

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

**O.A No. 1659/2013
M.A 2625/2013**

New Delhi, this the 09th day of August, 2018

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)

Shri B. K. Sinha
S/o. Shri Jotinder Pd. Sinha
Aged about 43 years,
R/o. B-5/2, Type IV Multi-storeyed Flats
Peshwa Road, Gole Market,
New Delhi – 110 001.Applicant

(By Advocate : Mr. M. K. Bhardwaj)

Versus

1. Mahanagar Telephone Nigam Ltd.,
Through its Chairman-cum-Managing Director,
Corporate Office,
5th Floor, 9, CGO Complex,
New Delhi.
2. Mahanagar Telephone Nigam Ltd.,
Through its Chairman-cum-Managing Director,
Corporate Office,
4th Floor, 9, CGO Complex,
New Delhi. ...Respondents

(By Advocate : Ms. Rachna Joshi Issar with Mr. Shailabh Pandey)

O R D E R (O R A L)

Justice L. Narasimha Reddy, Chairman :

The applicant is an employee of MTNL. Disciplinary proceedings were initiated against him alleging that he was responsible for loss caused to the department on account of

loss of 778 Distribution Point posts/poles. The charge memorandum in this behalf was issued on 15.06.2007; and the applicant submitted his explanation. Not satisfied with that, disciplinary authority appointed inquiry officer and detailed inquiry was conducted. The inquiry officer submitted his report dated 31.03.2009 holding that the charges framed against the applicant are proved. A copy of the same was made available to the applicant and after considering his explanation, the disciplinary authority passed order dated 13.04.2012 imposing the punishment of compulsory retirement.

2. The applicant preferred an appeal before the Appellate Authority feeling aggrieved by the punishment. Vide its order dated 30.04.2013, the appellate authority modified the punishment to the one of reduction of pay scale by three stages for a period of three years with further direction that during the period of such reduction, the applicant will not earn increment of pay and on expiry of that period, the reduction will have the effect of postponing the future increments of pay. He further directed that sum of Rs.1,28,000/- be recovered, which is 50% of the loss caused by the applicant to the company. The period during which the order of compulsory retirement was

operating, is directed to be treated as dies non. Challenging the said order the applicant filed this O.A.

3. Applicant contends that findings recorded by the inquiry officer are perverse in nature. He contends that though a specific request was made to send certain documents for examination by the Forensic Laboratory, that was not acceded to and still a finding was given against him. Other grounds are also urged.

4. Respondents filed counter affidavit. They stated that on account of the lapses on the part of the applicant and two other employees, the department lost 835 DP poles and after certain efforts some of the poles were recovered. It is submitted that being an officer in-charge of the distribution of material and verification of the site, the applicant was supposed to undertake supervision and during his tenure the loss was caused to the department. They further submit that the inquiry officer followed the prescribed procedure and his finding are based on cogent and consistent evidence.

5. We heard Mr. M. K. Bhardwaj, learned counsel for applicant and Ms. Rachna Joshi Issar with Mr. Shailabh Pandey, learned counsel for respondents.

6. The basis for initiation of disciplinary proceedings against the applicant and two other employees was the loss of Distribution Point/Poles of the department. In the course of departmental inquiry, not only several documents were filed but, also witnesses were examined. It must be stated that the inquiry officer was so objective and practical in his finding that as against the initial allegation of loss of 835 poles, he held the applicant responsible for loss of only 200 poles pointing negligence on the part of the applicant. In respect of two other persons viz. D. V. Singh and Anup Kumar Kharb, similar lapses were established and they were also found guilty.

7. On his part, the disciplinary authority analysed the report of the inquiry officer and explanation submitted by the applicant and imposed the punishment of compulsory retirement. The other two employees were imposed the punishment of stoppage of increments by three stages etc.

8. The appellate authority dealt with the matter at length, with reference to record. Nowhere has he disagreed with the findings either of the inquiry officer, or of the disciplinary authority.

9. What appears to have impressed the appellate authority is that the applicant is left over 14 years of service and there were no allegations of misconduct in his entire service against him. In a way, it was out of compassion and sympathy that the appellate authority has modified the punishment, for the benefit of the applicant.

10. We can interfere in the disciplinary proceedings only if it is established beyond any pale of doubt that the findings by the inquiry officer are based on no evidence or the material on record itself does not support the findings reached by the inquiry officer. Such is not the case here.

11. We are also guided by the judgment of the Hon'ble Supreme Court in **B. C. Chaturvedi Vs. Union of India and Ors.** 1995 (6) SCC 749, wherein it was held that Court or Tribunal cannot sit in appeal in the course of judicial review against the order of punishment. We have also gone through the other precedents cited by the learned counsel for applicant and we are not inclined to interfere with the order passed by the appellate authority.

12. On conclusion of the proceedings, learned counsel for applicant submitted that even if, the attempt on the part of the department was to bring parity of punishment with

the other two employees, the applicant had several additional detriments in the form of period for which he was not compulsorily retired. We do not propose to express any opinion on this. If the applicant feels aggrieved in this regard, he may make a representation to the appellate authority as regards the period which was treated as dies non.

13. We, therefore, dismiss the O.A with the observations made above.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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