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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/01099/2014

Friday, this the 29th day of November, 2018

C O R A M :

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

G.Mohandas,
Retired Divisional Engineer (Telecom),
Residing at T.C. 18/1925-1, JRA 120,
Meppuram, Thirumala,
Thiruvananthapuram – 695 006.Applicant

(By Advocate – Mr.Vishnu S. Chempazhanthiyil)

v e r s u s

1. The Chairman and Managing Director,
Bharat Sanchar Nigam Limited,
Corporate Office, Statesman House,
New Delhi – 110 001.
2. The Director,
Human Resources, Bharat Sanchar Bhavan,
Hareesh Chandra Mathur Lane,
Janpath, New Delhi – 110 001. ...Respondents

(By Advocate – Mr. George Kuruvilla)

This application having been heard on 16th November 2018, the Tribunal on 29th November 2018 delivered the following :

O R D E R

Per : Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

O.A.No.180/1099/2014 is filed by Shri.G.Mohandas seeking the

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following reliefs :

1. Call for the records leading to the issue of Annexure A3 and A5 and set aside Annexure A3 and A5.
2. Direct the respondents to immediately release the entire benefits withheld on account of imposition of penalty including the entitled promotion.
3. Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.

2. The brief facts of the case are as follows:

The applicant, a retired Deputy General Manager had been agitating his seniority issue from 1991 onwards before this Tribunal and the Hon'ble High Court of Kerala. The orders of the Tribunal and Hon'ble High Court were in favour of the applicant, but the respondents implemented the same only after the applicant filed a Contempt Petition. On implementation of the order, the applicant's seniority had gone up to 5138 from 9294, superseding a large number of officers.

3. The applicant submits that the quantum jump in his seniority position invited the wrath of the office of Chief General Manager, Telecom Thiruvananthapuram and the Directorate at Delhi. As retributive action, at the fag end of his service, the applicant was issued with a Charge Sheet on 15.11.2011 containing the following Articles of charges:

Article-I

That the applicant accepted cable laying works carried out in Vellayambalam-Sasthamangalam Section without the Sub Divisional Engineer officering the same for acceptance testing and issued acceptance testing without physically verifying the work.

Article II

That the applicant knowingly certified and passed cable bills submitted by P.Bijuprasad, Cable Laying Contractor, who had:

- (a) Claimed laying charge for 1923 mts. Of 50/.5 underground cable in excess;
- (b) Claimed rates applicable to cables newly laid instead of having laid cable which was already laid on the surface of the soil;
- (c) Claimed charges for reinstatement with concrete 3 cubic mts. Instead of actual volume of 2.52 cubic mts.

4. The applicant submitted a reply to the Charge Sheet requesting to drop the proceedings. The respondents considered the reply and passed an order dated 28.11.2011 reverting the applicant to the cadre of Divisional Engineer. The applicant submits that he filed an OA No.1089/2011 before this Tribunal for a direction to the respondents to complete the enquiry proceedings before his retirement. The respondents quoted a CVC letter which permitted 6 months time limit and the Tribunal disposed of the OA directing the respondents to complete the enquiry within 6 months. The applicant challenged the order of this Tribunal before the Hon'ble High Court praying for a shorter period for completion of enquiry. On the assurance of the BSNL Counsel to complete the enquiry even before 6 months, the Hon'ble High Court disposed of the OP(CAT) No.205/2012.

5. The applicant submits that the enquiry did proceed with required urgency, by being started on 06.03.2012 and being completed on 19.06.2012. The Inquiry Officer submitted his report on 22.06.2012. But the Inquiry report was communicated to the applicant only after a delay of

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four months i.e., 10.10.2012 to which the applicant filed his objection within two days i.e., 12.10.2012. The applicant filed a contempt case No.1615/2012 before the Hon'ble High Court of Kerala on the time limit not being adhered to. Under the threat of contempt action, final orders were passed on 12.02.2013, imposing penalty of 10% reduction in pension for a period of one year (Annexure A3).

6. Aggrieved by the penalty order, the applicant filed an appeal before the Appellate Authority for exonerating him of the charges. Since there was a delay in finalising this appeal, the applicant approached this Tribunal in OA No.322/2014 praying for a direction to the respondents to consider the said appeal. On the direction of the Tribunal to dispose of the appeal, the respondents considered the appeal but passed an order on 17.07.2014, rejecting the same (Annexure A5). Aggrieved by the Annexure A5 order the applicant has now filed the present OA.

7. The applicant f submits that the charges in respect of Article-1 stand not proved and Articles-II were proved only to a limited extent as per inquiry report. It is admitted by the respondents in the Charges Sheet that there was no loss caused to BSNL. Therefore, the action of the respondents is illegal, arbitrary and unjust. The applicant further submits that in consequence of the above the applicant's retirement benefits, to the tune of

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nearly 20 lakh rupees was withheld for more than 1 1/2 years and the applicant lost out his regular promotion as DGM (Adhoc) causing loss of consequential financial benefits including loss of higher pensionary benefits.

8. The respondents in their reply statement deny all the contentions raised by the applicant. It is submitted that the averment made by the applicant that the revision of his seniority consequent to court cases invited displeasure and wrath of CGM, Thiruvananthapuram and Directorate, Delhi is misconceived and not correct. The charge sheet was issued to the applicant based on the circumstances and evidence against him for violating Rules 4(1)(b) and 4(1)(c) of the BSNL CDA Rules, 2006. The applicant knowingly certified and passed the bogus bills submitted by the contractor. Further the applicant had also not physically verified the said work through Acceptance Testing and the applicant has acted in a manner unbecoming of a public servant. The respondents submit that there was no loss caused to BSNL on account of the applicant's action only because the violation was detected in time.

9. The respondents further state that the superannuation of the applicant on 29.02.2012 is not a valid reason to drop the inquiry proceedings. They also submit that by completing the proceedings within 5 months after

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appointment of Inquiry Officer and Presenting Officer, the assurance given to the Hon'ble High Court was honoured. After submission of his objection to the inquiry report, the applicant filed contempt petition before the Hon'ble High Court. The respondents after examining the findings of IO and defence of the applicant forwarded the proposal for penalty to DOT for ratification. The impugned order dated 12.02.2013 at Annexure A3 was issued on receipt of the ratification from DOT. Thus all necessary procedures were strictly adhered to. There was no unreasonable delay in issuing the final order.

10. The respondents further submit that the appeal filed by the applicant (Annexure A4) was duly considered after condoning the delay in submitting the same. By passing and certifying the bogus bills of the contractor, the applicant had violated BSNL CDA Rules, 2006. The applicant's submission that no loss was suffered by the BSNL cannot make us overlook his conduct. He is trying to cover up his lapses by attempting to generalize his action of passing bills without following due procedure. The respondents submit that the various grounds raised by the applicant are not correct and do not deserve any consideration. There is no illegality in Annexure A3 and A5 orders. Hence it is submitted that the same are not liable to be set aside.

11. Heard the learned Counsel for applicant Shri Vishnu S. Chempazhanthiyil and learned Counsel Shri George Kuruvila representing the respondents.

12. The learned Counsel for the applicant based his arguments on the point relating to the department wanting to punish the applicant for having successfully contested the matter relating to his seniority. He further argued that the Inquiry Report was hardly a conclusive one and both the charges were reported as not proved, Article II being proved only to a limited extent. He emphasised the fact that he had to run to various judicial fora on more than one occasion to get justice.

13. An Hearing Note was also submitted by the learned Counsel for the applicant. The learned Counsel also sought the assistance of the judgment of the Hon'ble Supreme Court in Inspector Prem Chand Vs. Govt. Of N.C.T. Of Delhi and Ors. - Civil Appeal No.1815 of 2007 (Arising out of SLP (c) No.15192/2006) dated 05.04.2007. The facts of the respective cases being different the findings in the said case have little relevance to the question under consideration here.

14. Shri George Kuruvilla , learned Counsel representing the respondents submitted that the scope of judicial review in a disciplinary case is limited.

It extends only to examine whether all procedures have been adhered to and whether there had been *malafide* on the part of the respondents in having imposed the punishment. Apart from that the other remaining issue is to see whether the punishment imposed has been disproportionate to the misconduct alleged on the part of the accused officer.

15. We have examined the case in detail with reference to the pleadings both documentary and oral, made before us. While it is true that the first charge has been declared as not proved by the inquiry, the second being proved only to a limited extent, the Disciplinary Authority concerned has considered the case in detail while imposing the punishment. As required action was taken only after duly communicating the inquiry report to the accused officer and after obtaining his objections/comments to the same. Further as required, the DOT's ratification for the proposed punishment was also obtained.

16. After the order imposing punishment was communicated, the applicant filed his appeal. The Appellate Authority after condoning the delay in filing the appeal, rejected the same after due consideration. On examination of these facts we cannot conclude that there has been any lack of application of mind or diligence in adhering to the procedure required as per rules. The applicant has not been able to prove any *malafide* on the part

of any of the respondents.

17. The charges raised against the officer are indeed serious. The first pertains to his action in issuing Acceptance Testing Certificate for cables which were not offered for Acceptance Testing by the functionary concerned and his failure to physically verify the work through Acceptance Testing. The second Article of Charges was even more serious with the officer having allowed transportation charges for returning cables to its earlier position without the contractor having incurred any transportation cost. The concerned authority had imposed punishment after examining the case with care after duly considering the inquiry report. The said holds for the order in appeal of the Appellate Authority as well.

18. The role of the Tribunal or Court in a disciplinary case such as this is limited as pointed out by the learned Counsel for the respondents. The Hon'ble Supreme Court in the case of **Shri Parma Nanda v. State of Haryana and others – [1989 (2) Supreme Court Cases 177]** held that the Tribunal could exercise only such powers which the civil Court or the High Courts could have exercised by way of judicial review and the same cannot be equated by an appellate jurisdiction. The Tribunal cannot interfere with the findings of Inquiry Officer or the Competent Authority where they are not arbitrary or utterly perverse. If the penalty can lawfully be imposed and

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is imposed on a proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is *mala fide* is certainly not a matter for the Tribunal to concern itself with. Based on the details available and the pleadings made by the respective Counsel, we do not view this matter as a fit case for the Tribunal to interfere with. Accordingly, the OA fails and is dismissed. No costs.

(Dated this the 29th day of November 2018)

ASHISH KALIA
JUDICIAL MEMBER

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/01099/2014

- 1. Annexure A-1** – True copy of the order dated 6.1.2012 in OA No.1089/2011 of this Hon'ble Tribunal
 - 2. Annexure A-2** – True copy of the order dated 24.1.2012 in O.P. (CAT) No.205/2012 of the Hon'ble High Court of Kerala.
 - 3. Annexure A-3** – True copy of the order No.210-9/KLA/11-VM-V dated 12.02.2013 issued by the 2nd respondent.
 - 4. Annexure A-4** – True copy of the appeal filed by the applicant to the 1st respondent.
 - 5. Annexure A-5** – True copy of the Order No.F.No.219-57/13-VM(Appeal) dated 17.07.2014 issued by the 1st respondent.
 - 6. Annexure R1(a)** – True copy of the bills passed by the applicant.
 - 7. Annexure R1(b)** – True copy of the Daily Order Sheet.
 - 8. Annexure R1(c)** – True copy of the relevant portion of Tender Document
 - 9. Annexure R1(d)**– True copy of the letter issued by the Contractor with english translation.
 - 10. Annexure R-1(e)** – True copy of the Memorandum of Charges.
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