

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.3997/2012

This the 28th day of September, 2016

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

R. N. Sharma S/o M. L. Sharma,
R/o E-56, Prem Gali, Babarpur,
Shahdara, Delhi-110032
Presently posted as
Divisional Engineer (GO No.19134A),
Dilshad Garden Telephone Exchange,
MTNL, Delhi.

... Applicant

(By Advocate: Mr. D. S. Chaudhary)

Versus

1. Union of India through
Secretary, Ministry of Communication and
Chairman Telecommunication,
Sanchar Bhawan, 20 Ashoka Road,
New Delhi-110001.

2. Chairman & Managing Director,
Mahanagar Telephone Nigam Limited,
5th Floor, Doorsanchar Sadan,
9, CGO Complex, Lodhi Road,
New Delhi-110003. ... Respondents

(By Advocates: Ms. Rachana Joshi Issar)

O R D E R

Justice Permod Kohli, Chairman :

The applicant in the present OA has challenged the order dated 11.09.2002 passed by the disciplinary authority awarding penalty of

reduction of pay by two stages from Rs.10250/- to Rs.9750/- in the time scale of pay of Rs.7500-250-12000 for a period of two years with immediate effect, with the further direction that the applicant will not earn increments of pay during the period of such reduction and on expiry of such period, the reduction will have the effect of postponing his future increments of pay; and the order dated 27.12.2011 passed by the President of India on the appeal/review of the applicant.

2. Brief facts leading to the filing of the present OA are that the applicant was subjected to disciplinary proceedings for major penalty under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 vide memorandum of charges dated 08.03.2000. At the relevant time he was serving as JTO, MTNL, New Delhi. On completion of the inquiry, the disciplinary authority awarded the punishment as noticed hereinabove vide the impugned order dated 11.09.2002 (Annexure A/1). He preferred a statutory appeal dated 01.11.2002 to the President of India (Annexure A/8) against the order of punishment. While his appeal was still pending, the applicant was permanently absorbed in MTNL w.e.f. 01.10.2000 vide order dated 02.07.2004 (Annexure A/9).

3. It appears that in view of the absorption of the applicant, the appeal of the applicant was transferred to the MTNL and the

same was decided by the Chairman-cum-Managing Director (CMD), MTNL vide order dated 28.10.2006. The applicant, aggrieved of the aforesaid order, filed a writ petition WP(C) No.8067/2007 before the High Court of Delhi, which came to be transferred to this Tribunal and registered as TA No.123/2009. One of the contentions of the applicant before the Tribunal was that the CMD, MTNL is not the competent authority to decide the appeal preferred by the applicant to the President of India against the order of imposition of penalty. The Tribunal, on recording this submission, suggested the applicant for seeking remedy of review. The other side also agreed for the same, and consequently the said TA was disposed of vide order dated 12.02.2010 with the following directions:

- “(i) The applicant is permitted to file a review petition on the appellate order having been passed by an authority not competent to do so; and
- (ii) On filing of such petition, the respondents will examine the matter and decide the same by passing a reasoned and speaking order within a period of six weeks, under intimation to the applicant.”

4. In view of the aforesaid directions, the applicant filed review petition to the CMD, MTNL on 19.05.2010 (Annexure A/11). It is contended by Mr. D. S. Chaudhary, learned counsel appearing for the applicant that the CMD, MTNL did not decide the review of the applicant as per the directions of the Tribunal, and to the contrary forwarded the same to the Department of Telecommunication (DoT),

and under their advice issued letter dated 01.08.2011 to the applicant asking him to file a fresh review petition for submission to DoT. The contents of the said letter are reproduced hereunder:

“Sub: Review Petition of Shri R.N. Sharma, SDE (GO-19134) – Retired.

This is in reference to your review petition dated 19.5.2010 addressed to CMD, MTNL which has been considered in D.O.T. and it is observed by DOT that you have not raised any point for review. The DOT further directed this office to get the review petition from you and forward the same to DOT along-with comments thereon.

In view of above, you are requested to send the fresh review petition at the earliest for further submission to DOT.

Sd/-
Vigilance Officer (DP)
Delhi”

5. The applicant thereafter instead of filing review as per directions contained in the aforesaid letter, filed a fresh appeal to the President of India through Secretary to Government of India, Ministry of Communication and Information Technology, vide his memo of appeal dated 18.09.2011 (Annexure A/13). This appeal has been decided vide the impugned order dated 27.12.2011 (Annexure A/3) treating the same as review. It is under these circumstances that the applicant has challenged the aforementioned orders in the present OA.

6. Mr. Chaudhary, learned counsel for the applicant has submitted that the order passed on his appeal treating the same as

review, as also the action of the respondents are illegal, contrary to law and in contravention of the directions of the Tribunal contained in its order dated 12.02.2010 passed in TA No.123/2009. According to him the disciplinary proceedings were initiated when he was an employee of the DoT under the Ministry of Communication and Information Technology. The penalty order was also imposed while he was a Central Government employee. He preferred the appeal while still an employee of the Central Government, and thus the decision of the appellate authority, i.e., CMD, MTNL on his appeal was/is illegal and without any authority of law. His further contention is that even when the Tribunal directed the CMD, MTNL to consider the review that may be filed by the applicant, it was not open to the said authority to have forwarded the review of the applicant to the DoT for its comment/consideration, and the DoT was also not empowered to direct the MTNL for a fresh review application from the applicant for consideration of the DoT, as is required vide letter dated 01.08.2011. It is also vehemently argued that the applicant had filed appeal before the President of India and the same could not have been treated as review by the DoT as no review was filed before the DoT. According to him, CMD, MTNL alone was competent to pass order on his review application regarding his competence to decide the appeal, but that has not been done. To the contrary, the review application of the applicant was

transferred to the DoT despite directions of the Tribunal. There is substance in these submissions of Mr. Chaudhary.

7. From the order dated 12.02.2010 passed by the Tribunal in TA No.123/2009, it is evident that it was virtually a consensual order, and the directions were to the CMD, MTNL to decide the review regarding his competence to decide the appeal filed by the applicant against the punishment order, but the CMD in gross contravention of the directions forwarded this review application of the applicant to the DoT, and the DoT instead of advising the CMD to comply with the directions of the Tribunal and take decision on the review application, further complicated the issue by asking the CMD to obtain a fresh review application and forward the same to the DoT for its consideration. All this exercise was unnecessary and unwarranted.

8. Ms. Rachana Joshi Issar, learned counsel appearing for the respondent No.2, MTNL, however, defended the action of MTNL as also that of the Government. Referring to the counter affidavit and a communication dated 19.02.2010 from the Ministry of Communication and Information Technology, DoT to the MTNL Corporate Office, it is argued that vide the aforesaid communication, the MTNL was informed that appeals against penalty orders of DoT are to be considered by DoT under the CCS (CCA) Rules even after

absorption of such persons in BSNL/MTNL after such penalty. However, the cases which have already been decided should not be re-opened (*emphasis supplied*). She has referred to para 3 of the said letter which reads as under:

“3. After considering the advice of DoP&T, it has been decided that the appeal/revision/review petitions of Group A, B, C and D Officers/Officials of BSNL/MTNL, against the penalty orders issued by DoT will be decided by the competent Appellate/Revising/Reviewing Authority in DoT, under the CCS (CCA) Rules 1965, such appeals/revision/review petitions may therefore be forwarded to this Department alongwith documents as per Annexure-A. However, the cases which have already been decided, should not be reopened.” (*emphasis supplied*).

From the aforesaid averments in the referred communication, we find that in view of the advice of DOPT, the DoT has decided that the appeals/revision/review etc. of the officers/officials absorbed in BSNL/MTNL in respect of the penalties imposed by the DoT, could only be decided by the competent authority in DoT under the CCS (CCA) Rules, 1965. The last line regarding the cases which have already been decided, does not refer to any kind of cases, and according to the learned counsel appearing for the respondent No.2, it refers to the cases already decided by BSNL/MTNL on the appeals/revision/review, which could not be looked into, and thus the case of the applicant having been decided by the CMD, MTNL could not be re-opened. This argument is totally misconceived. It is admitted even in this communication that in all cases where the

penalty has been imposed upon the employees of the DoT when they were serving with the Central Government, the appeals/revision/review could only be decided by the competent authority under the CCS (CCA) Rules, 1965, and not by the authorities in the MTNL, irrespective of the absorption at a later stage. Suffice it to say that the right to appeal is a statutory right under Rule 24 of the CCS (CCA) Rules, 1965, and the appellate authority could only be the President of India, the disciplinary proceedings having been initiated in the name of the President under Rule 14. Even if the intention of the aforementioned communication dated 19.02.2010 is not to re-open such cases where the authorities of MTNL have taken decision, the same is contrary to law. By any executive instructions or communication the competent appellate authority cannot be altered nor can the powers to hear appeal be transferred to any other authority outside the purview of the statutory rules.

9. It is, however, admitted position on record that the applicant instead of complying with the letter dated 01.08.2011, filed a fresh appeal to the President of India, the competent appellate authority under the CCS (CCA) Rules, 1965. This appeal has been considered and decided by the Ministry in the DoT as a delegatee of the President. The impugned order dated 27.12.2011 has been passed by the President of India on the said appeal treating the same as

review. From a perusal of the impugned order dated 27.12.2011 we find that the issues raised in the memorandum of appeal by the applicant have been dealt with. Ms. Rachana Joshi Issar, learned counsel for the respondent No.2 has taken us extensively through the order dated 27.12.2011 and the findings of the appellate authority on merits of the appeal. Her contention is that notwithstanding the fact that due to some misconception the appeal has been decided as a review, the fact remains that the contentions of the applicant raised in the appeal have been considered and dealt with while disposing of the appeal/review. We have found that the order dated 27.12.2011 is on merits of the appeal and has been passed by the competent appellate authority, i.e., the President of India. Thus, even if the appeal has been decided treating the same as a review, this *per se* does not in any manner nullify the order impugned, having been passed by the competent appellate authority on merits of the issues raised in the appeal. Merely because the appellate authority treated the appeal as review is not sufficient to interfere in the order passed by the competent authority. Nomenclature of any order does not decide the validity or otherwise of the order. It is the substance and the context of the order as also the competence of the person passing the order that needs to be examined. In the present case, the substance of the order clearly indicates that the contentions raised in the memo of appeal have been duly considered and adjudicated

upon. The order has been passed by the competent appellate authority, thus the validity of the order is not impacted in any manner.

10. Mr. Chaudhary has also argued that there has been discrimination as the estimates were prepared by two officers, whereas action has been taken against only one, i.e., the applicant. He has referred to the estimate dated 21.03.1994 which is allegedly signed by two officers. Insofar as the question of hostility and discrimination is concerned, unless the detailed facts are before the Tribunal, it is not possible to evaluate the question of discrimination. We do not intend to interfere on this count.

11. It is settled legal position that this Tribunal while dealing with the disciplinary proceedings in exercise of the power of judicial review, does not sit as a court of appeal over the conduct of disciplinary proceedings, or even the final order of punishment awarded. Interference in the conduct of disciplinary proceedings and the consequential order that may be passed by the disciplinary authority, is permissible only (i) where the disciplinary proceedings are initiated by an incompetent authority; (ii) such proceedings are in violation of any statutory rule or law; (iii) there has been gross violation of principles of natural justice; and (iv) on account of proven bias and *mala fides*. This is the law settled by the Hon'ble Supreme

Court in *B. C. Chaturvedi v Union of India & others* [(1995) 6 SCC 749].

12. For the above reasons, there is no merit in this Application, which is dismissed. No costs.

(V. N. Gaur)
Member (A)

(Justice Permod Kohli)
Chairman

/as/