

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
ALLAHABAD BENCH,**

Allahabad, this is the 19th day of JUNE 2018.

Present :

**Hon'ble Dr. Murtaza Ali, Member-J**

**Hon'ble Mr. Gokul Chandra Pati, Member-A**

Original Application No. 1464 of 2002

Smt. Chinmayee Moitra, wife of Tapan Moitra, Resident of Quarter No.1, Tape III, Telephone Exchange Campus, Saket Nagar, Kanpur Nagar.

**.....Applicant.**

By Advocate : Shri K.S. Singh/Shri Gaurav Singh

**VERSUS**

1. Union of India through the Chief General Manager, Telecom Circle, Habib Ullah State, Hazratganj, Lucknow.
2. General Manager, Telecom, Kanpur Telecom, District Telecom Bhavan, Mahatma Gandhi Marg, Kanpur.
3. Deputy General Manager (Planning), Kanpur Telecom, District Telecom Bhavan, Mahatma Gandhi Marg, Kanpur.
4. Deputy General Manager (Administration), Kanpur Telecom, District Telecom Bhavan, Mahatma Gandhi Marg, Kanpur.
5. Deputy General Manager (Administration), U.P Telecommunication Circle, Office of Chief General Manager, Habib Ullah State, Hazratganj, Lucknow.
6. Assistant General Manager (Planning and Development) Kanpur Telecom District Telecom Bhavan, Mahtma Gandhi Marg, Kanpur.

**..... Respondents**

By Advocate : Shri D.S. Shukla

**ORDER**

**By Hon'ble Dr. Murtaza Ali, Member-J**

This OA was initially filed in this Tribunal on 11.2.2002 which was dismissed as not maintainable vide order dated 3.3.2003 in

view of the fact that no notification under section 14 (2) of Administrative Tribunals Act 1985 was issued in respect of employees of BSNL. It appears that the applicant had preferred a Writ –A No. 30784 of 2003 before Hon'ble Allahabad High Court and during pendency of said writ petition, the BSNL was notified under section 14 of Central Administrative Tribunals Act. The file was remitted to this Tribunal after quashing the order of this Tribunal dated 3.3.2003 and it was directed by Hon'ble Allahabad High Court to decide the matter by this Tribunal vide order dated 14.7.2014.

2. This O.A. was filed for quashing the impugned orders dated 10.12.1999 and 27.6.2002 (Annexure 1 and 2) passed by respondent Nos. 4 and 2 respectively by which the approval of respondent no. 2 for compulsorily retirement of applicant was communicated and his appeal was rejected. By amendment, the applicant has also sought to quash the order dated 27.9.1999 (Annexure 8), by which she was compulsorily retired.

3. It is stated that the applicant was initially appointed on the post of Telephone Operator vide order dated 20.8.1971 in the office of Divisional Manager (Phones), Kanpur. She was made permanent on the said post vide order dated 26.7.1974. She was given appointment on the post of Stenographer Grade III vide order dated 19.11.1977. She was posted as Stenographer Grade II vide order dated 22.1.1987 but she was not granted promotion on the said post and was transferred from the office of DGM (P) to the

office of AGM (P&D). She filed an O.A. No. 1566 of 1993 seeking a direction to the respondents to promote her as Stenographer II and for quashing the said transfer order dated 20.08.1993. The Tribunal had directed to maintain status quo if the impugned order dated 20.8.1993 was not given effect to vide order dated 4.11.1993 (Annexure 3) and also disposed of said O.A. with the direction to the respondents to decide her representation dated 15.04.1993. It is stated that the applicant had fallen seriously ill and could not join her duties w.e.f. 12.11.1993 to 19.11.1993 and submitted her joining report on 22.11.1993 along with medical certificate as well as the copy of Tribunal's order dated 4.11.1993, but the respondents did not allow her to join her duties and passed several orders in her absence without affording her any opportunity of hearing. She preferred a representation on 10.12.1993 (Annexure 4) before respondent No. 7 along with order dated 4.11.1993 requesting him to permit to join her duties but the respondent No. 7 did not pay any heed. The respondent no. 7 informed to the respondent No. 3 vide his letter dated 9.3.1994 (Annexure 5) that in compliance of order of the Tribunal dated 4.11.1993, the order dated 20.8.1993, transferring her from the post of P.A. to Dy. General Manager (Planning) to the post of P.A. to Asstt. General Manager (Planning), has been set aside and *status quo* has been maintained. Even after issuance of said letter dated 9.3.1994, the applicant was not permitted to join her duties as P.A. to DGM (P) on the pretext that one Shri R.K. Srivastava was already

working on the said post. The applicant preferred another representation dated 18.3.1994 (Annexure 6) to the respondent No. 7 for clarification of the place of her posting.

4. In the meantime, the respondent No. 1 promoted her in the cadre of Stenographer Grade II vide order dated 30.06.1994. It is stated that she could not join at Lucknow as she was never relieved by DGM (P). The respondents cancelled her promotion order dated 30.6.1994 vide order dated 30.1.1995 and awarded punishment of stoppage of one increment for the period of one year vide order dated 5.5.1995. It is also stated that the respondent No. 6 issued an order dated 29.11.1994 (Annexure 8) treating the period between 12.11.1993 and 2.8.1994 as 'Dies non' ignoring the fact that she had already given an application for leave along with medical and fitness certificate and had also appeared on 22.11.1993 for joining but the respondent No. 3 refused to accept her joining. Aggrieved by the said orders, she had filed an appeal/representation before respondent No.1 and due to his inaction, she had filed another OA No. 164 of 1996 challenging the orders dated 29.07.1994 and 30.1.1995. The respondents also issued impugned orders dated 27.9.1999 (Annexure A-8) and 10.12.1999 (Annexure A-1) by which she has been compulsorily retired.

5. Aggrieved by the said impugned orders, she had filed OA No. 1486 of 2000 and the said OA was disposed of by this Tribunal vide order dated 8.1.2001 directing the respondents to dispose of

her appeal/representation dated 18.1.2000. The review application No. 22 of 2001 filed by the respondents against the order dated 8.1.2001 has also been rejected by this Tribunal vide order dated 9.7.2001 (Annexure 7). When the respondents did not decide her appeal within stipulated period of time, she also filed Contempt Petition No. 66 of 2002 and during pendency of said contempt petition, the respondent No.2 dismissed her appeal vide order dated 27.6.2002 (Annexure 2). It has been alleged that the impugned orders dated 27.9.1999, 10.12.1999 and 27.6.2002 are illegal, arbitrary and against the principles of natural justice and also in gross violation of the order dated 4.11.1993 passed by this Tribunal in OA No. 1566 of 1993.

6. In the counter reply, the respondents have not disputed her appointment, promotion, cancellation of promotion order and impugned orders of punishment and while denying the allegations made in O.A., it has been stated that the applicant could not be promoted earlier from the post of Stenographer Grade III (P.A.) to the post of Stenographer Grade II (PA) as no post was available in the Kanpur Telecom District at that time. It is further stated that the Competent Authority has already passed an order dated 8.4.1994 (Annexure CR-4) on the representation of applicant dated 15.4.1993 in compliance of order dated 4.3.1993 passed by the Tribunal in O.A. No. 1566 of 1993. It is also stated that in compliance of order of the Tribunal for maintaining status quo, the transfer order was cancelled vide order dated 9.3.1994 (Annexure

CR-6). It is further stated that she was relieved on 3.8.1994 to join in new unit on promotion, but the promotion order of applicant was cancelled vide letter dated 30.1.1995 (Annexure CR-10) due to her non joining on the promotional post. It is also stated that in spite of repeated instructions, the applicant did not turn up on duty as such her absence period from 12.11.1993 to 2.8.1994 was treated as 'dies non' vide order dated 29.11.1994 (Annexure CR-11) and the Competent Authority has also passed an order dated 5.5.1995 (Annexure CR-12) stopping her one increment for a period of 1 year falling due after issue of said order without cumulative effect. It has been submitted that as the applicant did not join her duty within the stipulated period of time, she was compulsorily retired under Rule 12 of CCS (CCA) Rules, 1965 and the Competent Authority has also rejected her representation/appeal dated 18.1.2000. Thus, it has been submitted that the impugned orders have rightly been passed by the Competent Authorities and the applicant is not entitled to any relief.

7. In the rejoinder, the applicant has reiterated the averments made in the O.A. and while denying the averments made in the counter reply, it has been stated that the post of Stenographer Grade-II was available in Kanpur Telecom District but she was wrongly denied promotion. On filing O.A. No. 1566 of 1993, the Tribunal had directed the competent authority to consider her representation vide order dated 4.11.1993 regarding her promotion from Stenographer Grade III (PA) to Stenographer

Grade II (PA) and the Tribunal had also ordered to maintain status quo. It has been alleged that the respondents had promoted several P.As from Grade III to Grade II, who were junior to the applicant but in compliance of Tribunal's order dated 4.11.1993, the applicant was not allowed to join either at her original place of posting or at transferred place. The applicant was running from pillar to post seeking suitable orders from the respondents but they were adamant to penalize her because she had challenged the order of her transfer before the Tribunal. She had also filed several applications (Annexure 6) to this effect. Thereafter, the applicant was also accorded promotion vide order dated 30.6.1994 (Annexure A-7) and posted at Lucknow, but she was never relieved by the Controlling Officer. Hence, she could not join on her promotional post and by taking advantage of this anomalous situation, the respondents cancelled her promotion order vide order dated 30.1.1995 ignoring the order of Tribunal dated 4.11.1993 by which the respondents were directed to maintain status quo. It is further stated that as the applicant was not relieved by the respondent No.3, she could not join at Lucknow. She sent several letters (Annexure -14) to the respondents and also met personally to the respondent No. 3 on 15.7.1994 and made a request to allow her to make signature on the attendance register and permit her to sit and work in her chamber, but she was not permitted to make her signature on the attendance register and enter in her chamber. It is also alleged that no opportunity of

personal hearing was afforded and no subsistence allowance or salary was paid to the applicant since February 1994 till the date of compulsory retirement while she was always ready and willing to perform her duties. It has also been alleged that the applicant was not afforded proper opportunity to participate in the inquiry proceedings and impugned orders have wrongly been passed by the respondents.

8. In the supplementary counter reply, it has been pointed out that the applicant had not challenged the original order of compulsory retirement, therefore, he could not claim reinstatement in service, payment of salary and consequential benefits. It is further stated that the applicant was promoted from stenographer grade-III to stenographer grade-II vide order dated 29.07.1994 (Annexure SCR-1) and she was relieved on 13.08.1994 as is evident from letter dated 13.09.1994 (Annexure SCR-2). As the applicant did not join in new unit on promotion as Stenographer Grade-II, her promotion order was cancelled vide order dated 30.01.1995 (Annexure SCR-3). It is further stated that the applicant could not be promoted earlier as the post of PA Grade-II was not available in Kanpur Telecom District and therefore her representation dated 15.04.1993 was rightly rejected by the competent authority vide order dated 08.04.1994 (Annexure SCR-11). It is also stated that the applicant abstained from duty w.e.f . 12.11.1993 to 02.08.1994, thus, the said period was treated as 'dies non' vide order dated 29.11.1994 (Annexure SCR-13). It is



further stated that the applicant was also punished for stoppage of one increment for a period of one year due to non joining on the promotional post vide order dated 05.05.1995 (Annexure SCR-17). It is also stated that after completion of the disciplinary proceedings, the applicant was compulsorily retired vide order dated 27.9.1999 (Annexure SCR-19) and her representation/appeal dated 18.01.2000 has also been rejected vide order dated 27.06.2002 (Annexure SCR-20).

9. In the supplementary rejoinder, it has been alleged that the impugned order of compulsory retirement dated 27.09.1999 was not passed by the competent authority and it is liable to be set aside on this ground alone. It is further stated that AGM (P & D) Kanpur was not competent to relieve her, as she was working under DGM (P) at the relevant time. It has further been alleged that Shri R K Srivastava who was 11 years junior to the applicant, was accorded promotion from Grade-III to Grade-II prior to the applicant and he was transferred from Ghaziabad to Kanpur in the year 1993. Thus, it has been stated that Grade-II post was available in the year 1993 and the respondents have wrongly stated that no post was available for according promotion to the applicant. It is further stated that it would be evident from the perusal of extract of inquiry report dated 11.02.1997 (Annexure SR-2) that the applicant had submitted her medical certificate, fitness certificate along with resumption report to DGM (P), but she was not allowed to join duty. It is also stated that the applicant was always available and

produced herself for duty but she was illegally and arbitrarily denied the access in the office. She submitted several letters (Annexure SR-3) to this effect but the respondents did not reply to her letters. It is also stated that the applicant has been denied salary since February 1994 and she was forced to face disciplinary inquiry without providing any subsistence allowance or salary and thus the inquiry is vitiated on this account alone.

10. In supplementary counter reply II, the respondents have denied the averments made in the supplementary rejoinder and further stated that the punishing authority of stenographer Grade-III is DGM and the Appellate Authority is General Manager (Telecom) and therefore punishment order as well as appellate order have rightly been passed by the competent authorities. It has been admitted that the applicant was relieved by Assistant General Manager (P) on 03.08.1994. It has been alleged that the applicant did not join her duty in the office of Assistant General Manager (P) Kanpur and disobeyed the orders of higher authorities. It has been stated that the applicant was adamant to join/work only with DGM (P) for which she was not entitled being stenographer of Grade-III and Shri R K Srivastava was a regular Stenographer Grade-II as per gradation list of Circle Office Lucknow and he was posted with DGM (P) after being transferred from Ghaziabad.

11. Heard Shri Gaurav Singh for the applicant and Shri D S Shukla for respondents and perused the record.

12. Learned counsel for the applicant would contend that the applicant was compulsorily retired vide order dated 27.09.1999 after serving 22 years in the department with full satisfaction to the higher authorities and she has not been paid any salary or subsistence allowance w.e.f., February 1994. She was not relieved by the competent authority for joining at Lucknow on her promotion and the respondents did not obey the order dated 04.11.1993 passed by this Tribunal in OA No. 1566 of 1993 by which the Tribunal had ordered to maintain status quo while staying the impugned transfer order dated 20.08.1993. It has also been contended that Shri A N Rai was highly prejudiced with the applicant and had passed several adverse orders against the applicant while posted as DGM (P) and later on he rejected her appeal as General Manager (Kanpur) Telecom District in gross violation of principles of natural justice. It has also been alleged that the applicant was not given fair and reasonable opportunity in the conduct of disciplinary proceedings and she was wrongly deprived of her pay/subsistence allowance w.e.f., February 1994.

13. Learned counsel for the respondents submitted that the applicant did not comply the orders of his superiors and, therefore, she has rightly been punished and her appeal has also been considered and rejected by the competent authority. It has also been contended that the Tribunal has no jurisdiction to interfere in the findings of the fact arrived at by the disciplinary authority.

14. It is trite law that the judicial review is not an appeal of a decision but a review of the manner in which the decision has been made. The purpose of judicial review is to ensure that the individual receives fair treatment. In the case of **Govt. of A.P. Vs. P. Chandra Mouli – 2009 (13) SCC 272**, it has been held by the Hon'ble Supreme Court that the power of punishment to an employee is within the discretion of the employer and ordinarily the courts do not interfere unless it is found that either inquiry proceedings or punishment is vitiated because of non-observance of the relevant rules and regulations or principles of natural justice or denial of reasonable opportunity to defend, etc. or that the punishment is totally disproportionate to the proved misconduct of an employee.

15. In the case of **B.C. Chaturvedi Vs. Union Of India & ors. – (1995) 6 SCC 749**, the Hon'ble Supreme Court has held as under:-

***“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 the eye of the court. When an inquiry is conducted on charges of 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 are 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 there from, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as Appellate Authority to re-appreciate the evidence and to arrive at its 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 or 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."***

16. Thus, it is clear from the above decisions that this Tribunal has very restricted power of judicial review in disciplinary proceedings and the Tribunal has to ensure only that the employee receives fair treatment and relevant rules, regulations and principles of natural justice have been adhered to and the employee was afforded reasonable opportunity to defend. We have not to re-appreciate the evidence and to arrive an independent finding but we have certainly to ensure that such findings must be based on some evidence and findings of Inquiry Officer, Disciplinary or Appellate Authority are not arbitrary or utterly perverse. Therefore, it can be concluded that the judicial review lies on the aspect of procedural irregularity and denial of legitimate opportunity for presenting one's case.

17. On perusal of record, it appears that following charge was levelled against the applicant:-

"2.1 That the said Smt. Chinmoi Moitra, Stenographer Grade-III on her posting under A.G.M. (P & D), Kanpur vide G.M.T. Kanpur letter No. Staff/10-13/96 dated 30/1/95 did not join her duties till 10/2/95. She was again instructed vide G.M.T. Kanpur letter No. Staff/10-13/94 dated 10/2/95 to resume her duties. Despite above administrative instructions and efforts, Smt Chinmoi Moitra did not care at all and did not join her duties causing lot of suffering to Government work. Thus Smt. Chinmoi Moitra by her above conduct showed indiscipline/disobedience, lack of devotion to duty and did such a work which is unbecoming of Govt. servant. In this way she violated Rule 3 (1) (ii) and 3 (1) (iii) of CCS (Conduct) Rules, 1964."

18. It is not in dispute that the applicant did not reply to the said charge sheet and it is an admitted fact that out of 10 sittings of inquiry proceedings, the applicant attended on 6 dates. During the inquiry proceedings, she repeatedly complained that she was never relieved by the competent authority for joining at Lucknow on promotion and she was not getting any salary or subsistence allowance w.e.f., February 1994 and she has submitted several letters/representations to this effect. She also asserted that she was always willing to join at the promotional post and she was restrained to enter the office of DGM (P) and signing the attendance register. She had also complained to District Magistrate and Senior Superintendent of Police Kanpur to this effect. From the perusal of record, it also appears that in spite of the fact that neither any prosecution witness was produced nor any order of relieving of applicant by competent authority was produced but the inquiry officer not only found her guilty for the charge levelled against her but also observed following irregularities committed by the applicant:-

- " (i) Not replying of Memo of Charge Sheet vide No. DGM (P)/DISC/Smt. C. Moitra (Steno)/95 dated 11.12.1995 within the stipulated time.
- (ii) Disobeying order vide Memo No. Staff/10-15/86 dated 30.01.95 and she was directed to report her duty to AGM (P & D) as stenographer Grade-III.
- (iii) Did not obey administrative instructions issued by AGM (A) vide No. Staff/10-13/94 dated 10.02.1995.
- (iv) According to absentee statement she did not inform AGM (P) about her whereabouts since 19.11.1995."

19. It is an admitted fact that during the period of disciplinary proceedings and even before initiation of such proceedings, the applicant was neither paid salary nor any subsistence allowance we.f. February 1994 nor she was allowed to work in pursuance of interim order dated 04.03.1993 passed by this Tribunal in OA No. 1566 of 1993, and she has been punished by a major punishment of compulsory retirement only on the charge of absenteeism ignoring her 22 years past services rendered by her.

20. In the case of **K L Gulati Vs Union of India [Bahri Bros Full Bench Judgements. Vol III, p. 376]** the Full Bench of Central Administrative Tribunal has held as under:-

*".. when there is no allegation of misconduct involving moral turpitude or any charge of corruption or of suspected doubtful integrity on the part of the applicant the quantum of punishment of removal from service appears to be wholly disproportionate."*

21. In the case of **Union of India vs Giri Raj Sharma reported in AIR 1984 Supreme Court Page 215**, the employee had overstayed the period of leave by 12 days and he was dismissed

from service on that ground. The High Court quashed the punishment and ordered his reinstatement with all monetary and service benefits. Hon'ble Supreme Court dismissed the Government appeal and held that the quantum of punishment was disproportionate while modifying the order of Hon'ble High Court to the extent that the employer might impose a minor penalty, if they desire to do so.

22. In the case of **Neelam Rani Verma Vs Union of India reported in (2004) 2 ATJ 256 (Chandigarh)**, the CAT Chandigarh Bench quashed the order of removal from service on account of unauthorised absence and substituted with a minor penalty. In the case of **Malkiat Singh Vs State of Punjab reported in JT 1996 (2) SC 648**, it has been held by Hon'ble Supreme Court that mere absence from duty could not be met with the extreme penalty of dismissal from service.

23. In the case of **Krushnakant B Parmar Vs Union of India and another reported in (2012) 1 Supreme Court Cases (L&S) 609**, the employee was principally charged for unauthorised absence from duty during three consecutive periods: (i) 3-10-1995 to 7-11-1995 (36 days); (ii) 9-11-1995 to 10-12-1995 (32 days); and (iii) 10-12-1995 to 2-8-1995 (234) days, in violation of Rules 3 (1) (ii) and 3 (1) (iii) of the Central Civil Services (Conduct) Rules, 1964. It has been held by the Hon'ble Supreme Court that if absence is due to compelling circumstances under which it was not possible to report for or perform duty, such absence cannot be held to be



wilful and employee guilty of misconduct. In the said case, neither inquiry officer nor appellate authority had found the absence of government servant wilful despite his specific defence that he was prevented from attending duty and was not allowed to sign attendance register. Evidence produced by the Government employee to substantiate his claim was ignored by the authorities concerned and on the basis of irrelevant facts and surmises he was held guilty. Hon'ble Supreme Court affirmed the order of Tribunal and quashed the dismissal order. Considering that the appellant had suffered a lot since 1996, when proceedings were initiated against him, the matter was not remitted to disciplinary authority and it was directed to reinstate the Government employee and pay him 50% back wages.

24. From perusal of record, it appears that neither there was any adverse remark against the applicant from the date of appointment i.e., 20.08.1971 nor she was ever punished till her transfer order was stayed by this Tribunal vide order dated 4.11.1993. During active service period of 22 years, she was made permanent vide order dated 26.07.1974 and posted to work as Stenographer Grade-II and later on promoted on regular basis on the said post vide order dated 30.06.1994. The trouble started when the applicant challenged her transfer order dated 20.08.1993 by which she was transferred from the office of DGM (P) to the office of AGM (P & D) and she filed OA No. 1566/93. The Tribunal ordered to maintain 'status quo' vide order dated 4.11.1993. The respondents

apparently got annoyed with the applicant and even after cancelling her transfer order they started to harass her on one pretext or the other and did not allow her to join in the office of DGM (P), while she was entitled to remain in the office of DGM (P) in view of said stay order passed by this Tribunal.

25. We are not inclined to go into the legality of orders passed by the respondents in respect of treating the period w.e.f., 12.11.1993 to 2.8.1994 as 'Dies non' vide order dated 29.11.1994, cancellation of promotion order dated 30.1.1995 and stoppage of one increment vide order dated 05.05.1995, but we are only concerned with impugned orders dated 27.09.1999, 10.12.1999 and 27.06.2002 by which she was compulsorily retired and her appeal was dismissed. The background and circumstances under which the disciplinary proceedings was conducted against the applicant are worth mentioning.

26. The applicant was transferred from the office of DGM (P) to the office of AGM (P & D) and after obtaining interim stay order dated 04.11.1993 for maintaining status quo, she submitted her joining report on 22.11.1993 alongwith medical/fitness certificate for absence period, but she was not allowed to join. This fact is evident from the extract of Inquiry Report (Annexure SRA-2). The only implication of stay order dated 04.11.1993 was that the applicant must be allowed to work in the office DGM (P) as she was not already relieved from there but it is seen from the letters on record that she was continuously forced to join in the office of AGM

(P&D) which was in gross violation of interim stay order dated 04.11.1993. Even after cancellation of impugned transfer order by the respondents vide letter dated 09.07.2004, the applicant was not permitted to work in the office of DGM (P). This shows complete disregard of interim order dated 04.11.1993 passed by this Tribunal in OA No. 1566 of 1993. The respondents have not filed any order of relieving from the office of DGM (P) by which it can be concluded that the applicant was relieved from the office of DGM (P) by the competent authority. From the sequence of letters and representations submitted by the applicant it goes to show how the situation was handled by the authorities in a high handed and biased manner. The applicant must have been permitted to work in the office of DGM (P) in view of interim stay order dated 04.11.1993 passed in OA No. 1566 of 1993 but it appears that the respondents were bent upon harassing the applicant by imposing one punishment after another alleging that the applicant was not joining her duties whereas the fact remains that the applicant was never permitted to work in the office of DGM (P) in pursuance of order dated 04.11.1993 passed in OA No. 1566 of 1993 and she was not relieved by the DGM (P) for joining at Lucknow on her promotion. Considering the facts of this case, by no stretch of imagination the applicant can be treated as wilful absentee from duty but we are of the considered view that non joining of applicant at Lucknow on promotion was due to not relieving of the applicant by the competent authority and proper hearing of

disciplinary proceedings cannot be imagined where the charged employee was neither paid any salary nor subsistence allowance.

27. In the case of **Capt. M. Paul Anthony vs Bharat Gold Mines Ltd reported in (1999) 3 SCC 679**, the appellant was suspended and not given any subsistence allowance. For want of subsistence allowance, the appellant could not attend inquiry which was held ex parte resulting in his dismissal from service. On appeal, the Hon'ble Supreme Court held:-

*"The provision for payment of subsistence allowance made in the service rules only ensures non-violation of the right to life of the employee. That was the reason why this Court in State of Maharashtra v Chandraban Tale,<sup>5</sup> struck down a service rule which provided for a nominal amount of rupee one as subsistence allowance to an employee placed under suspension. This decision was followed in Fakirbhai Fulabhai Solanki v Presiding Officer,<sup>6</sup> and it was held in that case that if an employee could not attend the departmental proceedings on account of financial stringencies caused by non-payment of subsistence allowance, and thereby could not undertake journey away from his home to attend the departmental proceedings, the order of punishment, including the whole proceedings would stand vitiated."*

The case of applicant is worse than the appellant of above case. She was not getting salary since February 1994.

28. As regards the quantum of punishment, the disciplinary authority has to keep in mind following points to award any punishment:-

- (i) Gravity of misconduct
- (ii) Past Conduct
- (iii) Nature of duties
- (iv) Position in organization
- (v) Previous penalty, if any
- (vi) Kind of discipline required to be maintained

29. From the perusal of punishment order of compulsory retirement, it does not appear that any of the above points were considered. Hon'ble Supreme Court has consistently held that if punishment imposed was grossly and shockingly disproportionate then the court can review the order and pass necessary directions. As the applicant was starving for want of salary and subsistence allowance and she was being forced to attend the disciplinary proceedings at the place far away from her residence, the decision of compulsory retirement from service seems to be quite harsh. The disciplinary authority overlooked past 22 years unstigmatic service rendered by her. In the instant case, neither integrity of the applicant was ever found doubtful nor there was any allegation of misconduct involving moral turpitude nor any charge of corruption was levelled against her but she was compulsorily retired, which is shocking to the conscious of the Tribunal and we find that the quantum of punishment of compulsory retirement from service is wholly disproportionate even if the disciplinary authority had come to a conclusion that she illegally remained absent from duty.

30. From the perusal of appellate order dated 27.06.2002, we find that the said order has been passed by Shri A N Rai, General Manager, Kanpur Telecom District, who had passed several adverse orders against the applicant while he was posted as DGM (P). A plain reading of impugned appellate order dated 27.06.2002 would indicate that the appellate authority did not consider the

grounds taken by the applicant in her representation/appeal dated 18.01.2000 and no opportunity of personal hearing was provided and her appeal/representation was simply rejected observing that the charges levelled against the applicant are fully established and she disobeyed the order of higher authorities without taking into account the fact that she was never permitted to work in the office of the DGM (P) in view of Tribunal's order dated 04.11.1993 passed in OA No. 1566 of 1993 and she was never relieved by the competent authority for joining at Lucknow on her promotion. Thus, we are of the considered view that the grounds mentioned by the applicant in her representation/appeal dated 18.01.2000 do not appear to have been considered by the appellate authority while passing the order dated 27.06.2002. We are also of the view that the appellate order dated 27.06.2002 clearly violates the principles of natural justice as the appellate authority Shri A N Rai, who was previously posted as DGM (P), had imposed several punishments upon the applicant after issuance of order dated 04.11.1993 by the Tribunal staying the order of her transfer. The need of approval of GM Kanpur Telecom District has also not been properly explained, if the punishment authority of the applicant was DGM (P).

31. It is established that the applicant was not absconding. She was very much present in various premises of respondents. In fact, she was living in the campus of the respondents. She had been continuously petitioning the respondents about her relief and

joining and other grievances. It seems that the 'absence' and 'non-compliance' of orders was forced/compelled on the applicant. It appears a clear case of continued prejudice and harassment of applicant by respondents even to the extent of causing her acute financial stringency on that she was not paid a penny during the period in question since February 1994.

32. In the light of the discussions made above, we are of the firm view that the Tribunal has to interfere under the power of judicial review. We are of the considered opinion that there was gross violation of principles of natural justice by conducting disciplinary proceedings against a lady official without providing her pay or subsistence allowance. We are also of the view that the applicant could not be held guilty for violating various improper orders by superior authorities whereas she was neither permitted to join in the office of DGM (P) in view of Tribunal's order dated 04.11.1993 passed in OA No 1566 of 1993 and she was also not relieved by the competent authority i.e., DGM (P) for joining at Lucknow on her promotion. The appellate authority has also not taken into consideration the grounds and circumstances under which she was forced to participate in the inquiry proceedings without being paid her pay or subsistence allowance and the appellate authority also not provided any opportunity of personal hearing and ignored the grounds taken by the applicant in her representation/appeal dated 18.01.2000.

33. The applicant has been seeking relief from this Tribunal since 1993 when she had initially filed OA No. 1566 of 1993 and in spite of the fact that she got favourable orders, the respondents were bent upon to deprive her to avail the benefits of various orders passed by this Tribunal. Now, she has already crossed the age of superannuation and it has been told by the learned counsel for the applicant during the course of the arguments that she is bed ridden and suffering from serious ailments without getting any medical treatment for want of money. Under these circumstances, and taking into account the inhuman approach of the respondents to harass a lady employee, we are of the view that since the applicant has suffered a lot since 1993, it would not be proper to remit the proceedings to disciplinary authority after quashing the impugned orders but to pass following directions:-

- (i) The OA is allowed and impugned orders dated 10.12.1999, 27.06.2002 and 27.09.1999 are quashed and set aside.
- (ii) The applicant shall be deemed to be in service till the actual date of her superannuation. She will be paid 50% of back wages from the date of non payment of salary till the date of superannuation on the basis of last pay drawn but she will be entitled for retiral benefits and pension on the basis of notional fixation of pay admissible to the employees of same grade after



implementation of recommendations of subsequent Pay Commissions as adopted by BSNL.

- (iii) The applicant shall be deemed to have been retired from the actual date of her superannuation treating the whole period, except already declared period as 'dies non', as qualifying service for determination of pension and retiral dues.
- (iv) The respondents shall comply the order within a period of 2 months from the date of receipt of this order. If the arrear of pay, pension and retiral dues are not released within two months, the applicant shall also be entitled for simple interest on due amount at the rate of 7% per annum from the due date till the payment is actually made.
- (v) There is no orders as to cost.

Member (A)

Member (J)

Arun...