

(Reserved on 04.09.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Original Application No. 330/00903/2012

This the **04th** day of **October, 2018**

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

Sachchidanand Upadhyay, S/o Saryoo Upadhyay, R/o Village Raine, Post Raine (Mau Nath Bhanjan) District Mau – 275101, presently posted as S.D.E (P.L.G.) O/o T.D.M. Mau District Mau.

.....Applicant

By Advocate: Shri N. Srivastava

Versus

1. Chairman – cum- Managing Director, Bharat Sanchar Nigam Limited, Bharat Sanchar Bhawan, H.C. Mathur Lane, Janpath, New Delhi - 110001.
2. Bharat Sanchar Nigam Limited through Director (H.R)/ Reviewing Authority, B.S.N.L., H.C. Mathur Lane, Janpath, New Delhi - 110001.
3. Chief General Manager (Telecom)/ Appellate Authority, Lucknow, U.P. East Telecom Circle Lucknow 4th Floor Door Sanchar Sadan, Laplace, Shahnazaf Road, Lucknow - 226001.
4. General Manager (Administration) / Disciplinary Authority U.P. East Telecom Circle, Lucknow, 4th floor, Door Sanchar Sadan Laplace Shahnazaf Road, Lucknow – 226001.
5. H.N. Singh, J.T.O (Electric), O/o Executive Engineer (Electric), Telecom Electrical Wing, CTO Building, Nadesar, Varanasi.

.....Respondents

By Advocate : Shri A.K. Tripathi

ORDER

DELIVERED BY:-

HON'BLE MR. GOKUL CHANDRA PATI, (MEMBER-A)

By way of the instant original application, the applicant has prayed for following main relief:-

“(a). to issue order or direction quashing the impugned orders dated 06.03.2012, 28.07.2011 and 07.02.2011.

(b). to issue another order or direction directing the respondent to immediately provide increments in the salary to the applicant.”

2. The facts of the case in brief are that applicant while posted as Sub Divisional Engineer (in short SDE), Mau was served with a charge memorandum dated 07.12.2009 (Annexure A-2A) initiating disciplinary action against him under the rule 35 of BSNL CDA Rule 2006 for his functioning as SDE, Mariyahun during the period from November 2007 to August 2008. The applicant filed a representation dated 29.12.2009 (Annexure A-2B) denying the charges on several grounds including the ground that he was transferred from the said post on 30.10.2007. Thereafter, on 31.07.2010, the office memorandum dated 07.12.2009 was withdrawn and on the same day, another charge-sheet was issued vide the memorandum dated 31.7.2010 (Annexure A-4) modifying the period from November 2007 - August 2008 to March 2007 –October 2007 without changing the contents of the first charge-sheet. The applicant submitted reply to the charge-sheet dated 31.07.2009 on 25.08.2010 (Annexure A-5) denying the charges on the ground that the operation and maintenance of the generator sets/EA were handed over by him to respondent No. 5 vide letter dated 15.04.2005.

3. It is further stated by the applicant that without considering the points raised by him in his reply, the respondent No. 4 passed the order dated 07.02.2011 (Annexure 1-A) imposing the penalty of stoppage of next two increments for the period of two years without cumulative effect. Then the applicant preferred an appeal dated 24.03.2011 (Annexure A-6) which was rejected by the Appellate Authority vide order dated 28.07.2011 (Annexure 1-B). Thereafter, the applicant filed review petition before the respondent No. 2 on 24.09.2011 (Annexure A-7), which was also rejected by the reviewing authority vide order dated 06.03.2012 (Annexure 1-C).

4. Being aggrieved by the action of the respondents, the applicant has filed the instant original application (in short OA) on following main grounds: -

- The initial charge-sheet was issued to the applicant was malafide and false.
- The respondent no. 4 withdrew the first charge-sheet without specifying reasons and owing to his malafide intention issued another charge-sheet manipulating the period of excessive consumption for generating sets.
- The respondent no. 4 did not consider the points raised in his representation.
- All the authorities failed to consider the fact that prior to alleged date of excessive consumption, the applicant had handed over the charge of operation and maintenance of the EA sets to the respondent no. 5 vide letter dated 15.04.2005.
- The disciplinary authority, appellate authority and the reviewing authority failed to consider the points taken by the applicant in his defence.
- The impugned orders have been passed in violation of rule 35 of the BSNL CDA Rules 2006.
- The respondents have failed to appreciate the provisions of rule 16 of the CCS Rules and without recording specific finding on every imputation of misconduct or misbehaviour have passed the impugned orders.
- The disciplinary authority did not consider the provisions of rule (10-A) of CCS Rules and passed the impugned order dated 07.02.2011.
- The disciplinary authority also failed to disclose the evidence collected by him during the course of inquiry.

5. The respondents have filed Counter Affidavit stating therein that period in the first charge-sheet was inadvertently wrongly shown and it was withdrawn on technical ground. It is stated that the applicant was responsible for maintenance and running of E/As in the exchange during March 2007 to October 2007. It is further stated that the disciplinary authority after considering the points raised by the applicant in his

representation had passed the impugned order dated 07.02.2011. It is also averred that since the appeal was reiteration of the representation, the appellate authority was in agreement with the disciplinary authority passed the order dated 28.07.2011. It is further stated that in the review petition same grounds were taken by the applicant, hence the reviewing authority after taking into consideration the review petition, passed the order dated 06.03.2012 upholding the punishment order.

6. The applicant has filed Rejoinder Affidavit reiterating the averments in the OA. The applicant has also filed a Supplementary Affidavit on 28.11.2017 enclosing therein a reply dated 14.06.2017 (Annexure SA-2) in response to the application dated 19.05.2017 (Annexure SA-1) filed under RTI Act. It is stated in the Suppl. Affidavit that as per the information furnished by the respondents, the Operation and Comprehensive Maintenance of Electro-Mechanical Services at Telephone Exchange was and is controlled and managed by Executive Engineer (Electrical), BSNL Electrical Circle, Varanasi and hence, the applicant is not responsible for the same. Hence, the applicant submitted that he has been punished for a work, for which was not entrusted to the him.

7. We have heard Shri Namit Srivastava, learned counsel for the applicant on 4.9.2018 and proceeded to decide the OA under rule 16 of CAT (Procedure) Rules, 1987, since none was present on behalf of respondents in spite of the last opportunity given to the parties to argue the case on 4.9.2018 vide order dated 7.8.2018. It is also noted that vide order dated 16.5.2016, Hon'ble High Court directed this Tribunal to dispose of this OA preferably within a period of one year. However, vide order dated 4.9.2018, the learned counsel for the respondents and applicant were allowed to file their written submissions within a week. The counsel for the applicant filed his written arguments on 10.9.2018, but the respondents' counsel has not submitted any written submissions as per the order dated 4.9.2018.

8. Learned counsel for the applicant argued that as stated in the OA and the Supplementary affidavit filed by the applicant on 28.11.2017

attaching the letter dated 14.6.2017 of the respondents in reply to the query of the applicant under the RTI Act, 2005 indicated that the maintenance of the generators was entrusted to the respondent no. 5 who is borne in the electrical wing under the respondents. This can be seen from the column relating to controlling authority in the letter dated 08.06.2017 in which the electrical officers' name is reflected, which shows that the applicant was not responsible for maintenance of the generators and hence, the charge-sheet alleging excess expenditure in maintenance is not maintainable. During the course of the arguments, learned counsel for the applicant also cited the following judgments in support of his case in his written arguments: -

- i. Order dated 04.12.2008 passed CAT, Hyderabad Bench in OA No. 718/2006 – H. Ramchander Vs. The Chief Personnel Officer, South Central Railway & Ors.
- ii. Order dated 14.01.2009 passed by CAT, Delhi in OA No. 1897/2008 – Rajesh Kumar Vs. UOI & Ors.
- iii. Order dated 29.04.2010 passed by CAT, Delhi in OA No. 2561/2009 – Laxman Prasad Vs. UOI & Ors.
- iv. Order dated 10.01.2003 passed by CAT, Lucknow Bench reported in the case of Raja Ram Verma vs UOI and anr 2003 (3) SLJ 365 CAT.

9. We have considered the pleadings filed by both the parties and submissions of learned counsel for the applicant. The argument of the applicant's counsel that the maintenance of the generators was entrusted to the electrical wing is averred in para 4.16 of the OA. In reply, the respondents in para 21 of the counter affidavit (in short CA) have stated as under:-

“21.the petitioner was responsible for mtce and running of E/As in the exchange and specific period of March, 07 to Oct. 07 was mentioned during which the lapses were observed.”

In reply to the above contention in para 19 of the CA, the applicant has stated the following in para 13 of the Rejoinder:-

“13.the maintenance of the generator sets were handed over by the applicant to the respondent no. 5 by way of letter dated 15.04.2005 and as such no liability as alleged for any excess consumption can be fastened on the applicant / deponent.”

10. It is seen from above that although the applicant has referred to the letter dated 15.04.2005 by which the applicant stated to have handed over the maintenance of the generators under his control to the respondent no. 5, but copy of the letter has not been enclosed by the applicant either with the OA or the Rejoinder or the Supplementary affidavits filed by him subsequently. In absence of such letter dated 15.04.2005 or any other order in support of the averments in para 4.16 of the OA, there is no document before us to corroborate the averment of the applicant that he did not have any responsibility for maintenance of the generators after 15.04.2005.

11. To have a better appreciation of the averments of the applicant regarding responsibility for maintenance, we have carefully gone through the representation dated 25.08.2010 (Annexure A-5 to the OA) submitted by the applicant in reply to the charge-sheet dated 31.07.2010 and it is seen that there is no mention in the said representation about handing over of the responsibility for maintenance of the generators to the respondent no. 5 vide letter dated 15.04.2005 (which has been averred in para 4.16 of the OA). Further, it was not contended in the said representation dated 25.08.2010 that the applicant was not responsible for maintenance or operation of the generators and the applicant has submitted arguments in the said representation trying to justify the expenditure incurred for the purpose. Regarding the responsibility of the electrical wing it was mentioned in para (6) of the representation dated 25.08.2010 that:-

“6.it is also worth to be stated that **operation and maintenance of E/A sets were being carried out by SDE (Electrical) under the supervision of Telecom Electrical Staff. The E/A sets logbook were being maintained by the staff operating the E/A sets.** The Electrical Wing of BSNL is supposed to have expertise in the E/A sets, it was never reported by them to me regarding any deficiency in the consumption of fuel in the E/A sets.”

Thus, although the electrical wing of the BSNL was responsible for operation and maintenance, the applicant had the overall responsibility

as stated in para (6) of the representation dated 25.8.2010 as discussed above.

12. Another argument advanced by the applicant's counsel in his written arguments is that the cancellation of the first charge-sheet dated 07.12.2009 and substituting it by a new charge-sheet vitiates the proceedings. In support of this argument, the judgment/order of different cases as stated in para 8 have been cited in the written argument. Perusal of the order of the Tribunal in the case of Rajesh Kumar vs. UOI in OA No. 1897/2008, it is seen that there is a reference to the letter dated 05.07.1978 of the authorities in para 5 of the order which was relied upon by the Tribunal in deciding that OA. No such letter of the respondents has been referred to in this OA, for which the cited case is distinguishable. Similarly for order dated 29.04.2010 in OA No. 2561/2009 refers to the instructions on the subject in para 13 of the order. There is another reason that there was no recording of findings as to the actual loss as mentioned in para 14 of the order, for which the cited case is distinguishable. The order dated 10.01.2003 in the case of Raja Ram Verma (supra), there is reference to the instructions of the Railway Board specifying how the charge-sheet is to be dropped as discussed in para 9 of the order and in that OA, the charge-sheet was issued without application of mind as stated in para 16 of the order. Hence, the case cited is inapplicable to the present case. Similarly, the other cited case is also factually distinguishable. The applicant has not furnished any rule or instructions of the respondents to prove that there is violation of law in the manner in which the the first charge-sheet was dropped and second charge-sheet was issued in this case.

13. There is another argument placed by the applicant's counsel in the written arguments filed by him that the punishment order of 'stoppage of next two increment for the period of two year without cumulative effect" has been implemented by stopping increments of the applicant for four years, first by stopping each of two increments for two years. It is submitted by the applicant's counsel that the applicant's increment has been stopped for four years in stead of for two years on non-cumulative basis as per the impugned punishment order. However, no such specific

plea has been taken by the applicant in the OA and supplementary affidavit filed by the applicant subsequently.

14. In the facts and circumstances of the case, as discussed above, we are not able to consider any specific relief prayed for in the OA. However, taking into consideration the submission of the applicant's counsel in his written argument that the applicant's increments have been stopped for four years while implementing the penalty order, we dispose of this OA granting liberty to the applicant to submit a representation to the respondent no. 4, if the submissions as discussed in para 13 are correct, enclosing a copy of this order within two weeks from the date of receipt of a copy of this order and the respondent no. 4, on receipt of the said representation, shall pass a speaking order clarifying the issue within one month from the date of receipt of such representation from the applicant. It is clarified that we have not expressed any opinion or decided the issue mentioned at para 13 above. The OA stands disposed of accordingly. There is no order as to costs.

(RAKESH SAGAR JAIN)
MEMBER-J

(GOKUL CHANDRA PATI)
MEMBER-A

Anand...