

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00177/2015

Date of Order: This, the 12th day of October 2018

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE MR. N. NEIHSIAL, ADMINISTRATIVE MEMBER

Sri Ram Kumar Bhattacharyya
S/o Late Tarapada Bhattacharyya
Sr. TOA (P) under office of the
Sub Divisional Engineer (Marketing)
Telephone Exchange Complex
Panbazar, Guwahati – 781001.

Residential Address:

Shunchali, House No. 8, Noonmati, P.O. & P.S. – Noonmati
Guwahati – 781020, District – Kamrup (M), Assam.

...Applicant

By Advocates: Mr. B. Chakraborty, Mr. T.R. Sarma &
Mrs. P. Hazarika

-Versus-

1. Bharat Sanchar Nigam Limited
Represented by the General, BSNL, Kamrup Telecom District
Panbazar, Guwahati – 781001.
2. Deputy General Manager (A&M)
O/o the GMTD Kamrup, Panbazar, Guwahati – 781001.
3. Divisional Engineer (Internal)
BSNL, Kamrup Telecom District, Panbazar, Guwahati – 781001.

... Respondents.

By Advocate: None

ORDER

N. NEIHSIAL, MEMBER (A):

Being aggrieved with the action of the respondents,
the applicants have preferred the instant petition under 19 of
the Administrative Tribunals Act, 1985 to set aside the following:

"8(a) To direct the Respondent authorities, more particularly to the Respondent no. 2 not to act upon and set aside its impugned show cause notice under memo no- GMT/Staff/QB-528/14-15/14 dated 06.05.2015 whereby, the applicant has been directed to furnish a reply to the show cause on the inquiry report which was submitted long back on 14.08.1997."

The applicant also prays the following interim relief:

"During pendency of this application, your Lordships may also be pleased to stay the operation of the impugned order no. GMT/Staff/QB-528/14-15/14 dated 06.05.2015 issued by the respondent no. 2 until further order of this Hon'ble Tribunal."

2. Accordingly, O.A. was considered and interim order was passed on 27.05.2015 as hereunder:

"Meanwhile, the operation of the impugned show cause notice dated 06.05.2015 shall remain suspended. Liberty is granted to the respondents to put up their objection, if any, for revocation, alteration or modification of this interim order."

3. Subsequently, the case came up on 28.07.2015-05.08.2015, 17.08.2015, 10.03.2016, 13.04.2016, 01.06.2016, 27.07.2016, 11.08.2016, 16.11.2016, 16.02.2018, 27.03.2018, 11.05.2018, 15.06.2018, 24.08.2018 and 25.09.2018 on which date the hearing was concluded. During these periods, the respondents filed written statement on 07.08.2015 and written argument on 10.03.2016 Mr. M. R. Das, learned counsel for the respondents BSNL objected for hearing of the case as written

argument has already been filed on 10.03.2016. Subsequent to this date, it is observed from the records that respondents have not attended on the dates of listing of the O.A.

4. Facts of the case of the applicant are that he was appointed as a Telephone Operator in 1978 and he has since retired from service on 30.09.2015 from service as Sr. Telephone Operator Assistant (NE-XI). In 1986 he was implicated in a criminal case and he was in custody from 19.05.1986 to 01.07.1986. The applicant was convicted in the case under section 325 of IPC by the trial Court and finally he was acquitted by the Hon'ble Gauhati High Court by order dated 24.04.1995. He was placed under suspension on 08.12.1989 in connection with his arrest in the above mentioned case and the same was revoked by order dated 11.08.1995 after his acquittal. The period of suspension was also directed to be regularized as per judgment dated 15.07.1998 passed by this Hon'ble Tribunal in O.A. No. 36/ 1995 and was paid full salary for the period of suspension. In the meanwhile, departmental proceeding was initiated against the applicant by issuing charge memo on 27.03.1996 after about 10 years of the incident of his arrest. The charges alleged suppression of the fact that the applicant was under detention in connection with

the criminal case. He filed a statement denying the charges. The enquiry report was submitted by the enquiry officer on 14.08.1997 holding the charges proved and a copy thereof was forwarded to the applicant on 17.12.1997 asking his response on the report which was duly submitted by the applicant on 08.01.1998. In the meantime, the applicant also got two time bound promotions on 20.11.2004 and 27.02.2006

5. The respondents issued a letter No. GMT/Staff/QB-528/2014-15/12 dated 28th February 2015 to the applicant asking him, inter alia to submit copy of charge sheet, denial of charges and copy of punishment award. On failure to comply with, the impugned order No. GMT/Staff/QB-528/14-15/14 dated 06.05.2015 was issued to him.

6. From the records, it is seen that the respondents have filed written argument on 10.03.2016 i.e. well after 09 (nine) months from the date of suspension of the show cause notice by this Tribunal on 27.05.2015. In the written argument, the respondents have pointed out that since the charges have been proved by the Inquiry Officer and also it is a matter of violating basic provision of CCS (conduct) Rules 1964 in regard to the suppression of information regarding arrest or conviction, this Tribunal may be pleased not to set aside the impugned

show cause notice dated 06.05.2015. They also highlighted that if the applicant is spared without any action taken on the offence committed, it will spread a bad example to other serving employees of the respondent organization which have far reaching affect. As regards the issue of abnormal delay, particularly for the period from 08.01.1998 to 28.02.2015 i.e. over period of seven (07) years, they merely stated in the written statement at para IX dated 05.08.2015 that it was due to administrative reason. This detailed administrative reason has neither been explained nor justified, including if any unusual circumstances beyond the control of the respondent authorities which had led to this abnormal delay of seven years.

7. Keeping in view of the above, after careful consideration, balancing the alleged lapses committed by the applicant in not informing this involvement in the acquitted criminal case and the glaring indefensible failure on the part of the respondents to follow up initiated disciplinary proceeding to finality, it is felt that re-opening of the disciplinary proceeding at the stage of issuing show cause notice to the charged officer on the report of the inquiry officer after a period of seven (07) years is absolutely against the principle of natural justice particularly when the applicant was acquitted by the

Hon'ble Gauhati Hight Court vide its judgment and order dated 24.04.1995 in Criminal Appeal No. 125/1989. If there was such serious view on the gravity of the lapses committed by the charged officer, the proceedings should have been initiated, pursued and completed in a time bound manner so that the disciplinary authority could have taken a final view and take action as considered appropriate. This situation also defeats the very argument that non-punishment of the applicant would have far reaching affect on the serving employees of the respondent organization. In fact, as pointed out in the foregoing para, liberty was granted to the respondent authorities to put up their objection, if any on the interim order dated 27.05.2015.

8. Considering the above facts and circumstances and also taking into account the principle of the judgments and rulings in case of similar disciplinary proceedings rendered by the Hon'ble Apex Court in the case of **State of A.P. V. N. Radhakishan** reported in **(1998) 4 SCC 154; 1998 SCC (L&S) 1044** where the Hon'ble Apex Court observed that – “the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right

that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessary prolonged without any fault on his part in delaying the proceedings", we consider that the respondent authority do not have any case against the applicant. Hence disciplinary proceedings initiated against the applicant vide show cause notice under memo no. GMT/Staff/QB-528/14-15/14 dated 06.05.2015 is hereby set aside and the applicant may be granted all the pensionary benefits as admissible to him under the Rules within a period of three months from the date of receipt copy of this order.

13. With the above observation and directions, O.A. stands disposed of. No order as to costs.

(N. NEHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)

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