

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD**

(This the 2nd Day of November 2018)

Hon'ble Mr. Rakesh Sagar Jain, Member (J)

Original Application No.992 of 2012
(U/S 19, Administrative Tribunal Act, 1985)

Virendra Kumar S/o Sri Banwari Lal Pachauri, presently posted as
Divisional Engineer Phones, A.T.X Building Agra, (U.P).

..... Applicant

By Advocate: Shri Rajesh Kumar Tiwari

Versus

1. Chairman –cum- Managing Director, Bharat Sanchar Nigam Limited, Sanchar Bhawan, Janpath, New Delhi.
2. Director (HR), Bharat Sanchar Nigam Limited, Harish Chandra Mathur Lane, Janpath, New Delhi 110001.

..... Respondents

By Advocate: Shri D.S Shukla

ORDER

1. Applicant Virendra Kumar seeks the following reliefs:

- 1) That the Hon'ble Tribunal may issue an order in the nature of certiorari for quashing the impugned orders dated 09.04.2008, 04.08.2009 & 01.09.2011 issued by the respondent No.2 (Annexure 1).
- 2) That the Hon'ble Tribunal may issue an order or direction in the nature of mandamus commanding the respondents to call for entire records pertaining to the applicant before this Hon'ble Court.
- 3) That the Hon'ble Tribunal may pass any other or further order which this Hon'ble Tribunal may pass in the circumstances of the case.
- 4) To award the cost of the application to the applicant.

2. Case of applicant Virendra is that while posted as SDE (Phones) Etah w.e.f. 06.06.1997, he was given additional charge of SDE, G/Es Etah vide letter dated 29.10.1997 which pertained to Village Panchayat Telephones (VPTs) and he supervised the same from 29.10.1997 to 22.06.1998 which is confirmed by letter dated 08.05.2012 (Annexure-A5) but was wrongly concluded by the Disciplinary authorities that he worked on the additional work from 06.06.1997. He handed over both the charge to Shri Ram SDE on 22.06.1998.
3. During this period, applicant was served with a charge sheet to the effect that while posted under TDM, Etah during 06.06.1997 to 22.06.1998, committed the irregularities while providing VPTs on MARR, details of which are mentioned in the charge sheet. Taking into account the representation of the applicant, General Manager (Admin) vide order 09.04.2008 imposed punishment of reduction of pay of applicant by one stage for a period of one year without cumulative effect. The appeal and revision preferred by the applicant was dismissed vide orders dated 09.04.2008 and 01.09.2011 by the Chief General Manager and Director (BSNL) respectively.
4. Applicant has challenged the aforementioned three orders on the following grounds:
 - A. The applicant actually posted as SDE Phones Etah on 06.06.1997 and applicant was ordered to look after the additional charge of SDE G/Ex. Etah w.e.f. 29.10.1997 but the Disciplinary Authority passed wrong order by considering the period of applicant w.e.f. 06.06.1997 while the applicant repeatedly mentioned that the work of opening/conversion of VPTs was supervised in jurisdiction of SDE G/Es Etah w.e.f. 29.10.1997 to 22.06.1998 only.

- B. The Disciplinary Authority i.e. General Manager (Admin) passed an order after about a period of 20 months which was arbitrary, whimsical and frivolous as the grounds stated therein are totally erroneous.
 - C. Without considering the grounds as assailed through the Review Petition, the Reviewing Authority negated the review petition vide order dated 01.09.2011 wherein not a single point has ever been dealt which has been factually proved on record as submitted by the applicant.
5. In counter affidavit, the reply of respondents is that the applicant was guilty of violating the Government policy of one VPT for one village and failed to collect correct information exhibiting negligence towards his duty. The applicant failed to maintain absolute integrity and exhibited lack of devotion to duty and thereby contravened the provision of Rule 3 (1) (i), 3 (1) (ii) and 3 (1) (iii) of CCS (Conduct) Rules 1964. It is the further averment of respondents that the entire disciplinary proceedings against the applicant were conducted as per rules and regulations and the finding as well as the punishment is based on correct appreciation of facts of the case.
6. In the rejoinder affidavit, applicant has controverted the case of the respondents as coming out in the counter affidavit. Applicant has refuted the facts as averred in the counter affidavit as being wrong and entire disciplinary proceedings were based on wrong facts and all factual and documentary proofs were ignored by the disciplinary authorities.

7. I have heard and considered the arguments of the learned counsels for the parties and gone through the material on record.
8. It is no more *res integra* that the power of judicial review does not authorize the Tribunal to sit as a court of appeal either to reappraise the evidence/materials and the basis for imposition of penalty, nor is the Tribunal entitled to substitute its own opinion even if a different view is possible. Judicial intervention in conduct of disciplinary proceedings and the consequential orders is permissible only where (i) the disciplinary proceedings are initiated and held by an incompetent authority, (ii) such proceedings are in violation of the statutory rule or law, (iii) there has been gross violation of the principles of natural justice, (iv) there is proven bias and *mala fide*, (v) the conclusion or finding reached by the disciplinary authority is based on no evidence and/or perverse, and (vi) the conclusion or finding be such as no reasonable person would have ever reached.
9. In *B.C. Chaturvedi v. Union of India*, AIR 1996 SC 484, reiterating the principles of judicial review in disciplinary proceedings, the Hon'ble Apex Court has held as under: "12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice be complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a

finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry of where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

10. In *R.S. Saini v. State of Punjab and ors*, (1999) 8 SCC 90, the Hon'ble Apex Court has observed as follows: "We will have to bear in mind the rule that the court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings."

11. In the instant case, the charge against the applicant stands proved that the applicant was guilty of violating the Government policy of one VPT for one village and failed to collect correct information exhibiting negligence towards his duty. The applicant failed to maintain absolute integrity and exhibited lack of devotion to duty and thereby contravened the provision of Rule 3 (1) (i), 3 (1) (ii) and 3 (1) (iii) of CCS (Conduct) Rules 1964.
12. The record reveals all the three authorities after considering the materials available on record including the applicant's representation made against the inquiry report, imposed the punishment upon applicant. Again the appeal against the order of Disciplinary Authority and the revision against the order of appellate authority would show that the said authority disposed of the appeal/revision by a reasoned and speaking orders. Applicant has been unable to show any infirmity in the orders of upholding the order of punishment.
13. The observations/findings recorded by the Disciplinary Authority and Appellate Authority are based upon evidence/materials, and it cannot be said that there was no evidence before the Disciplinary Authority, Appellate Authority and Revisional authority to arrive at the above findings/ conclusions against the applicant. The applicant, in discharge of his duties, was required to discharge his duties with utmost sense of integrity, honesty, devotion and diligence, and to ensure that he did nothing which could be unbecoming of the conduct of an Government Officer.
14. At risk of repetition, it may be stated that it is settled law that the Tribunal cannot sit as a court of appeal over the findings of the inquiring authority. The conclusions derived by the inquiring authority are based upon evidence. The adequacy

of the evidence cannot be looked into by the Tribunal so long the view of the inquiring authority is one of the possible views. The argument of the applicant's counsel that the findings are perverse cannot be accepted.

15. Insofar as the orders under challenge are concerned, they cannot be said to be without reasons. I have perused the orders. The authorities have recorded sufficient reasons in their orders and considered the stand of the applicant as per his memo of appeal. The contention of the learned counsel for the applicant that the orders are without reasons is not correct. Suffice it to say that the administrative authority is not required to write a judgment, as is written by a court of law. The administrative authority, particularly when exercising appellate jurisdiction, is only required to disclose due application of mind to the issues raised, which has been done in the present case.
16. After having given our thoughtful consideration to the materials available on record and the rival submissions, in the light of the decisions referred to above, I have found no substance in the submissions of learned counsel for the applicant to allow the O.A.
17. In the light of our above discussions, I have no hesitation in holding that the O.A. is devoid of merit and liable to be dismissed. Accordingly, the O.A. is dismissed. No costs.

(Rakesh Sagar Jain)

Member (J)

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