

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.773/2013

Reserved on : 20.01.2017
Pronounced on : 01.02.2017

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. V. N. Gaur, Member (A)

Ashok Golas
(Superannuated from Indian Telecommunication
Service Group 'A'),
101-A, Mount Kailas,
New Delhi-110065.

... Applicant

(By Advocate : Mr. Padma Kumar S.)

Versus

1. Union of India through
Secretary, Department of Telecommunications,
Ministry of Communication & IT,
Government of India, Sanchar Bhawan,
20 Ashoka Road,
New Delhi-110001.
2. Member (Services),
Department of Telecommunications,
Ministry of Communication & IT,
Government of India, Sanchar Bhawan,
20 Ashoka Road, New Delhi-110001.
3. Chairman & Managing Director,
Bharat Sanchar Nigam Limited,
Government of India Undertaking
(under Department of Telecommunication),
Ministry of Communications & IT,
Government of India,
Third Floor, Bharat Sanchar Bhawan,
Janpath, New Delhi-110001.

4. Secretary,
Department of Personnel & Training,
Ministry of Personnel, Public Grievances & Pensions,
Government of India, Room No.115,
North Block, New Delhi-110001. ... Respondents

(By Advocates: Mr. Subhash Gosain and Mr. R. V. Sinha)

O R D E R

Justice Permod Kohli, Chairman :

The applicant joined the Department of Telecommunications (DoT), Government of India on 11.12.1972 in the cadre of Indian Telecommunication Service (ITS) Group 'A' on being selected through Engineering Services Examination held in 1971 by the Union Public Service Commission. He earned promotion up to the Higher Administrative Grade (HAG) of ITS Group 'A' on 25.10.2002. He retired from service on 30.06.2010 on attaining the age of superannuation. From 28.02.2003 till his superannuation, the applicant served on deemed deputation in BSNL under the control of DoT. The applicant was served with an administrative recordable warning vide order 25.06.2010 (Annexure A-1). Relevant part of the order issuing the warning reads as under:

"In pursuant of the decision of the competent authority I, Rajesh Wadhwa, Director (CFA) being the controlling officer, hereby issue an "Administrative Warning" to Shri Ashok Golas then PGM (O) UP (West) Telecom Circle, now CGM NCES New Delhi."

This warning was preceded by certain events and various acts were attributed to the applicant. The allegations against the applicant are enumerated in the aforesaid order. Relevant extract is reproduced hereunder:

“That the said Shri Ashok Golas while functioning as PGM (O) o/o CGMT UP (West) Telecom Circle during the period 2003 to 2004, is alleged to be responsible for not maintaining the decorum of the post and has maligned the image of BSNL in connivance with the editor of “Sajag Pratinidhi” Jaipur based News Paper. Shri Ashok Golas passed information over telephone number 0141-2294477 to the editor before the publication of the said news clipping dated 25th Jan 2004 & 1st Feb 2004.

That the said Shri Ashok Golas while functioning as PGM (O) o/o CGMT UP (West) Telecom Circle during the period 2003 to 2004, contacted over telephone number 0141-2294477 many times (during the period 30-10-2003 to 27-01-2004) of the editor of “Sajag Pratinidhi” from his residential telephone no.2640062, Inspection Quarter, suit no.2, GPO Compound, Meerut, before publication of the said news clipping in News Paper “Sajag Pratinidhi” Jaipur dated 25.01.2004 & 01.02.2004.

Shri Ashok Golas also made calls to the editor of “Sajag Pratinidhi” from his office telephone no.2603636, Meerut, before publication of the said news clipping in News Paper “Sajag Pratinidhi” dated 25.01.2004 & 01.02.2004.

The copy of the News Paper “Sajag Pratinidhi” dated 25-01-2004 was specifically sent by the Editor directly to Shri Ashok Golas, which established the connivance of Shri Ashok Golas with the Editor of the said news paper.”

The aforesaid order was challenged by the applicant in OA No.4427/2011 before this Tribunal. The said OA was disposed of vide order dated 28.02.2012 with the following observations/directions:

“The applicant was issued administrative warning, vide order dated 25.06.2010, against which he made a representation on 26.07.2010. During the course of arguments, learned counsel for the applicant limits his prayer to direct the Secretary, Department of Telecommunications, first respondent herein, to take a decision on applicant’s representation dated 26.07.2010.

In view of the limited prayer of the applicant, as mentioned above, we dispose of this Original Application directing the Secretary, Department of Telecommunications, first respondent herein, to take a decision on applicant’s representation dated 26.07.2010 as expeditiously as possible, and definitely within a period of six weeks from today.”

Since the directions were not complied with, the applicant filed a contempt petition, CP No.309/2012. However, during the hearing of the said contempt petition, the respondents came out with an order dated 16.04.2012 whereby representation of the applicant was rejected and the contempt proceedings were accordingly closed vide order dated 24.04.2012. This OA has been instituted by the applicant challenging the order dated 16.04.2012 rejecting his representation as also the validity of the order dated 25.06.2010 communicating the

administrative warning. The applicant has accordingly sought the following relief:

- “a) Quash the unlawful and baseless warning issued to the Applicant vide order no.243-137/2009-VM-V dated 25.6.2010 (Refer Annexure A1).
- b) Quash the respondents order no.2-12/2010-VM.I dated April 16, 2012 (Refer Annexure A2) against the unlawful and baseless Administrative warning issued to the Applicant.
- c) Direct the Respondents to pay cost of litigation as well as mental agony suffered by the Applicant.
- d) Pass any other order and/or directions as this Hon’ble Tribunal may deem fit in the facts and circumstances of this case in the interest of justice.”

2. We have heard the learned counsel for parties at length.

3. The main contention, rather the only issue raised by the applicant, challenging the validity of the aforesaid orders is that the order communicating recordable warning amounts to punishment and while awarding this warning, neither any inquiry was conducted nor any show cause notice was issued to the applicant affording him an opportunity of being heard for the proposed recordable warning. In this regard, learned counsel for the applicant has firstly taken us to the allegations made in the impugned order dated 25.06.2010 which have been reproduced hereinabove. He has also taken us to the second impugned order dated 16.04.2012 whereby the representation has been rejected giving the following reasons:

“3. The following observations are made on the grounds raised by Shri Golas:

- (i) The administrative warning was issued to Shri Golas after due process and giving sufficient opportunity for rebuttal borne out of the facts that during investigation, questionnaire was sent to Shri Golas on 24.07.2008 and again on 16.12.2008 and reminders on 18.12.2008 and 03.07.2009, a copy of the CVO's report was also served to Shri Golas on 11.08.2009; while complying the direction of the Hon'ble Court in OA No.1553/08 filed by Shri Golas, CMD, BSNL gave opportunity to Shri Golas to represent on 24.07.2009 and 02.09.2009; a number of opportunities to inspect the files and related documents of CVO, BSNL relating to the case were given to Shri Golas and copy of the documents, as demanded, were also provided to him.
- (ii) Disciplinary action by the competent authority against Shri Golas was not barred by any Court. The issue of entries in ACR is an entirely different matter. Shri Golas' grievance relating to the entries in ACR was the subject matter of OA No.114/2010 and his grievance for being found unfit for promotion was the subject matter of OA No.3301/2010. Hon'ble CAT, New Delhi dismissed both applications vide order dated 18.01.2012. In this order the fact of issue of administrative warning vide order dated 25.06.2010 was also taken note of.”

4. On the basis of the above it is vehemently argued by the learned counsel for the applicant that the warning has been issued based on specific allegations without holding any inquiry and without establishing the said allegations against the applicant. His

further argument is that the recordable warning is an outcome of the specific allegations and has the proportions and attributes of punishment. It is strenuously argued that recordable warning is being incorporated in the service dossier of the applicant, which amounts to a permanent stigma. This action of the respondents will have civil consequences in the service career of the applicant. The action being without affording any kind of opportunity of being heard to the applicant is liable to be set aside on account of violation of principles of natural justice.

5. In regard to the second impugned order dated 12.04.2016, it is again contended that the rejection of the representation of the applicant is also on the basis of various allegations attributed to him, and thus the same is also liable to be set aside applying the same parameters and principles on which the first impugned order is liable to be set aside.

6. In the counter-affidavit filed on behalf of respondents 1 and 2, it is stated that the applicant has been found guilty of serious charges of misconduct of supply of information deliberately to the newspaper *Sajag Pratinidhi* of Jaipur, to malign the image of BSNL, and some news items to that effect were also published in the said newspaper on 25.01.2004 and 01.02.2004. It is further mentioned that based upon the investigation report for initiation of disciplinary

proceedings for major penalty recommended by the Chief Vigilance Officer, BSNL, the then General Manager, BSNL, UP (West) Telecom Circle, referred the matter to Central Vigilance Commission for its first stage advice. The Commission advised that no vigilance issue was involved and the matter appeared to be of administrative nature and accordingly advised for administrative action. Regarding the impugned order dated 25.06.2010, it is stated that a lawful administrative warning was issued and prior to issuance of the aforesaid warning, during investigation a questionnaire was sent to the applicant on 24.07.2008 and again on 16.12.2008, and a copy of the report of CVO was also given to the applicant on 11.08.2009. In respect of the representation, it is stated that the department examined the representation of the applicant dated 26.07.2010 and found that no valid ground was made out for annulling the administrative warning issued vide order dated 25.06.2010.

7. The learned counsel appearing for the respondents submits that warning is not a prescribed punishment either under major or minor penalties under rule 11 of the CCS (CCA) Rules, 1965, and thus the applicant has no cause to challenge the same. It is further submitted that since a questionnaire was sent to the applicant during investigation and the applicant did not respond to the same,

he was provided an opportunity, which he did not avail and thus principles of natural justice have been observed.

8. Vide order dated 05.01.2017 passed by this Tribunal, the respondents were directed to file an affidavit of the competent authority authorized under the rules and custodian of the records to supply information whether the impugned warning has been recorded in the ACR of the applicant or not. In response to the said direction, an affidavit has been filed by one B. R. Sreenivasa, Deputy Controller in the Department of Telecommunications, Delhi Region. In para 3 of the said affidavit, following statement has been made:

“3. That it is further submitted that a perusal of the ACR of the officer reveals that neither the administrative warning dated 25.06.2010 nor order dated 16.04.2012 has been placed in the ACR of the officer for the year 2003-2004. Further a perusal of decision taken to issue administrative warning administering warning to the officer also reveals that there was no direction to place the same in the ACR of the officer. It is further submitted that the entire action in the case starting from the time of entry of “doubtful integrity” till time of issue of administrative warning has been taken as per GOI OM dated 20.05.1972. Copy of GOI OM dated 20.05.1972 is annexed herewith and marked as Annexure RA/1.”

9. Learned counsel for the applicant has referred to the notings of the Department of Telecommunications (Annexure A-41) starting from page 141. From a perusal of the notings it appears that

on the allegations of supplying information to the newspaper, action was initiated. Investigation was also carried out on the column of 'Integrity' and action was proposed for disciplinary proceedings against the applicant for major penalty under the CCS (CCA) Rules, 1965. However, the Hon'ble MoS (C&IT) recorded as under:

“How is it that just when officer is about to retire, such matters are being raised. Looks more like a case of harassment on eve of retirement. MOC may decide. Administrative Action is recommended.”

This recommendation of the Hon'ble MoS (C&IT) appears to have been approved by the Hon'ble Minister (C&IT) on 08.06.2010. It is accordingly stated that the comments of the Hon'ble Minister clearly indicate that the action of the respondents was only to harass the applicant. However, we find that though the Hon'ble Minister mentioned that it appeared to be a case of harassment on the eve of retirement, the Ministry of Communication was given liberty for administrative action. It seems that pursuant to the aforesaid remarks of the Hon'ble MoS (C&IT) and the approval thereof by the Hon'ble Minister (C&IT), the respondents have issued the impugned order dated 25.06.2010.

10. It goes without saying that warning on the basis of allegations, and if recorded in the service dossier, has the attributes of punishment of censure. Office memorandum No.22011/2/78-

Estt.(A) dated 16.02.1979 issued by the Department of Personnel and Administrative Reforms, Government of India, insofar as the same is relevant to the issue, reads as under:

“Where a departmental proceeding has been completed and it is considered that the officer concerned deserves to be penalized, he should be awarded one of the recognized statutory penalties as given in Rule 11 of the CCS (CCA) Rules, 1965. In such a situation, a recordable warning should not be issued as it would, for all practical purposes, amount to a ‘censure’ which is a formal punishment and which can only be awarded by a competent Disciplinary Authority after following the procedure prescribed in the relevant disciplinary rules. The Delhi High Court has, in the case of *Nadhan Singh v Union of India*, also expressed the view that warning kept in the C.R. Dossier has all the attributes of “censure”. In the circumstances, as already stated, where it is considered after the conclusion of disciplinary proceedings the officer concerned should be penalized, the Disciplinary Authority should award the penalty of “censure” at least. If the intention of the Disciplinary Authority is not to award a penalty of “censure”, then no recordable warning should be awarded. There is no restriction on the right of the Disciplinary Authority to administer oral warnings or even warnings in writing which do not form part of the character roll.”

This office memorandum clearly prohibits issuance of recordable warning where the authorities intend to initiate disciplinary proceedings under the CCS (CCA) Rules, 1965. The intention is clear and unambiguous to penalise the Government servant for his acts of omission and commission.

11. Prior to issuance of the office memorandum dated 16.02.1979, the Hon'ble High Court of Delhi had dealt with the issue in the case of *Shri Nadhan Singh v Union of India* [1969 SLR 24]. The petitioner in the aforesaid case was served with a notice by the disciplinary authority asking him to show cause why departmental action under the relevant rules be not taken against him on account of certain allegations contained in the statement annexed to the notice. After considering his reply to the said notice, the disciplinary authority found him guilty of misconduct and issued a severe warning to be careful in future vide order dated 14.08.1963. Copy of the warning was also directed to be placed in his character roll. Petitioner's appeal against the aforesaid order was not forwarded to the appellate authority, and withheld on the ground that warning not being one of the penalties prescribed in the rules, no appeal lay against the said warning. The petitioner challenged the action of the respondents before the Hon'ble High Court contending that the question whether the order dated 14.08.1963 administered a simple warning to the petitioner warranting no appeal thereagainst, or it inflicted a punishment of censure, and censure being one of the penalties provided under the rules against which an appeal is maintainable, had to be considered by the appellate authority. Accepting the contention of the petitioner, the Hon'ble High Court

directed the disciplinary authority to forward the petitioner's appeal to the appellate authority. His appeal was accordingly forwarded to the appellate authority who decided that no appeal would lie under the rules against the warning administered to the petitioner. The petitioner again approached the Hon'ble High Court challenging the order passed by the appellate authority. While deciding the matter, the Hon'ble High Court observed that the appellate authority did not specifically decide whether the memorandum dated 14.08.1963 administered a simple warning to the petitioner or it imposed the penalty of censure upon him, and instead assumed that the memorandum dated 14.08.1963 administered a warning only. The petitioner laid stress to the fact that the memorandum administering warning upon him expressly stated that he was found guilty of misconduct and irrespective of such finding, simply issuing a warning to him was an attempt to disguise the real action taken against the petitioner. The Hon'ble Court observed that notwithstanding the word 'warning' mentioned in the memorandum dated 14.08.1963, it really imposed the penalty of 'censure' on the petitioner based on the finding that he was guilty of misconduct. The writ petition was accordingly disposed of with the following observations/directions:

“7. In such cases, I am of the opinion that it is not the form of the order or the word that is used or the nomenclature that is given that matters but really the substance of it. The Memorandum dated 14-8-1963 finds the petitioner guilty of misconduct and yet to contend that it merely administered a warning, dissociated from and unconnected with, the disciplinary proceedings initiated on 16-4-1963, is to say the least, unconvincing. There are several circumstances which will indicate that the ‘warning’ that was administered to the petitioner by the Memorandum dated 14-8-1963 was only a censure imposed upon the petitioner: one circumstance is that the Memorandum itself does not say that the disciplinary action initiated against the petitioner under R. 16 of the Rules by the notice dated 16-4-1963 was dropped or closed.

8. The second is that in express terms the Memorandum states that the petitioner was found guilty of misconduct. The Third circumstance is that the Memorandum itself states that a copy of that communication has been placed in the character roll of the petitioner. The fourth feature is that the Chairman, Central Water and Power Commission, who issued this Memorandum had described himself as the disciplinary authority also while issuing the said Memorandum indicating thereby that Memorandum was issued by him only in his capacity as the disciplinary authority. I am also doubtful whether an informal warning can ever go with the finding of misconduct against a Government servant. Admittedly, this ‘warning’ was intended to be taken into consideration for assessing the official career of the petitioner and is likely to effect the same adversely, since the Memorandum itself states that a copy of that communication has been placed in the character roll of the petitioner. Under these circumstances, in my opinion, notwithstanding the word ‘warning’ used in the said Memorandum, that Memorandum really imposed the penalty of censure on the petitioner based on the finding that he was guilty of misconduct. If that be the case, clearly an appeal lies to the appellate authority and it is for the appellate authority to

consider the appeal on merits. It is in view of this circumstance, I refrain from expressing any opinion on the various allegations and grievances of the petitioner with reference to the action initiated against him which culminated in the said Memorandum. Even though the petitioner in his petition has challenged the entire proceedings, on the basis of the conclusion I have arrived at, I direct the issue of a writ of certiorari to quash the order of the President of India rejecting the appeal of the petitioner, communicated by the Deputy Secretary to the Government of India in the Ministry of Irrigation and Power, on 2-9-1966. The result of such quashing will be that the appellate authority will have to consider the appeal of the petitioner on merits on the basis that the Memorandum dated 14-8-1963 of the Chairman, Central Water & Power Commission, imposed a penalty of censure on the petitioner.”

12. In the instant case, both the impugned orders clearly specify the allegations against the applicant and thus the intention of the respondents is absolutely certain to punish the applicant. However, on account of remarks of the Hon'ble Minister, instead of disciplinary proceedings on the basis of specific allegations, this device has been adopted and recordable warning issued. Admittedly, under such circumstances, it not only casts stigma but also would result in civil consequences in the service career of the applicant if it is placed on his service dossier. Thus observance of principles of natural justice becomes imperative. The contention of the learned counsel for the respondents that a questionnaire was issued to the applicant and thus principles of natural justice have been observed cannot be accepted. Firstly that questionnaire was in

regard to the allegations which were being investigated for purposes of holding either criminal investigation or, may be, disciplinary proceedings. In view of the competent authority having refused initiation of disciplinary proceedings at the fag end of the retirement of the applicant, the respondents issued the recordable warning. It is at this stage that the applicant was required to be provided an opportunity in respect to the proposed action, which is intended to impact the civil rights of the applicant in his service career and also amounts to stigma on account of specific allegations, including integrity. Admittedly, no such opportunity was provided to the applicant. Thus the impugned orders are liable to be quashed.

13. This OA is accordingly allowed. Both the impugned orders are hereby quashed. No costs.

(V. N. Gaur)
Member (A)

(Justice Permod Kohli)
Chairman

/as/