

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.740 of 2013

Cuttack this the 19th day of February, 2018
CORAM:

THE HON'BLE SHRI S.K.PATTNAIK, MEMBER(A)
THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Sri Suresh Chandra Nayak, aged about 65 years, S/o. late Adimanda Nayak, resident of Plot No.N-3/166, I.R.C. Village, Bhubaneswar, District-Khurda, Odisha-751 015

...Applicant

By the Advocate(s)-M/s.A.Ku.Mohanty
P.Ku.Kar
D.Ku.Mohanty

-VERSUS-

1. Chairman cum Managing Director, Bharat Sanchar Nigam Ltd., Bharat Sanchar Bhawan, Haris Chandra Mathur Lane, Jan Path, New Delhi-110 001
2. The Chief General Manager, Bharat Sanchar Nigam Ltd., Calcutta Telecom District, B.B.D.Bag, Kolkata-700 001
3. The Chief General Manager, Bharat Sanchar Nigam Ltd., Odisha Telecom Circle, Bhubaneswar-751 001
4. Sri Narahari Das, Dy.General Manager, Bharat Sanchar Nigam Ltd., Office of C.G.M.T., Odisha, Bhubaneswar-751 001

...Respondents

By the Advocate(s)-Mr.K.C.Kanungo
ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant had retired from Bharat Sanchar Nigam Ltd. (BSNL) at the time of filing the O.A. He has challenged the charge-sheet/departmental proceedings initiated against him by the Chief General Manager, Calcutta Telecom District, Kolkata after more than four years of his retirement relating to an event which occurred more than four years earlier contrary to the provisions of Rule-61(4)(2)(b) BSNL CAD Rules as well as Rule-9(2)(b) of CCS (Pension) Rules. He has prayed for the following reliefs in the O.A.

- i) To allow the Original Application and to quash the charge sheet dated 18.12.2012 (as per Annexure-A/5) for being illegal, irregular and void in the eye of law.
- ii) To issue any other order or orders, direction or directions as it deems fit and proper in the interest of justice for the benefit of the applicant
- iii) To order and direct that the cost of litigation be paid to the applicant by the respondents.

2. The applicant had also prayed for an interim relief by way of stay on the departmental proceedings. On 14.7.2014 this Tribunal had granted liberty to the departmental authorities to proceed with the disciplinary proceedings, but had ordered that no final order will be passed without the leave of this Tribunal.

3. The facts of the case, as they appear from the O.A., are as follows:

The applicant had joined as Junior Engineer in the Department of Telecommunications on 8.6.1974 and was transferred and absorbed in BSNL when the Organization was formed on 1.10.2000. On 28.02.2009 he retired after attaining the age of superannuation when he was working as Divisional Engineer (Marketing) in the O/o. Chief General Manager, BSNL, Bhubaneswar. On 18.12.2012, a charge sheet was issued against the applicant alleging certain irregularities committed by him in processing and paying the bills to a contractor during the period from March, 2008 to May, 2008. The Articles of Charge were as follows:

ARTICLE-I

That the said Shri Suresh Chandra Nayak while working as SSA head in Bhawanipatna, Orissa has processed and paid the bills of contractor Shri K.P. Agarwal in an irregular manner in the absence of original Work Order and of the works whose Work Order had already been cancelled by his predecessor Shri Rabindra Sahu, the then TDM, Bhawanipatna.

Thus by his above acts, the said Shri Suresh Chandra Nayak committed grave misconduct, failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner

unbecoming of a company executive and thereby violated the provisions of Rule 4(1)(a), (b) & (c) of BSNL, CDA Rules, 2006.

ARTICLE-II

That the said Shri Suresh Chandra Nayak has made false payment of Rs.66,740/- to the supplier Shri K.P.Agarwal though the power cable was not supplied to Kesinga Exchange.

Thus by his above acts, the said Shri Suresh Chandra Nayak committed grave misconduct, failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a company executive and thereby violated the provisions of Rule 4(1)(a), (b) & (c) of BSNL, CDA Rules, 2006.

ARTICLE-III

That the said Shri Suresh Chandra Nayak in many instances while passing the bills of contractor, the files were not routed through the Chief Accounts Officer.

Thus by his above acts, the said Shri Suresh Chandra Nayak committed grave misconduct, failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a company executive and thereby violated the provisions of Rule 4(1)(a), (b) & (c) of BSNL, CDA Rules, 2006.

The applicant filed a representation on 3.1.2013 with the Chief General Manager CTD-cum-Disciplinary Authority, Kolkata requesting to drop the charges/disciplinary proceedings which was illegal and irregular since it was not issued by the competent authority and was also contrary to provisions of BSNL, CDA Rules, 2006 as well as CCS(Pension) Rules, 1972, on the ground that the event mentioned in the charge sheet related to a period more than four years prior to his date of retirement. However, on 25.7.2013, an Inquiry Officer was appointed by the CGM-cum-Disciplinary Authority, BSNL, Orissa Circle, Bhubaneswar who issued notice to the applicant fixing the date of preliminary hearing as 1.11.2013 vide his letter dated 15.10.2013. Aggrieved by this the applicant has filed the present O.A. praying for the reliefs as mentioned in Para-1 above on the ground that the departmental proceedings so initiated are against Rule-9(2)(b) of CCS(Pension) Rules, 1972 and Rule-61(4)(2)(b)(ii) of BSNL CDA Rules, 2006. He has also taken the ground that

the CMD, BSNL is the competent authority to institute the departmental proceedings as per Rule – 61(4)(1) of BSNL CDA Rules, 2006 since the applicant had already retired from service. In the present case the charge sheet was issued by the CG, BSNL CTD, Kolkata. Moreover, it is his contention that the inquiry is proposed to be held against the applicant under Rule-36 of BSNL CDA Rules, 2006 for imposing major penalty on him when such rule is not applicable for a retired employee and none of the punishments prescribed for imposition of major penalty prescribed in Rule-33(B) of BSNL CDA Rules can be imposed on him. The charge sheet is therefore *ab initio* void in the eyes of law and is illegal, irregular and redundant.

4. The Respondents in their counter filed on 26.3.2014 have contested the claim of the applicant. It is their contention that although the applicant had retired from service on superannuation on 28.2.2009, no vigilance clearance in his favour was given as departmental proceedings had been instituted against him under Rule-36 of BSNL CDA Rules before his retirement vide Memorandum No.Vig./8-209/2009 dated 06.02.2009. The applicant had received the above mentioned charge sheet on 28.02.2009, on the date of superannuation. In the superannuation order dated 27.02.2009, it was clearly mentioned by the BSNL Corporate Office, New Delhi that vigilance clearance is withheld and the DCRG and CVP in respect of the applicant should be further withheld till the conclusion of the vigilance/disciplinary case as per CCS(Pension) Rules, 1972 (R/5 & R/6). On receiving of a complaint against the applicant both the CBI and the Departmental Vigilance Wing conducted investigation for the entire period when the applicant had worked as the TDM, Bhawanipatna SSA, i.e., upto 14.01.2009. After the investigation, the disciplinary action was instituted on 6.2.2009 before his retirement as per the

advice of the Chief Vigilance Officer, BSNL, Corporate Office. The CBI, Bhubaneswar had registered a case vide R.C.No.RC0152009A0004 dated 03.03.2009 in the CBI Court Bhubaneswar. The CBI submitted a report on 15.2.2010 recommending major penalty against the applicant which has been duly approved by the CMD, BSNL, Bhubaneswar on 28.12.2010 as per sub rule (4) of Rule 61 BSNL CDA Rules, 2006 and was conveyed to the Vigilance Officer, Orissa Circle for taking necessary action vide letter dated 5.1.2011. Upto 14.1.2009, a number of decisions had been taken by the applicant as TDM, Bhawanipatna intentionally bypassing the Chief Accounts Officer mentioning in the Column "CAO as on leave". The Respondents have also clarified that on the date of issue of charge sheet on 18.12.2012, there was no CGM, Orissa Circle and therefore, the CGM, Calcutta Circle was authorized by the CMD to sign the charge sheet. The charge sheet has been approved by the CMD, BSNL, New Delhi on 28.12.2010 under sub rule(4) of Rule 61 of BSNL CDA Rules, 2006. The CGM, BSNL, Orissa Circle appointed the Inquiry Officer on 25.07.2013 when he resumed the conduct of disciplinary proceedings against the applicant. Before retirement of the applicant one disciplinary proceeding had already been instituted against him vide Memorandum No.Vig.8-209/2009 dated 6.2.2009 which was under progress at the time of filing of the O.A. The 2nd charge sheet dated 18.12.2012 was issued on the recommendations of S.P.,CBI, Bhubaneswar and it is a part of the misconduct/conspiracy during the applicant's tenure as TDM, Bhawanipatna and the cause of action arose before his retirement. The applicant's case is covered by Rule-9(2)(a) of CCS(pension) Rules, 1972 instead of Rule-9(2)(b). The applicant has filed the present O.A. on false grounds suppressing the fact

that a disciplinary proceeding had already been instituted against him on 6.2.2009 before his retirement on 28.2.2009.

5. The applicant filed a rejoinder on 17.6.2014 in which he has reiterated that departmental proceedings cannot be instituted against him as a retired officer on the alleged misconduct in respect of the events which took place more than four years before the institution of the proceedings. Although the Inquiry Officer submitted his report in the month of December, 2012, the said proceeding is irrelevant since the charge sheet and the disciplinary proceedings are illegal *ab initio*. The charge sheet was issued against him on 27.12.2012 which is the date of actual service of the charge sheet pertaining to incidence which occurred four years prior to the issue of charge sheet and therefore, the Hon'ble Apex Court's judgments in case of **Union of India vs. Dinanath Shantaram Karekar (AIR 1998 SC 2722)** and **S.Pratap Singh vs. State of Punjab [(1964) 4 SCR 733]** are applicable in his case. The applicant has also cited the judgment of the Hon'ble Supreme Court in **State of U.P. vs. Sri Kishore Pandey [AIR 1996 SC 1656]** to support his stand that the departmental proceeding cannot be instituted after lapse of four years from the date on which the event of misconduct had taken place. The applicant claims that no departmental proceeding was instituted against him while he was in service before his superannuation on 28.2.2009. The event of the alleged misconduct which is a cause for the charge sheet occurred during the period from 31.3.2008 to 3.5.2008 and the charge sheet has been issued to him on 27.12.2012 which is after four years of the occurrence of the event. Hence, the charge sheet instituted against the applicant is contrary to the rules and therefore, the O.A. should be allowed. Neither the CGM, Calcutta

Telecom District nor C.G.M. Orissa is the competent authority to initiate disciplinary proceedings against a retired STS officer.

6. The Respondents filed an additional counter-reply on 1.7.2014 enclosing recommendations of the CBI, Bhubaneswar dated 15.2.2010 and extract of the CVC Manual. They have also enclosed copy of letter dated 3.1.2.2013 written by the applicant to the CGM, CTD cum Disciplinary Authority, Kolkata requesting him to drop the disciplinary proceedings against him since the CMD, BSNL is the Disciplinary Authority to frame the charges against him and the alleged event had taken place four years before the issuance of charge sheet. In the additional counter the Respondents have submitted that the charge sheet against the applicant is not only based on irregular payment to M/s.K.P.Agarwal, Contractor on 31.3.2008, 7.4.2008, 11.4.2008 and 3.5.2008, but also based on irregular decision taken by the applicant during his tenure as TDM, Bhawanipatna upto 14.1.2009 intentionally bypassing the CAO and mentioning that CAO is on leave in the note sheets of the file. Moreover, the applicant also manipulated and organized the irregular work till he relinquished the charge of TDM, Bhawanipatna on 14.1.2009. The CBI had after an inquiry recommended the BSNL for taking required departmental action for major penalty as per Clause- 4.3 (Chapter-IV) of CVC Manual mandated by the CVC, 2003. The CVC recommendation was received on 15.2.2010 and due approval was taken from the CMD, BSNL, New Delhi on 28.12.2010 under Sub-rule - 4 of Rule 61 of BSNL CAD Rules, 2006 for initiating disciplinary action against the applicant. The CBI had already instituted a case against the applicant on 3.3.2009. The Respondents also submitted that the inquiry report on the disciplinary proceedings related to a Memorandum of Charge dated 6.2.2009 had been

received and issue of final order was under process by the competent authority. This Charge Memo was issued before the retirement of the applicant. The 2nd Charge sheet dated 18.12.2012 under Rule-9(2)(a) of CCS (Pension) Rules, 1972 as one charge sheet is already pending. Moreover, since a case was instituted by the CBI on 3.3.2009, it was well within four years of the pending charge sheet dated 18.12.2012. Therefore, it is not contrary to Rule-2(b) of CCS (Pension) Rules, 1972 and Rule-61 (4)(2)(b)(ii) of BSNL CDA Rules, 2006. Since the CMD, BSNL has approved the initiation of regular departmental action (RDA) major penalty against the applicant, the charge sheet is as per rules. The case was registered by the CBI on 3.3.2009 and the CMD approved the recommendation of the CBI on 28.12.2010 which is well within four years of the incident leading to the charges. There is nothing wrong in the appointment of the Disciplinary Authority to initiate disciplinary proceedings after getting due approval from the CMD, BSNL as per Rule-61 of BSNL CDA Rules, 2006. Therefore, the O.A. filed by the applicant deserves to be dismissed as devoid of merit.

7. We have heard the learned counsels from both the sides and perused the documents submitted by them. The issue under adjudication is whether the charge sheet dated 18.12.2012 and the disciplinary proceeding initiated against the applicant are legally sustainable in view of the applicant's retirement on 28.2.2009.

8. The applicant has challenged the disciplinary proceedings initiated against him mainly on two grounds, i.e., (i) the charge sheet was issued four years after the alleged imputed misconduct and (ii) the charge sheet was issued by an incompetent authority.

9. From the records enclosed by the Respondents, it is found that a Memorandum of Charge No.Vig.8-209/2009 dated 6.2.2009 under Rule-36 of BSNL CDA Rules, 2006 was issued to the applicant. There is also a second charge sheet dated 18.12.2012 and the applicant in the present O.A. has challenged the 2nd charge sheet. The first charge sheet was issued on 6.2.2009 (R/5) initiating disciplinary proceedings before his retirement and therefore, its legal validity cannot be questioned. The Respondents in their additional counter filed on 1.7.2014 have submitted that the disciplinary action under charge sheet dated 6.2.2009 was nearing finalization. Since this Memorandum of Charge dated 6.2.2009 is not the subject matter of the present O.A., we do not want to dwell upon it.

10. The Memorandum of Charge which has been challenged in the present O.A. is dated 18.12.2012 and from a perusal of Articles of Charge and the imputation of misconduct, it is found that the date of sanction of estimate, work order and the payment has been made in the year 2008 and Account Payee Cheque dated 3.5.2008 has been finally issued to Shri K.P.Agarwal, Contractor. Although the Respondents have stated that the applicant continued in his position as TDM, Bhawanipatna till 25.2.2009 and continued to commit irregularities nothing has been mentioned in the charge sheet about any such instance after May, 2008. Although the CBI had recommended initiation of disciplinary proceedings for major penalty against the applicant as early as 15.2.2010 and as per submission of the Respondents, the CMD, BSNL sanctioned initiation of departmental proceedings on 28.12.2010, for the reasons best known to the respondents, Memorandum of Charge was issued in December, 2012 after a gap of two years. There is nothing on record to explain this delay of two years in initiating disciplinary

proceeding against the applicant. Had the Memorandum of Charge been initiated immediately after the approval of the CMD that would have been within four years from the date of the alleged irregularities.

11. Rule-9(2)(b) of CCS (Pension) Rules, 1972 states as follows:

“9(2)(b)- The Departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his reemployment:

- (i) Shall not be instituted save with the sanction of the President;
- (ii) Shall not be in respect of any event which took place more than four years before such institution”.

Rule-61(4)(2)(b)(ii) of BSNL CDA Rules, 2006 has adopted the above provision and prescribes the following:

“61(4)(1)- Chairman/Managing Director is the competent authority to issue sanction to institute the departmental proceedings against an absorbed employee after retirement for withholding a pension for combined service of BSNL and DOP period (here in referred as pension) or gratuity or both either in full or in part or withdrawing a pension either in full or in part whether permanently or for a specified period and of ordering recovery from a pension or gratuity of the whole or part of the pecuniary loss caused to the company, if any disciplinary or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon reemployment after retirement”.

12. In the present case, the applicant retired on 28.2.2009. The Memorandum of Charge of the alleged irregularities mentioned in the statement of imputation of misconduct relate to a period which ends in May, 2008. The Charge Memo was issued on 18.12.2002. Although the Respondents have submitted that the applicant had committed other irregularities till

February, 2009, those have not been included in the charges and imputation of misconduct. The rule position being quite clear the disciplinary proceedings initiated against the applicant cannot stand the scrutiny of law. The case laws cited by the applicant in support of his plea are therefore relevant and come to his rescue. It is open for the Respondent No.1 to conduct an inquiry against the concerned erring officials who withheld the issuance of charge sheet from February, 2010 to December, 2012. But the applicant's ground that he was issued a Memorandum of Charge for an incident which happened more than four years earlier is legally sustainable.

13. So far as the second ground taken by the applicant regarding competency in issuing the charge Memo is concerned, Rule-61(4)(2)(b) clearly states that the disciplinary proceedings cannot be instituted save with the sanction of the Chairman/Managing Director. In the present case, since the Memorandum has been issued with the approval of the CMD, BSNL, the plea of the applicant that the charge memo has been issued by an incompetent authority collapses on the facts of the case. The issue on the competency in issuing charge memo suffers from no illegality. Although the Memorandum of Charge has been signed by the CGM, CTD, Kolkata, the Heading of the Charge Memo shows that it has been issued on behalf of the CGM, Orissa Circle. Respondents' contention that since the post of CGM Orissa Circle was vacant, CGM, Calcutta was authorized to issue Charge Memo appears to be legally valid and acceptable. However, the disciplinary proceeding suffers from the fatal lacunae that the charges relate to incidents which occurred more than four years before the institution of the disciplinary proceedings.

14. In view of the above, the O.A. is allowed. The Memorandum of Chrge dated 18.12.2012(A/5) is quashed and set aside as being *ab initio* void. All

disciplinary proceedings pursuant to this Memorandum of Charge will stand abated. No costs.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

(S.K.PATTNAIK)
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.740 of 2013
Cuttack this the day of February, 2018

i Suresh Chandra Nayak...Applicant

-VERSUS-

Chairman cum Managing Director, Bharat Sanchar Nigam Ltd. & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ?

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

(S.K.PATTNAIK)
MEMBER(J)