

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

11.01.2013

OA No. 645/2011 with MA 397/2012

Mr. P.N. Jatti, Counsel for applicant.

Mr. Mukesh Agarwal, Counsel for respondent no. 1.

Mr. T.P. Sharma, Counsel for respondents nos. 2 to 4.

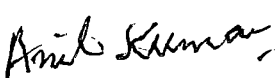
MA No. 397/2012

Heard on MA for amendment in the OA. The MA is allowed. The amendments sought in the OA are allowed.

The MA stands disposed of accordingly.

OA NO. 645/2011

Heard learned counsel for the parties. The OA is disposed of by a separate order.


(Anil Kumar)
Member (A)


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

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THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Friday, this the 11th day of January, 2013

ORIGINAL APPLICATION No.645/2011

CORAM:

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

Radha Vallabh Sharma s/o Shri Durga Lal Sharma, aged about 54 years, r/o A-21, New Light Colony, Tonk Road, Jaipur, presently working as Telephone Operator in the Office of P.G.M.T.D., Jaipur FRS SDE (Sanganeri Gate, Jaipur on deemed deputation.

.. Applicant

(By Advocate : Shri P.N.Jatti)

Versus

1. Union of India through the Secretary to the Govt. of India, Ministry of Communication, Department of Telecom, Sanchar Bhawan, New Delhi.
2. The Chairman and Managing Director, Bharat Sanchar Nigam Ltd. Bharat Sanchar Bhawan, New Delhi.
3. Chief General Manager, Bharat Sanchar Nigam Ltd., Jaipur
4. Principal General Manager, Bharat Sanchar Nigam, Jaipur Telecom District, Jaipur
5. Shri R.R.Meena, Deputy General Manager so called-Disciplinary Authority (N.W.O. East), Sanganeri Gate of PGMTD, Jaipur
6. Shri J.R. Meena, Enquiry Officer and so called Inquiry Officer, DE (E-II) Sanganeri Gate O/o PGMTD, Jaipur

.....Respondents

(By Advocate : Shri Mukesh Agarwal for resp. no. 1 and Shri Tej Prakash Sharma for resp. No. 2 to 6)

ORDER (ORAL)

Brief facts of the case are that the applicant was appointed as Telephone Operator in the Department of Telecom on 13.11.1979. The applicant absconded from duty w.e.f. 10.3.1998 to 15.4.2011. During this period, the Bharat Sanchar Nigam Limited (BSNL) came into existence w.e.f. 1.10.2000 and after formation of BSNL, options were invited from all employees for absorption in the BSNL. It is admitted fact that the applicant has not given any option and the employees who did not exercise their option for absorption in BSNL or did not want to be absorbed are still DOT employees and are treated on deputation from Department of Telecom to BSNL.

2. Rules have been framed by the BSNL which are called "BSNL Conduct, Discipline and Appeal, Rules 2006". Under Rule 41(1) of the aforesaid Rules of 2006, it is clearly given out that where the service of a Government servant are lent to BSNL or service of an employees of a public undertaking are lent to BSNL, the borrowing authority shall have the powers of the Appointing Authority for the purpose of placing such Government servant or



public undertaking employee under suspension and of the Disciplinary Authority for the purpose of conducting disciplinary proceedings against him.

3. In view of the Rules of 2006, the DGM (NOW-East) is the competent authority for conducting disciplinary proceedings against the applicant. As per Rule 41 read with schedule of appointing Disciplinary and Appellate Authority in BSNL for non-executive concerned, the DGM is the appointing authority and disciplinary authority for major penalties as such, inquiry was directed to be initiated against the applicant for willful absence.


4. The applicant preferred this OA praying that by a writ/order or direction the respondents be directed not conduct further inquiry till the order of the competent authority on Ann.A/1 dated 7/10.5.2011 and charge memo dated 25.4.2011 be quashed and set aside as it has not been issued by the competent authority.

5. It is second round of litigation. Earlier the applicant has filed OA No.203/2011 on the same ground praying for setting aside the charge memo dated 29.3.2011 issued to the applicant and the same was dropped vide order 15.4.2011. Since the



respondents have withdrawn the charge memo dated 29.3.2011, as such, the OA has become infructuous and the same was dismissed as infructuous vide order dated 3.12.2012. Thereafter a fresh charge memo has been issued by the competent authority on 25.4.2011 in accordance with provisions of Rules of 2006. It is also stated at Bar by the learned counsel appearing for the official respondents that the inquiry has been completed and by way of this OA the applicant has prayed not to conduct inquiry till the order of the competent authority and by amending the relief clause, besides not to proceed with the inquiry, also prayed for quashing and setting aside the charge memo dated 25.4.2011 on the ground that the same has not been issued by the competent authority.

6. The learned counsel appearing for the respondents raised preliminary objections regarding maintainability of this OA stating that the OA has been filed by the applicant at premature stage where the disciplinary proceedings have yet not been culminated into a final order so far by the competent authority. Further stated that inquiry has been conducted and completed and the applicant has participated in the inquiry and has raised all sort of objections which are raised here in this OA. It is also stated by the learned counsel appearing for the respondents



that even after passing of the final order by the competent authority, the applicant has every right to challenge the order on the ground of competency or in contravention of the Rules. It is also submitted that by way of amendment, the applicant has only amended the relief clause, which is not permissible as per the provisions of law.

7. We have heard the rival submissions of the respective parties and carefully gone through the relevant rules as referred by the respective parties and also the judgments referred. It is not disputed that the applicant has remained absent from 10.3.1998 to 15.4.2011 without proper permission of the authorities and the respondents have stated in their reply that inquiry has already been completed, as such, at this stage, the relief claimed by the applicant that the respondents be directed not to conduct further inquiry has become infructuous. Similarly, the charge memo dated 25.4.2011 does not require any interference as in earlier OA, the charge memo has been issued by the incompetent authority which was withdrawn and a fresh charge memo has been issued by the competent authority on 25.4.2011.

8. With regard to the argument advance on behalf of the applicant that applicant is not employee of the BSNL is



concerned, we have thoroughly considered Rule 41 of BSNL, CDA Rules, 2006 and letter dated 8.2.2001 issued by the Government of India, Ministry of Communications, Department of Telecommunications regarding disciplinary authorities/appellate authorities in respect of the employees of the Department of Telecom, erstwhile Department of Telecom Services and Department of Telecom Operations who have been transferred to BSNL w.e.f. 1.10.2000 on deemed deputation without deputation allowance, which reveals that the BSNL is competent to issue charge sheet and to initiate disciplinary proceedings on the ground of willful absence from duty against the applicant. Rule 41 of the aforesaid Rules, of 2006 provides as under:-

"Rule 41 PROCEDURE CONCERNING OFFICERS ON DEPUTATION FROM CENTRAL GOVERNMENT OR THE STATE GOVERNMENT OR ANOTHER PUBLIC UNDERTAKING OR A LOCAL AUTHORITY

- (1) Where the services of a Government servant are lent to BSNL or services of an employee of a public undertaking are lent to BSNL (herein after in this rule referred as "the borrowing authority") the borrowing authority shall have the powers of the Appointing Authority for the purpose of placing such Government servant or public undertaking employee under suspension and of Disciplinary Authority for the purpose of conducting disciplinary proceedings against him.



- (2) Where an order of suspension is made or disciplinary proceedings are taken against an employee who is on deputation to the Company from the Central or State government or another Public undertaking or a local authority, the authority lending his services (hereinafter referred to as the "Lending Authority") shall forthwith be informed by the borrowing authority of the circumstances leading to the order of his suspension or the commencement of the disciplinary proceedings, as the case may be.
....."

9. In view of above, we are of the view that no interference is required with the charge memo issued by the competent authority on 25.4.2011 and since the inquiry has already been completed but the final order has not been passed by the respondents, in such eventuality, the respondents can proceed further.

10. The judgments referred by the applicant are not applicable to the facts and circumstances of the present case.

11. Consequently, the OA being devoid of merit fails and the same is hereby dismissed. The respondents are directed to pass final order and opportunity is always with the applicant to redress his grievance in accordance with provisions of law before the



appropriate competent authority, if any prejudicial order is passed against his interest.

12. The OA stands disposed of in the above terms with no order is to costs.

13. The interim direction issued on 2.1.2012 shall stand vacated.



(ANIL KUMAR)
Admv. Member

R/



(JUSTICE K.S.RATHORE)
Judl. Member