order passed by the Disciplinary Authority and the Appellate Authority.

7. Aggrieved and dis-satisfied with the order passed by the Disciplinary Authority, Appellate Authority and Reviewing Authority, the applicant preferred this OA on the ground that the Disciplinary Authority has committed gross negligence in not considering the fact that neither any wrongful gain nor wrongful loss was caused to the Corporation. Further challenged on the ground that the Disciplinary Authority has arrived at the conclusion and held the charges as proved on the basis of surmises and conjectures as there is no specific reason for disagreement. It is being a case of no evidence and therefore, the action of the respondents is per-se illegal and deserves to be quashed and set-aside.

8. The learned counsel appearing for the applicant further referred to Rule 21.8 of the CPWD Manual and stated that the Rule has been twisted in a peculiar way to suit the predetermined objective of proving the charge at any pretext and it has not quoted as per the actual text and referred the same, which is reproduced as under:-



"21.8 As an exception, earnest money in Legal Tender Notes and deposit at call receipt of Scheduled Banks attached to the tender and returned to the contractors whose tenders are rejected on the same day as the tenders are opened by the Divisional Officer, need not pass through the Divisional Accounts, provided that the contractor concerned gives a stamped receipt for the money in the register maintained in the Divisional Officer and that the register is to that extent treated as a subsidiary cash book and consequently as an accounts record. Earnest money which is received prior to the date fixed for opening of the tenders, or which for any reason cannot be refunded on that day should be brought to account in the cash book and returned subsequently to the contractors under the normal rules."

9. After referring the provisions of Rule 21.8, the learned counsel appearing for the applicant submits that bare perusal of above rule would show that the same speaks of an exception and not exceptional situation. The exception is that when the tenders are rejected on the same day and tenders are opened by Divisional Officer with the proviso that the contractors concerned give a stamped receipt for the money in the register maintained in the Divisional Office and that the register is to that extent treated as subsidiary cash book and consequently as an accounts form. It is further submitted that in the instant case all these requirements were fulfilled and things were done as per rules in force. The word situation cannot be read as a part of the provision and the provision is to be read as a whole and with



words used therein and not by adding or supplementing any words.

10. It is also alleged by the learned counsel appearing for the applicant that the penalty order as well as the appellate order is non-speaking orders as none of the points mentioned therein have been considered and the orders have been passed in stereotyped manner without application of mind.

11. The learned counsel appearing for the applicant further placed reliance on the judgment rendered by this Tribunal in OA No.154/2010 vide order dated 27<sup>th</sup> September, 2011 in the case of Om Prakash vs. The Chairman and Managing Director BSNL and Ors.

12. Per contra, the learned counsel appearing for the respondents has raised the preliminary objection regarding maintainability of the OA as the same is filed after an inordinate delay of around 2 years and as such, the OA is barred by limitation. So far as merit is concerned, it is stated that the pay order dated 12.8.1999 along with tender form in respect of invalid tender of M/s Niyojit Nirman Company, was returned by SDE, Planning Cell directly to the concerned firm and the invalid tenders were not routed through Accounts Officer, i.e. the applicant, is wrong because the tender was opened on 13.8.1999 by Tender Opening Committee (TOC) of which the



applicant was also a member and the said tender was neither opened by the Divisional Officer nor the TOC recommendation was approved by the Divisional Officer on 13.8.1999 and, therefore, the pay order enclosed as EMD with one tender could not be returned on the same day, as per rule 21.8 of CPWD manual Vol.II. Even no stamped receipt was procured from the contractor against returning the said DD dated 12.8.1999. Therefore, looking to the factual aspect, the Disciplinary Authority has rightly put disagreement note and imposed the penalty after considering representation of the applicant. Similarly, the Appellate Authority has thoroughly examined the case on its merit and rejected the appeal of the applicant by upholding the order passed by the Disciplinary Authority. Further, the Reviewing Authority also thoroughly considered the inquiry report, disagreement note of the Disciplinary Authority, the representation as well as the contents of the appeal and the orders passed by the Disciplinary Authority and Appellate Authority and after considering each and every aspect has rejected the review petition filed by the applicant upholding the order passed by the Disciplinary Authority and Appellate Authority.





13. In support of his submissions, the learned counsel appearing for the respondents placed reliance on the judgment rendered by the CAT-Jodhpur Bench in OA no.196/2009 vide order dated 1<sup>st</sup> March, 2011 in the case of J.C.Heda vs. BSNL.

14. We have heard the rival submissions of the respective parties and carefully perused of the memorandum of charge sheet, inquiry report as well as the disagreement note. We have also considered the detailed representation filed by the applicant and the averments made in the appeal as well as in the review petition. It is not disputed that the Inquiry Officer in its report has given the following finding:-

"On the basis of the documentary and oral evidence adduced before me in the case, as well as related facts and circumstances relevant to article of charge (Annexure -I of the charge sheet) and statement of imputations of misconduct and misbehavior (Annexure-II of the charge sheet) and in view of the reasons/analysis given above, I arrive at the conclusion that charge of grave misconduct, failing to maintain absolute integrity, exhibiting lack of devotion to duty and acting in a manner unbecoming of a Government servant thereby violating Rule 3(1)(i)(ii) and (iii) of CCS (Conduct) Rule 1964 leveled against Shri M.C.Prajapat the then A.O. (Cash), O/o TDM, Jhunjhunu presently working as AOTR, O/o GMTD, Sikar in the article of charges are NOT PROVED."



15. The Disciplinary Authority disagreed with the findings given by the Inquiry Officer vide memorandum dated 30.6.2004 to the extent that:-

"The I.O. has mainly relied on Rule 21.8 of the CPWD manual Vol.II which provides that Earnest Money can be refunded on the same day, as an exception, when the tenders are opened by the Divisional Officer. In this case, there was no exceptional situation for refunding the EMD in the same day."

16. After drawing disagreement note, the applicant was given opportunity to make representation and it is also not disputed that the applicant represented by way of filing detailed representation against the disagreement note and the Disciplinary Authority having considered the representation filed by the applicant awarded penalty of reduction by one stage in the time scale of pay for one year with future effect.

17. We have also gone through the order passed by the Appellate Authority. The Appellate Authority vide speaking order dated 31.5.2007 taking into objective assessment of the facts and circumstances of the case in its entirety and the fact that nothing new and concrete has been submitted by the charged officer so as to consider the case on merit and thus found convincing not to interfere with the punishment awarded by the Disciplinary Authority and rejected the appeal dated 30.10.2004 preferred by the applicant.



18. We have also considered the revision petition filed by the applicant and the Reviewing Authority passed detailed and speaking order dated 2.4.2009 having thoroughly considered the punishment order passed by the Disciplinary Authority as upheld by the Appellate Authority on its merit and also considered the averments made in the revision petition and by passing a detailed order rejected the revision petition observing as under:-

"On perusal of the facts and case records, it is observed that nothing new and concrete has been submitted by the charged officer in his Review Petition to consider the case on merit. In this case, the tender was opened on 13.8.1999 by the TOC and neither opened by Divisional Officer (SSA Head) nor the TOC recommendation was approved by the divisional Officer (SSA Head) on dated 13-08-99 and therefore, the pay order enclosed as EMD with the one tender (Declared invalid by TOC) cannot be returned on the same day, as per rule 21.8 of CPWD Manual Vol.II. Even no any stamped receipt was procured from the contractor against returning the said DD No.14361 dated 13-8-99. The submission made by the charged officer is not as per rule and thus, not convincing. The punishment already awarded by the Appellate Authority is well commensurate with the gravity of misconduct done by the charged officer.

Therefore, taking into account the records of the case and on an objective assessment of the facts and overall circumstances of the case in its entirety, I, Kuldeep Goyal, Chairman-cum-Managing Director, BSNL, New Delhi hereby REJECT the petition dated



14.8.2007 preferred by Shri M.C.Prajapat, Sr. AO, O/o GMTD, Kota, Rajasthan Telecom Circle."

19. Upon considering the order passed by the Disciplinary Authority as upheld by the Appellate Authority as well as the by the Reviewing Authority, since the Disciplinary Authority, Appellate Authority and Reviewing Authority have given concurrent findings and detailed speaking orders have been passed, in such situation, as per the law laid down by the Hon'ble Supreme Court, no interference is required by this Tribunal.

20. We have also examined the judgment cited by the applicant in support of the submissions in the case of Om Prakash vs. CMD, BSNL passed in OA No.154/2010 vide order dated 27<sup>th</sup> September, 2011, but the facts and circumstances of the case of Shri Om Prakash are altogether different and the ratio decided by this Tribunal is not applicable to the facts and circumstances of the present case. We have further considered the judgment rendered by the Hon'ble Supreme Court in the case of Transport Commissioner, Madras vs. Thiru A.Radhakrishna Moorthy reported in JT 1994 (7) SC 744 and more particularly in para 7 wherein the Hon'ble Supreme Court has observed as under:-

"So far as the truth and correctness of the charges is concerned, it was not a matter for the Tribunal to go into – more particularly at a stage prior to the



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**CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR.**

**Subject :** Notice issued in C.W.P. No. 7565/2013, in the Rajasthan High Court at Jaipur.

The Registrar, Rajasthan High Court at Jaipur has sent a notice issued in Civil Writ Petition No. 7565/2013, filed by M.C.Prajapat through his counsel, against the order dated 04.01.2013 in OA. No.164/2009 M.C. Prajapat & Ors. Vs UOI & Ors. Passed by the Bench comprising Hon'ble Mr. Justice K.S. Rathore, Member (J) & Hon'ble Mr. Anil Kumar, Member (A) Central Administrative Tribunal, Jaipur Bench, Jaipur is a formal party. No action is called for on our part.

Submitted for information/order, please.

Section Officer (Judl.)

Joint Registrar

Hon'ble Member (A)

शेखर  
4-3-15

4/3/15

Vareli  
4/3/15

Anil Kumar  
5/3/2015

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"So far as the truth and correctness of the charges is concerned, it was not a matter for the Tribunal to go into – more particularly at a stage prior to the



conclusion of the disciplinary enquiry. As pointed out by this Court repeatedly, even when the matter comes to the Tribunal after the imposition of punishment, it has no jurisdiction to go into truth of the allegations/charges except in a case where they are based on no evidence i.e., where they are perverse. The jurisdiction of the Tribunal is akin to that of the High Court under Article 226 of the Constitution. It is power of judicial review. It only examines the procedural correctness of the decision making process. For this reason the order of the Tribunal in so far as it goes into or discusses the truth and correctness of the charges, is unsustainable in law."

21. In an another decision in the case of Government of Tamilnadu and another vs. A.Rajapandian reported in JT 1994 (7) SC 492, in para 10 the Hon'ble Apex Court held as under:-

"We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matter or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with the principles of natural justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority."



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**CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR**

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**ORDER SHEET**

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**ORDERS OF THE TRIBUNAL**

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06.08.2012

MA 238/2012 (OA No. 164/2009) with MA 110/2009

Mr. C.B. Sharma, Counsel for applicant.  
Mr. T.P. Sharma, Counsel for respondents.

Learned counsel for the respondents seeks time to file  
reply to MA seeking amendment in the OA.

List it on 21.08.2012.

*Anil Kumar*

(Anil Kumar)  
Member (A)

*K.S. Rathore*

(Justice K.S.Rathore)  
Member (J)

*ahq*

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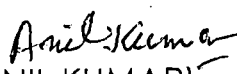
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22. It is settled law that the Tribunal has no jurisdiction to re-evaluate the evidence or to go into truth of allegation but the Tribunal having power of judicial review can examine the procedural correctness of the decision making process. In this case, we do not find any procedural lacunae or any error committed by the respondents as the respondents have given ample opportunity to the applicant to represent his case. Even after disagreement, the Disciplinary Authority has given opportunity to the applicant to represent and it is not disputed that the applicant has filed detailed representation and the same has been considered and then only the punishment order has been passed.

23. Thus, in our considered view, no illegality can be found in the concurrent findings given by the Disciplinary Authority, Appellate Authority and Reviewing Authority and in view of the ratio decided by the Hon'ble Supreme Court, as referred hereinabove, we do not find any illegality, which requires any interference by this Tribunal. Consequently, the OA being bereft of merit fails and the same is hereby dismissed with no order as to costs.

  
(ANIL KUMAR)  
Admv. Member

  
(JUSTICE K.S. RATHORE)  
Judl. Member

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