

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH**

...  
**ORIGINAL APPLICATION NO.060/00961/2017**

**Chandigarh, this the 18<sup>th</sup> day of October, 2018  
(Order Reserved on 04.10.2018)**

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**CORAM:HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &  
HON'BLE MS. P. GOPINATH, MEMBER (A)**

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Surjan Dass (Retired), Chief Telephone Supervisor, aged 66 years  
(Group-D) s/o Sh. Inder Ram, r/o House No. 1286, Sector 10,  
Panchkula, Haryana.

**....Applicant**

**(Present: Mr. J.R. Syal, Advocate)**

**Versus**

1. Union of India through Secretary, Department of Telecommunication, Sanchar Bhawan, New Delhi.
2. Bharat Sanchar Nigam Limited through its General Manager, Telephone District, Sector 34, Chandigarh – 160022.
3. General Manager (Admn), Telephone Department, Chandigarh Sector 34 Chandigarh.
4. Deputy General Manager (CFA-North), office of the GMT/D, Chandigarh.
5. Principal General Manager (TD), BSNL, Office of the General Manager, Telecom District, Sector 34, Chandigarh.

**..... Respondents**

**(Present: Mr. K.K. Thakur, Advocate)**

**ORDER**

**MS. P. GOPINATH, MEMBER (A)**

1. Applicant is aggrieved against the order dated 10.08.2015, passed by the 4<sup>th</sup> respondent, exercising the powers under Rule 34 of BSNL CDA Rules, 2006, imposing a penalty of withholding of DCRG as well as 100% pensionary benefits, and the order dated 12.06.2017, passed by the 5<sup>th</sup> Respondent, whereby an appeal preferred by the applicant was rejected.

2. Applicant submits that he belongs to 'Gadaria' caste, as per certificate dated 16.05.1969 (Annexure A-1), which is one of the Scheduled Caste/Scheduled Tribe. We note that the Annexure A-1 Caste Certificate, placed on record by the applicant, does not state

whether the caste is SC or ST and the inapplicable caste/tribe has not been scored out. This should have alerted the respondents which did not happen. The applicant's main contention is that on production of Annexure A-1, at the time of his appointment as Telephone Operator, he was given appointment based on the said certificate. No objection was raised at that time. The applicant was promoted to the post of Telephone Supervisor in the year 1992, and as Chief Telecom Supervisor in 2010. He was absorbed permanently in BSNL in the year 2001-02. He was given the IDA grade of Rs. 8500-245-12450 on 24.03.2011. Thus, during the entire 37 years of service, nothing adverse was discovered about the caste status of the applicant, is the argument of his counsel.

3. On the date of retirement on 30.07.2011, the applicant was served with a charge-memo on the ground that he had secured employment as Telephone Operator under ST category in the year 1974, by giving wrong information. A detailed inquiry was conducted. His main plea during the inquiry was that he submitted his caste certificate at the time of appointment, and the same should have been verified by the respondents or the State authorities. He submitted that it is not a case of giving wrong information to the department.

4. The correctness or the otherwise of the caste certificate came up on a complaint made on the matter. An enquiry was instituted. Based on the findings of the Inquiry Officer, the Disciplinary Authority imposed a penalty of withholding of DCRG and 100% pensionary benefits. An appeal filed by the applicant was also rejected. Hence this O.A.

5. Respondents, in their written statement, submit that a penalty has been imposed on the applicant after following the due

process of law as laid down for disciplinary proceedings and on proven misconduct. The applicant has no argument against the conduct of the disciplinary proceedings, nor has the finding that the caste certificate is inappropriate been challenged. No procedural lapse or irregularity is made out by applicant in the disciplinary proceedings, and the penalty imposed cannot said to be disproportionate to the gravity of the charge leveled.

6. Respondents have relied upon the finding of the Hon'ble Supreme Court in the case of **Union of India and Ors Vs. Himmat Singh Chahar**, AIR 1999 SC 1980 that the judicial review does not allow interfering with the finding of the fact arrived at in the departmental inquiry. We are also not embarking upon re-appreciating the evidence in the disciplinary case by putting ourselves in the seat of the disciplinary or appellate authority.

7. This is a case where the applicant has sought employment by submitting a caste certificate whose correctness is suspect. The respondents should have noticed that there was something amiss in the caste certificate (Annexure A-1), produced by the applicant, as the same was not in the proper format. It has not been indicated in the certificate whether he belongs to SC category or ST category. The respondents have also got caste certificate of the applicant verified from SDO Naraingarh, who in the reply dated 22.10.2012 (Annexure R-1) mentions that the certificate has not been issued by his office and has been signed by a person i.e. Sarpanch of the village, who is not the competent offuing authority to issue the certificate. The Research Officer, Welfare of Scheduled Castes and Backward Classes Department, Haryana has observed that "mool rup se vapis bhej kar likha jata hai ki hairyana meing Anusuchit janjati Schedule Tribe nahi hai". Thus, the very

foundation of the appointment of the applicant is wrong and had this fact been brought to notice or verified at the time of his appointment, the applicant would not have been issued an offer of appointment.

8. The fact that the disciplinary proceedings were initiated on the date of his retirement after 37 years of service and continued post retirement would not mitigate the seriousness of the misrepresentation made to obtain employment. The respondents have also produced a copy of CDA Rules (Annexure A-6) as per which the CMD BSNL is the competent authority to issue sanction to institute the departmental proceedings against the absorbed BSNL employees after retirement, and hence the argument that the BSNL is not the appropriate authority to institute departmental proceedings is also set aside. The respondents also argue that there is no rule which prevents the issue of charge-sheet on the date of retirement, for an offence of producing an invalid and wrong caste certificate, and that too issued by an incompetent authority. There is also no rule which disallows the continuation of disciplinary proceedings after retirement. We hold that the person who failed to verify the caste certificate at the time of appointment of the applicant is also equally responsible for the wrong appointment. This, however, would not absolve the applicant of seeking appointment with a wrong caste certificate.

9. The argument of the applicant that he did not hide any fact and had placed all his records before the respondents would also not absolve him of the misdemeanor of seeking appointment under a wrong premise. The Apex Court has held in a number of judgments that a person who seeks equity must come with clean hands, and that a person who comes with a false claim cannot

plead equity. Thus, the applicant cannot expect the Court to exercise jurisdiction in his favour, after seeking appointment as a reserved candidate on the basis of a wrong caste certificate.

10. Learned counsel for the applicant, while relying upon a judgment of the Hon'ble Supreme Court in the case of **Rajeshwar Baburao Bone Vs. The State of Maharashtra and Another** (Civil Appeal No. 5778 of 2015 decided on 29.07.2015), would argue that as there was inordinate delay in verifying the certificate, the benefit availed by the applicant on the basis of certificate should not be disturbed. We would, however, not agree with this contention as the wrong would remain a wrong and he does not get help from the aforesaid order.

11. Be that as it may, the applicant has intruded into the position and space, set aside for a reserved candidate, and illegally occupied the said space for a period of 37 years, and thus, deprived a genuine subject of a chance of employment as envisaged in the Constitution of India under Articles 15 (5), 16, 16 (4A), 16(4B), 335, 341 and 342.

12. Judicial review is not an appeal over a decision of the Disciplinary Authority but is intended to ensure that the findings or conclusions are based on some evidence and that the authority entrusted with the power of enquiry or the disciplinary authority has jurisdiction, power and authority to reach a finding of fact or conclusion. The Tribunal in its power of judicial review does not act as an appellate authority to re-appreciate the evidence or arrive at its own independent findings on the evidence. This is a case which does not attract any of the above. This is also not a case where the conclusion or finding reached by the disciplinary authority is based on no evidence. The caste certificate produced

by the applicant is not issued by an official authorized under the law and rules, and the caste is not one which is recognized as a Scheduled Caste/Scheduled Tribe. The finding in the disciplinary case is one which a reasonable person or decision maker would have reached within the framework of law. There is no space for the Tribunal to interfere or mould the conclusion. The Bench would also not substitute its own decision with that of the disciplinary authority in view of the seriousness of the offence where a facility of reservation provided to SC/ST has been misused for personal benefit.

13. Judicial review of administrative action, as settled by a plethora of judgments by the Judiciary, is intended to prevent arbitrariness, irrationality, bias and malafide. We find that none of the above is attracted by the decision taken in the applicant's case. It would be erroneous to think that in disciplinary proceedings, judicial review is an appeal against a decision. If there has been an enquiry consistent with the rules, then what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of a competent authority, as held by the Apex Court in the case of **Govt. of A.P. Vs. M.N. Khan (2006) 2 SCC 373**.

14. In view of the discussion above, we find that the O.A. is devoid of any merit and is hereby dismissed as such. No costs.

**(P. GOPINATH)**  
**MEMBER (A)**

**(SANJEEV KAUSHIK)**  
**MEMBER (J)**

**Dated: 18.10.2018**

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