

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/020/657/2014

Date of Order : 12-06-2018

Between :

G.Purnachandra Rao S/o Nageshwara Rao,
Aged about 50 years, Occ: Telecom Mechanic,
BSNL, Unguturu, O/o (SDE Groups), Gannavaram,
(Under orders of Compulsory Retirement),
R/o 21-9/3-9/3, 1st Lane, Pasuputhota,
Madhuranagar, Vijayawada, Krishna District.

....Applicant

AND

1. Union of India Rep by its
Chairman and Managing Director,
BSNL, Corporate Office, Bharat Sanchar Bhavan,
Janpath, New Delhi.
2. The Chief General Manager Telecom,
BSNL, AP, Hyderabad.
3. The Senior General Manager,
Telecom District, BSNL, Vijayawada 520004.
4. The Dy.General Manager (A&P) & Disciplinary Authority,
O/o Senior General Manager,
Telecom District, BSNL, Vijayawada 520004.
5. The Accounts Officer (SB) / (Pay) / (Claims),
O/o Sr.GM TD BSNL, Vijayawada, A.P.,
6. The Sub-Divisional Engineer (Groups),
BSNL, Gannavaram, Krishna District, A.P.
7. Union of India Rep by its
Secretary,
Ministry of Telecommunications,
Government of India, New Delhi.

...Respondents

Counsel for the Applicant: Mr. M.Bhaskar

Counsel for the Respondents : Mrs.K.Rajitha, Sr.CGSC for R-7
Mrs.A.P.Lakshmi, SC for BSNL

CORAM :

THE HON'BLE MR.JUSTICE R.KANTHA RAO, JUDICIAL MEMBER
THE HON'BLE MRS.MINNIE MATHEW,ADMINISTRATIVE MEMBER

(Oral order per Hon'ble Mr.Justice R.Kantha Rao, Judicial Member)

Heard Mr. M. Bhaskar, learned counsel appearing for the applicant
and Mrs. A. P. Lakshmi, learned Standing Counsel for BSNL.

2. The applicant while working as Telecom Mechanic in BSNL, Tangutur was chargesheeted by the CBI for the offence under section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988, on the ground that he demanded and accepted illegal gratification for doing some official favour. The said case was pending before the CBI Court, Visakhapatnam. The Department simultaneously initiated disciplinary proceedings in respect of the very same charge. The Inquiry Officer who conducted the Disciplinary Enquiry found that the charge was proved against the applicant and submitted his report to the Deputy General Manager who is the Disciplinary Authority. The Deputy General Manager in consideration thereof and following the procedure prescribed for imposing penalty, passed the penalty order of Compulsory Retirement on the applicant on 17.04.2010. It requires to be noticed in this context that by the date of imposing Compulsory Retirement on the applicant, the Criminal Case before the CBI Court in respect of the very same charges was pending. Subsequently the CBI Court disposed of the Criminal Case by imposing the punishment of simple imprisonment for a period of one year and also imposed a fine of Rs.2000/- for the offence punishable under section 7 of Prevention of

Corruption Act, 1988. The applicant preferred an appeal against the judgment of the CBI Court and the Hon'ble High Court suspended the sentence of imprisonment. Learned counsel appearing for the applicant submits that the appeal is still pending.

3. However, after conviction recorded by the CBI Court against the applicant and sentencing him for the punishment that is mentioned above, the Dy. General Manager who is the Disciplinary Authority issued a notice to the applicant purportedly under Rule -40(a) of BSNL CDA Rules proposing to impose the penalty of "100% pension cut and forfeiture of 100% DCRG" against the applicant who is under the order of Compulsory Retirement.

4. The applicant filed OA No.995 of 2011 against the said show cause notice and the Tribunal issued a direction to the applicant to submit a representation to the Disciplinary Authority and accordingly the applicant submitted a representation to the Disciplinary Authority and the Disciplinary Authority after receiving the representation, passed a penalty order against the applicant on 17.04.2014 imposing a 100% cut in pension. The said order is challenged in the present OA.

5. The Respondents in their reply statement contended inter alia that after conviction, the Disciplinary Authority imposed the penalty impugned in the present OA under Rule-40 (a) of BSNL CDA Rules. They also contend that only sentence of imprisonment against the applicant was suspended by the Hon'ble High Court but still the Criminal Appeal against the conviction is

pending.

6. The short question that requires consideration is as to when in respect of the same charge penalty was imposed in the course of the Departmental Enquiry held against the applicant while the Criminal Case is pending, on conviction whether some other penalty can be imposed by the Disciplinary Authority under Rule 40(a) of BSNL CDA Rules on the ground that gravity was made out on account of conviction by the CBI Court against the applicant.

7. When there is a Criminal Case as well as a Disciplinary Enquiry, they can be proceeded with simultaneously or the Department can wait till the disposal of the Criminal Case pending against the charged employee. The question requires determination in the Criminal Case is as to what is the punishment that can be imposed on the accused (charged employee) upon conviction in respect of a criminal charge whereas in the Disciplinary Enquiry the Department would impose penalty for the misconduct that is proved in the Departmental Enquiry. The penalty in the Disciplinary Enquiry would be imposed irrespective of the decision in the Criminal case. In any event when the Departmental Enquiry was proceeded without waiting for the result of the Criminal Case and the Criminal Case was concluded and penalty was imposed, it is not open for the Department to impose any further penalty on the ground that the applicant was convicted in respect of the Criminal Charge. We have gone through Rule-40(a) of BSNL (CDA) Rules which lays down that the Disciplinary Authority may impose any of the

penalties specified in Rule 33 where the employee has been convicted on the basis of the Criminal Charge. This is an independent provision where after conviction on a criminal charge the Disciplinary Authority can impose penalty specified in the said provision. But the Disciplinary Authority cannot further impose penalty under Rule-40(a) in addition to the penalty imposed in the Disciplinary Proceedings. These two are independent provisions and when the Disciplinary Enquiry was concluded against the charged employee, it became final and penalty was imposed, the Disciplinary Authority is precluded from imposing any further penalty on the charged employee. In the instant case the applicant was compulsorily retired on 17.04.2010 and since then he was no longer in BSNL. He was receiving pension but after passing impugned order on 17.04.2014, the Respondents stopped paying pension to the applicant.

8. For the reasons aforementioned, we are of the considered view that the order passed by the Disciplinary Authority on 17.04.2014 imposing 100% pension cut on the applicant who had already been compulsorily retired on 17.04.2010 is misconceived and illegal. The said order would attract the provisions of double jeopardy and the same is liable to be set aside. Accordingly the impugned order No. X/DGM(A&P)VJ/Disc/GPR/TM/2013-14/31, dated 17.04.2014 is set aside. The Respondents are directed to restore the pensionary benefits to the applicant immediately and pay the arrears of pension to the applicant from the date it was stopped together with interest at the rate which is permissible on the GPF deposits and shall continue to pay the applicant the

pension and pensionary benefits for which he is entitled on his compulsory retirement on 17.04.2010 within a period of two months from the date of receipt of a copy of this order.

9. The Original Application is allowed accordingly. No order as to costs.

(MINNIE MATHEW)
ADMINISTRATIVE MEMBER

(R.KANTHA RAO)
JUDICIAL MEMBER

Dated : 12th June, 2018.
Dictated in Open Court.

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