

CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 388/2011

ORDER RESERVED ON: 14.07.2015

DATE OF ORDER: 20-07-2015**CORAM****HON'BLE MR. JUSTICE HARUN-UL-RASHID, JUDICIAL MEMBER**
HON'BLE MR. R. RAMANUJAM, ADMINISTRATIVE MEMBER

R.K. Singh S/o late Shri Ram Govind Singh, aged about 69 years, R/o 362, Sarswati Colony, Kherli Phatak, Kota and retired on 31.01.2002 from the post of Divisional Engineer (Rural), Telecom District Kota.

...Applicant

Mr. C.B. Sharma, counsel for applicant.

VERSUS

1. Union of India through its Secretary to the Government of India, Department of Telecommunications, Ministry of Communications and Information Technology, Government of India, Sanchar Bhawan, 20, Ashoka Road, New Delhi – 110117.
2. Chief General Manager Telecom, Rajasthan Telecom Circle, Sardar Patel Marg, Jaipur – 302008.
3. Union Public Service Commission through its Secretary, Dholpur House, Shahjahan Road, New Delhi – 110069.
4. Assistant Director General (VT), Department of Telecommunications (Vigilance Wing), Ministry of Communications & Information Technology, West Block-1, Wing-2, R.K. Puram, New Delhi – 66.

...Respondents

Mr. Mukesh Agarwal, counsel for respondent nos. 1, 3 & 4.

Mr. Ravinder Pal, proxy counsel for

Mr. Neeraj Batra, counsel for respondent no. 2.

ORDER
PER MR. JUSTICE HARUN-UL-RASHID, JUDICIAL MEMBER

The applicant is aggrieved by Annexure A/1 order dated 25.08.2010 and Annexure A/2 order dated 14.01.2009 and prayed for quashing the same. Another prayer of the applicant is to quash the charge memo dated 21.10.2003 (Annexure A/5).

2. According to the applicant, respondent no. 4 is neither the appointing authority nor the disciplinary authority and therefore not competent to serve charge memo Annexure A/5 upon the applicant. It is said that the order dated 14.01.2009 passed by the respondent no. 1 is without application of mind and is violative of provisions of Rule 9 of CCS (Pension) Rules, 1972. It is submitted that the disciplinary authority and the appellate authority failed to take into consideration the written brief of the applicant, his reply to the enquiry report and other relevant materials in passing the impugned orders.

3. The respondent nos. 1, 3 & 4 filed their joint reply statement. Respondent no. 2 filed his separate reply statement.

4. It is submitted on behalf of the respondent nos. 1, 3 & 4 that the charge-sheet was issued to the applicant after following the procedure prescribed under the relevant rules/instructions on the subject. The applicant is a retiree from service, hence, prosecution sanction was not required. The action of the CBI in filing the charge sheet against the applicant in the criminal case before the competent court of law is legal and justified. The respondent no. 4 is competent to issue the orders on behalf of the President as per the Ministry of Home Affairs Notification S.O. 211 (E) dated 16th February, 2002 relating to the authentication to make orders and other instruments executed in the name of the President. It is stated that there is no bar to continue disciplinary proceedings along with the criminal proceedings, as in the departmental proceedings, strict rule of evidence is not applicable and the charges are required to be

proved on the principle of preponderance of probability. Learned counsel for the respondents also placed reliance on the decision of the Hon'ble Supreme Court in the case of **State Bank of Hyderabad vs. P. Kata Rao** (2008) (15) wherein it has been held that even after acquittal in the criminal case, inquiry proceedings can be initiated or continued in case the same has been initiated earlier.

5. In the reply statement, it has also been pointed out that the term "grave misconduct" depends upon the nature of conduct and no exhaustive definition has been given in CCS (Pension) Rules, 1972 or CCS (CCA) Rules, 1965. The Govt. of India instruction no. 1 below rule 9 of CCS (Pension) Rules, 1972 provides that the terms "grave misconduct" is wide enough to include corrupt practices. It is also submitted that the report of the Inquiry Officer is based on evidence and other relevant material on record and that the Disciplinary Authority came to the conclusion of the guilt of the delinquent officer after taking into account all the relevant facts, evidence and other material on record. It is also submitted that both the Disciplinary Authority and the Appellate Authority considered the facts, circumstances, relevant records, the article of charges and concurrently found that the charge leveled against the applicant stands proved.

6. We have heard learned counsels for the parties and examined the documents on record.

7. Annexure A/2 is the order dated 14.01.2009 passed by the Disciplinary Authority imposing the penalty of withholding of 30% of monthly pension for a period of five years upon the applicant. Annexure A/1 is the order dated 25.08.2010 passed by the Appellate Authority rejecting the appeal of the applicant by which the applicant challenged the Annexure A/2 punishment order dated 14.01.2009.

8. During the period 2000-01, the applicant was working as Divisional Engineer (Rural) under the General Manager, Telecom District (GMTD), BSNL, Kota SSA, at that period, he was responsible for supervising the work of trenching, laying of underground cables and other cable associated work in various Sections of Sangod Sub Division of Kota SSA. During that period, the then JTO Shri R.D. Sharma was supervising the day to day work of trenching and laying of UG cable in different sections of Sangod Sub Division entrusted to by M/s Prakash Electronics, Kota on cent percent basis. The work of trenching, laying of underground cable and other cable associated work in various sections of Sangod Sub Division of Kota SSA was awarded to M/s Prakash Electronics, Kota at Rs. 45,90,845. The allegation leveled against Shri R.D. Sharma is that while supervising the work, he misused his official position, classified the soil strata in most of the Alania and Kaithoon Exchange Areas of Sangod Sub Division as Hard Rock and that he falsified the measurement book by making false entries with respect to the soil strata and the depth of the trenches.

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9. The allegation against the applicant is that he in collusion with Shri R.D. Sharma and Shri R.N. Meena partner of M/s Prakash Electronics Kota by misusing his official position certified the false and fictitious entries in the measurement book (MB) as correct, at the time of test checking the work. It is alleged that on the basis of false and fictitious entries in the MB, Shri R.N. Meena, partner of M/s Prakash Electronics, Kota raised the exaggerated bills in respect of the work executed by M/s Prakash Electronics and it is further alleged that Shri R.D. Sharma, Shri R.K. Tripath and the applicant with mala fide intention recommended to pass the bills and all the exaggerated bills were passed by the GMTD, BSNK, Kota, the competent authority and the payments were made in favour of M/s Prakash Electronics, Kota.

10. The Central Bureau of Investigation during the course of investigation conducted physical verification in the presence of Geologist of the Department of Mines and Geology, Government of Rajasthan, Kota in order to ascertain the soil strata in Dara, Mandana and Sangod Exchange Areas of Sangod Sub Division, which revealed that the soil strata in these sections varied from soft soil to disintegrated soil of non-rock category and that there was no patch of rocky strata in these sections.

11. The department framed the article of charges against the applicant on the basis of the false and fictitious entries in the MB and the excess payments to the tune of Rs. 4,26,817/- made in favour of M/s Prakash Electronics, Kota thereby causing wrongful pecuniary gain to M/s Prakash Electronics, Kota and themselves

and corresponding wrongful loss to BSNL. The department initiated disciplinary action against the applicant having failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Govt. servant, thereby violating Rule 3 (1)(i)(ii) and (iii) of CCS (Conduct) Rules, 1964.

12. On denial of charges by the applicant, an enquiry was conducted by the Inquiry Officer. The Inquiry Officer submitted his report dated 13.11.2007 holding that the article of charges stand proved. The representation submitted by the applicant was considered by the Disciplinary Authority. The charge against the applicant relates to false and fictitious entries in the MB regarding soil strata. After considering the evidence on record, the Disciplinary Authority came to the tentative conclusion that the applicant deserve penalty under Rule 9 of CCS (Pension) Rules, 1972. A reference was made to UPSC seeking their advice on the quantum of penalty. The Commission has observed that the charge that the applicant in collusion with other officers of BSNL and private parties made and certified false and fictitious entries in the MB showing soil strata in Alania and Kaithoon Exchange area of Sangod Sub Division as hard rock, is proved. After considering of the findings of the Inquiry Officer, submission of the applicant in his representation dated 20.02.2008, the advice tendered by the UPSC and all relevant facts and circumstances of the case, the Disciplinary Authority accepted the advice of UPSC and ordered imposition of the penalty of withholding of 30% of monthly pension for a period of five years on the applicant.

13. The applicant preferred an appeal dated 12.05.2009 before the Appellate Authority. The Appellate Authority passed a reasoned and speaking order vide Annexure A/1 order dated 25.08.2010. The appellate authority also considered the submissions made by the applicant. The appellate authority came to the conclusion that no new material or evidence has been brought to notice of the said authority. The appellate authority also examined the relevant material and the contentions raised in the appeal of the applicant. The contentions raised by the applicant in the appeal were extracted in the Annexure A/1 order. The appellate authority considered those contentions, examined those points and ordered that no new point or material is established for reconsideration of the penalty imposed. The appellate authority found that the appeal of the applicant is devoid of any merit.

14. The Annexure A/2 punishment order has been passed by the disciplinary authority taking into consideration the materials on record including the report of the inquiry officer. The Disciplinary Authority on the facts of the case and materials on record and other relevant circumstances, concluded that the applicant misused his official position and certified false and fictitious entries in the Measurement Book at the time of test checking the work. It is also proved that on the basis of false and fictitious entries in the Measurement Book, Shri R.N. Meena, partner of M/s Prakash Electronics Kota raised the exaggerated bills in respect of the work executed by him in Alania and Kaithoon Exchange Area of Sangod Sub Division and as such payments were made causing heavy loss to the public

exchequer. The disciplinary action was initiated and punishment of withholding of 30% of monthly pension for a period of five years was imposed upon the applicant on the basis of the proved allegation of false and fictitious entries in the measurement book and on the basis of the said entries, excess payment was made to the tune of Rs. 4,26,817 in favour of M/s Prakash Electronics, Kota by causing wrongful pecuniary gain to the contractor and causing corresponding loss to the BSNL.

15. The Disciplinary Authority imposed the punishment of withholding of 30% of monthly pension for a period of five years on the applicant vide punishment order dated 14.01.2009 (Annexure A/2). The Appellate Authority after examining the contentions of the applicant at length, observed that all the points have already been considered by the Disciplinary Authority at the time of imposition of penalty and arrived at the conclusion that no new material or evidence has been brought to the notice of the appellate authority and ordered that the appeal dated 12.05.2009 submitted by the applicant is devoid of merits and stands rejected.

16. We have examined the contentions of the applicant and the respondents in detail. We find that the findings are recorded by the Disciplinary Authority on the basis of the relevant materials on record. We do not find any illegality, infirmity or factual error in passing the impugned orders. The reasons of the Disciplinary Authority and the Appellate Authority in passing the impugned orders are justifiable under the facts and circumstances of the case. No substantial grounds are made out by the applicant for

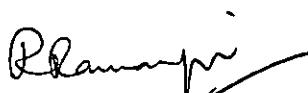
interference with the findings recorded by the fact finding authorities.

17. Learned counsel for the applicant placed reliance upon the decision of the Hon'ble Delhi High Court in the case of **Union of India & Ors. vs. T.P. Venugopal** reported in 2008 (3) (XI) All India Services Law Journal, 381 wherein it is observed that CCS (Pension) Rules give statutory right to an employee to pension on his reaching the age of superannuation and that therefore, the steps which may be taken for deprivation of pension to an employee must be correlative to or commensurate with the gravity of grave misconduct or irregularities as it deprives the right of the employee to have financial assistance on the evening of his life.

18. The findings recorded by the authorities indicate that the applicant misused the official position and certified false and fictitious entries in the measurement book as correct at the time of test checking the work and as such excess payments to the tune of Rs. 4,26,817/- were made in favour of M/s Prakash Electronics, Kota thereby causing wrongful pecuniary gain to the said firm and corresponding wrongful loss to BSNL and thus committed grave misconduct in such manner. We find no illegality or infirmity in the orders passed by the Disciplinary Authority and the Appellate Authority. The facts and circumstances of the case before the Hon'ble Delhi High Court defer materially with the facts and circumstances of the present case. Therefore, the decision of the Hon'ble Delhi High Court in

the said case is not applicable to the facts and circumstances of the present case.

19. In view of the facts and circumstances noticed above, the Original Application is devoid of any merit and deserves to be dismissed. Accordingly, the Original Application is dismissed. There shall be no order as to costs.



(R. RAMANUJAM)
ADMINISTRATIVE MEMBER



(JUSTICE HARUN-UL-RASHID)
JUDICIAL MEMBER

Kumawat