

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.2580 OF 2013

New Delhi, this the 26th day of May, 2017

CORAM:

**HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

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Chander Prakash Tiwari,
s/o late Shri Ram Sunder Tiwari,
aged about 54 years,
R/o H.No.80, C-Block,
Sector-21, Rohini,
New Delhi 110086

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Applicant

(By Advocates: Ms.Pratibha Sinha, Mr.B.K.Sinha and Mr.Santosh Kumar)

Vs.

1. Mahanagar Telephone Nigam Ltd.,
Through the Chief General Manager (P&D) First Floor,
Eastern Court,
New Delhi 110011

2. The General Manager (P&D),
Mahanagar Telephone Nigam Ltd.,
First Floor,
Eastern Court,
New Delhi 110011

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Respondents

(By Advocates: Mr.H.S.Dahiya and Mr.Niraj Dahiya)

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ORDER

Per Raj Vir Sharma, Member(J):

We have perused the records, and have heard the learned counsel appearing for the parties.

2. Memo dated 28.3.2011, along with the statement of article of charge, statement of imputation of misconduct, the list of documents by which, and the list of witnesses by whom the charge against the applicant was proposed to be sustained, was issued by the Disciplinary Authority (DA) proposing to hold an inquiry against the applicant under Clause 37(E)(i) of the Certified Standing Order of Mahanagar Telephone Nigam Ltd. and also calling upon the applicant to submit the written statement of his defence within ten days of the receipt of the Memo and to state whether he desired to be heard in person. The charge framed against the applicant reads thus:

That Sh.Chander Prakash Tiwari, Phone Mechanic was holding the physical charge of cable store of COC-V(N), Sec.6, Dwarka for the period of 6 years since 2002. Meanwhile Shri Ram Chander Pandey, Phone Mechanic was deputed vide letter No.COC-V(N)/Tfr & Posting/2006-07/45 dated 31.10.2006 for taking over the physical charge of the cable store from Sh.Chander Prakash Tiwari, Phone Mechanic. While taking over/making over the charge of cable store of Sec.6, Dwarka, the physical measurement of the cables was carried out. During measurement of cables, 13 cables of different sizes & DPs old type were found short in comparison to that of record entered in the stock register. Thus, Shri Chander Prakash Tiwari, the physical incharge, misappropriated the cables of the store of COC-V(N) and failed to maintain the records of the cable store properly which has caused considerable cable short in the store and pecuniary loss of Rs.6,61,847/- (Rupees Six lakhs sixty one thousand eight hundred forty seven only) to the Company.

By the aforesaid act, the said Sh.Chander Prakash Tiwari, Phone Mechanic (PM-4513) has failed to maintain absolute integrity, devotion to his duty and acted in a manner unbecoming of a Company Employee in violation of clause 35(iv)&(xii) of Certified Standing Orders for MTNL C&D Group employees.ö

2.1 The applicant submitted the written statement of his defence denying the charge levelled against him. Therefore, the DA appointed Inquiring Officer (IO) and Presenting Officer (PO). The applicant also engaged a Defence Assistant. During the inquiry, as many as 15 documents were produced and marked as Exts.S-1 to S-13(b), and two witnesses (SWs 1 and 2) were examined on behalf of the DA/prosecution. The statement of the applicant was also recorded by the IO. Three witnesses (DWs 1 to 3) were also examined on behalf of the applicant. The applicant also submitted the brief of his written defence.

2.2 After analyzing the evidence and materials available on record of the inquiry, the IO submitted his report dated 24.5.2012 finding the charge as fully proved against the applicant. The relevant part of the IO's report dated 24.5.2012 is reproduced below:

- ö(i) Sh.Ram Chander Pandey, Phone Mechanic took over the physical charge of cable store of COC-V(North) from Sh.Chander Prakash Tiwari, Phone Mechanic after physical verification of cable store. In this charge report dated 12.3.2008 duly signed by both the officials came to the light some short cables then that of stock recorded in the stock register and as shown in Anne.II.
- (ii) An attempt of cable theft from the store of COC-V (North) at Sec.6, Dwarka by some unscrupulous elements was made on 19.10.2006. One thief was caught with some stolen cable pieces b y security Guards/Chowkidars

and handed over to the Police. An FIR was registered in the concerned Police Station on 19.10.2006. The cable pieces which thieves tried to steal are not the ones which are subject of the inquiry.

By going through all the relief upon documents and evidences recorded in front of me, it is clear that Sh.C.P.Tiwari, Phone Mechanic the physical Incharge of the cable store from 19.10.2006 a date on which an attempt of theft was made to 12.3.2008 a date on which he made over the charge to Sh.Ram Chander Pandey, Phone Mechanic, never at any point of time wrote to his COC about the cable shortage. COC-V(North) wrote letters dated 14.5.2008, 11.7.2008, 27.7.2008 (reminder), 19.8.2008 (reminder-II), 17.9.2008, 10.11.2008 (reminder III), 31.12.2008 and 4.3.2009 to Sh.Chander Prakash Tiwari, Phone Mechanic to submit clarification in r/o shortage of cable in the store. But he did not give any clarification nor did he indemnify the short cable. In his statement recorded on 31.1.2011 before the AVO, he along with himself held the COC-V(North) equally responsible for cable shortage and revenue loss. Now in his defence brief he says that the charges levelled against him are based on mere assumption, suspicion and doubt.

This inquiry indeed is based upon facts and not on assumption while the whole defence of SPS Sh.C.P.Tiwari seems to revolve around an assumption that said cable pieces might have been stolen by some thieves, which seems a clever ploy to create suspicion and doubt in the mind of inquiry. He could not produce anything substantial to prove his innocence. By no stretch of evidence, he could prove that the cable pieces, the subject of inquiry, were stolen from the store.

The store was well guarded 24x 7 as per version of SW-1 Sh.Dharam Singh, COC-V (North) and DW-1 Sh.R.B.Shah, DE(FRS) R/G, defence witness Sh.Vishwanath (DW-1) told the inquiry that on 19.10.2006 some of the thieves who ran away in the darkness could not take anything with them. Another defence witness S.Pratap Singh gave an ambiguous statement about his conduct as store Incharge.

The COC-V(North) being the Controlling Officer may have faltered on the store verification count but this mere fault on the part of COC-V (North) does not absolve Sh.C.P.Tiwari on his duties and responsibilities as physical incharge of cable store.

He was supposed to keep the every article of the store Account for which he did not. He failed miserably in maintaining the record of cable store properly.

Conclusion and finding

On the basis of oral and documentary evidences adduced before this inquiry as well as arguments tendered by the prosecution and by the SPS in his defence brief as assessed in analysis and assessment of evidences, it is clear that Sh.C.P.Tiwari, Phone Mechanic has misappropriated 13 cable length of different sizes and 20 no. of DPs (old type) and he is definitely responsible for causing pecuniary loss to the Company.

2.3 Accepting the findings of the IO, the DA passed order dated 6.12.2012 imposing on applicant the following penalty:

- ö(a) Reduction by three stages in his pay scale for a period of three years with cumulative effect, and
- (b) Recovery of Rs.6,61,847/- (Rupees Six lacs Sixty One Thousand Eight Hundred Forty Seven only) to the company from his pay of the part of pecuniary loss caused by him to company due to act of omission and commission on his part.

2.4 Being dissatisfied with the DA's order dated 6.12.2012(ibid), the applicant made an appeal dated 3.1.2013.

2.5 The Appellate Authority (AA), by his order dated 17.6.2013, disposed of the applicant's appeal dated 3.1.2013 and modified the penalty as follows:

- ö1. Reduction by three stages in his pay scale for a period of three years with cumulative effect and
- 2. Recovery of 2/3rd of Rs.6,61,847 (i.e. Rs.4,41,230) on account of loss caused by Sh.C.P.Tiwari, PM to the company.

2.6 The present O.A. has, thus, been filed by the applicant praying for the following reliefs:

- õ(i) To set aside the appellate order dated 17.06.2013 of the appellate authority passed by Mr.A.K.Garg, Director (HR).
- (ii) To set aside the order of Disciplinary Authority dated 06.12.2012 passed by the General Manager (P&D).
- (iii) To direct the respondents to return back the amount deducted from the pay of the applicant along with the interest accrued thereon.
- (iv) To direct the respondents to restore the reduced 3 increments to its original.
- (v) Pass such other pass such other or further order as this Honøble Court may deem fit and proper in the facts and circumstances of this case.ö

3. It has been contended by the applicant that the charge sheet is not specific and is a vague one. The IO has not conducted the inquiry in an impartial manner. Though the charge sheet does not mention about violation of Clause 35(iv) and (xii) of the Certified Standing Order of the Mahanagar Telephone Nigam Ltd., yet the DA has recorded the finding that he (applicant) has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a company employee in violation of clause 35(iv) and (xii) of the said Certified Standing Order. Both the IO and DA have failed to appreciate the materials available on record of the inquiry in their proper perspective. The impugned orders are violative of the principle of natural justice. The AA has failed to consider the points urged by him in the appeal in their proper perspective. In view of all the above, it has been submitted by the applicant that the impugned orders are unsustainable in the eyes of law and liable to be quashed.

4. *Per contra*, it has been submitted by the learned counsel appearing for the respondents that there was sufficient evidence to prove the charge against the applicant. The EO, DA and AA have all recorded the findings in fair manner. The pleas taken by the applicant in the written statement of his defence have been duly considered and findings thereon have been arrived at by the EO and DA. The grounds urged by the applicant in the appeal have been duly considered and findings have been arrived at by the AA. The procedure established by law has been duly followed. Thus, there is no infirmity in the orders passed by the authorities. Therefore, the O.A. is liable to be dismissed.

5. We have given our thoughtful consideration to the rival contentions.

6. 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:

ō12. 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 re-appreciate 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 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.

7. In **Government of Andhra Pradesh v. Mohd. Nasrullah Khan**, (2006) 2 SCC 373, the Hon'ble Apex Court has reiterated the scope of judicial review as confined to correct the errors of law or procedural error if it results in manifest miscarriage of justice or violation of principles of natural justice. In paragraph 7, the Hon'ble Court has held:

“By now it is a well established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an Appellate Authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error if any resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by appreciating the evidence as an Appellate Authority.”

8. After going through the materials available on record, we find that this O.A. can be decided only on the points of procedural error committed by the DA while passing the impugned order of punishment, and of failure on the part of the AA to appreciate the plea raised by the applicant in his appeal regarding violation of Clause No.37 (E)(ii)(3) of the Certified Standing Order of Mahanagar Telephone Nigam Ltd.

9. Clause No.37(E)(ii) of the Certified Standing Order of Mahanagar Telephone Nigam Ltd. reads thus:

ö(ii) ACTION ON THE ENQUIRY REPORT

- (1) The Disciplinary Authority, if it is not itself the Inquiring Authority may, for reasons to be recorded by it in writing remit the case to the Inquiring Authority for fresh or further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 37(E) (i) as far as may be.
- (2) The Disciplinary Authority shall, if it disagrees with the findings of the Inquiring Authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.
- (3) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in rule 36 should be imposed on the workman, shall give an opportunity to the delinquent workman to submit his version, if any, [notwithstanding anything contained in rule 37(F)] and on receipt of the reply from the workman, shall pass an order in the matter.ö
- (4) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the workman concerned.

10. In the instant case, the IO submitted his report dated 24.5.2012 finding the charge as fully proved against the applicant. There is nothing on record to show that before passing the impugned order of punishment dated 6.12.2012, the DA has given an opportunity to the applicant to submit his version, if any, in terms of Clause 37(E)(ii)(3) of the Certified Standing Order of Mahanagar Telephone Nigam Ltd. Therefore, the impugned order

of punishment has been passed by the DA in clear contravention of the mandatory provision of Clause 37(E)(ii)(3), *ibid*.

11. In paragraph 2 of his appeal (Annexure P-4), the applicant has clearly urged thus:

õ1. The impugned order is violative of principles of natural justice and mandatory clause 37E(ii)(3) of Certified Standing Orders for MTNL C & D Group Employees (Non Executive) which is reproduced below:-

(1) õIf the Disciplinary Authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in rule 36 should be imposed on the workman, shall give an opportunity to the delinquent workman to submit his version, if any, [notwithstanding anything contained in rule 37(F)] and on receipt of the reply from the workman, shall pass an order in the matter.ö

The Learned Disciplinary Authority however failed to comply with the said mandatory provision and failed to afford any opportunity whatsoever and allow me to submit any representation before issuing the impugned order in violation of principles of natural justice.ö

11.1 The order dated 17.6.2013(Annexure P-4) passed on the applicant's appeal made against the impugned order of punishment shows the AA to have dealt with and rejected the aforesaid plea of the applicant in the following words:

õ1. The IO report has been received by Sh.C.P.Tiwari, PM as stated in his letter dated 12.7.2012. The IO report was addressed to Disciplinary Authority and was sent to the official through proper channel. As there was no representation from the official on the observation/ conclusion made in IO report, the DA took the decision after consideration of the IO report and other circumstances of the case and imposed the penalty vide

order dated 6.12.2012. This reveals that sufficient time was given to Sh.C.P.Tiwari, PM to reply.ö

11.2 When Clause 37(E)(ii)(3) of the Certified Standing Order of Mahanagar Telephone Nigam Ltd., in clear and unambiguous terms, mandates that if the DA, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in rule 36 should be imposed on the delinquent, it shall give an opportunity to the delinquent to submit his version, if any, and on receipt of the reply from the delinquent, shall pass an order in the matter, the mere communication of copy of the report of inquiry by the IO to the applicant, in our considered view, would not amount to compliance with the mandatory requirement of Clause 37(E)(ii)(3),ibid. Thus, it is clear that the AA has utterly failed to appreciate the applicant's aforesaid plea on the touchstone of Clause 37E(ii)(3), ibid. Therefore, the impugned order passed by the AA is unsustainable in the eyes of law and liable to be quashed on that score alone.

12. In view of our above findings that the procedure as laid down in Clause 37(E)(ii)(3) of the Certified Standing Order of MTNL has not been followed by the DA, while passing the impugned order of punishment, thus and thereby denying an opportunity to the applicant of submitting his views/representation against the findings in the IO's report/findings of the DA, and resulting in manifest violation of the principle of natural justice, and that the AA has failed to appreciate the applicant's plea of contravention of Clause 37(E)(ii)(3), ibid, while rejecting the applicant's appeal, we quash both the impugned orders passed by the DA and AA, and remit the matter to

the DA to proceed from the stage of Clause 37(E)(ii)(3), *ibid*, and pass appropriate orders in the matter within a period of three months from today.

13. Resultantly, the O.A. is partly allowed to the extent indicated above. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SHEKHAR AGARWAL)
ADMINISTRATIVE MEMBER

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