

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/650/2016

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Date of Reserve:19.12.2018

Date of Order :21.01.2019

Sri Amiya Sankar Behera, aged about 37 years, S/o. Of Sri Bholanath Behera – at present working as Jnior Accounts Offier, Office of the S.D.O., Phones-VII, 8/B, JaydurgaNagar, Bhubaneswar-751 006 – residing in Plot No.58, 1st floor, Jayadurga Nagar, Bhubaneswar-751 006.

...Applicant

By the Advocate(s)-M/s.A.K.Mohanty
P.K.Kar
D.K.Mohanty
R.C.Jena

-VERSUS-

1. Chairman cum Managing Director, Bharat Sanchar Nigam Ltd., Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, new Delhi-110 001.
2. The Chief General manager, Bharat Sanchar Nigam Ltd., Odisha Circle, B.S.N.L. Bhavan, Bhubaneswar-751 002.

...Respondents

By the Advocate(s)-Mr.L.Jena

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant presently working as Junior Accounts Officer in the BSNL has filed this Original Application under Section 19 of the A.T.Act, 1985, seeking for the following reliefs:

- i) To allow the Original Application.
- ii) To quash the letter No.ST/161/502/2011/15 dated 14.7.2016 (As per Annexure-A/14) issued by the Respondent No.2 for being bad and not sustainable in law.
- iii) To direct the Respondents to open the sealed cover and to grant two financial upgradations to the next higher IDA scales of pay to the applicant as per BSNL's Executive Promotion Policy w.e.f. 16.6.2007 and 16.6.2012 and consequently direct the Respondents to promote the

applicant to the post of Sub Divisional Engineer w.e.f. 2.7.2013 i.e., the date from which his juniors are promoted to such posts with all consequential benefits after he has been acquitted in the criminal case and when there are no other legal impediments for granting him financial upgradation and promotion on all these dates.

- iv) To order and direct that the cost of litigation be paid to the applicant by the Respondent No.2 for torturing the applicant and dragging him into unnecessary litigation.
- iv) To issue any other order/orders, direction/directions as the Hon'ble Court deems fit and proper to meet the ends of justice.

2. The relevant facts which are necessary for a just decision of the matter are that the applicant while working as Junior Telecom Officer, Rairangpur Exchange for the period from June, 2003 to February, 2006, a criminal case was initiated by the CBI, Bhubaneswar vide T.R.No.03/10 of 2013/2008 arising out of R.C. 34(A)/2006 under Section 120-B and 420 IPC and under Section 13(1)(d) of Prevention of Corruption Act alleging illegal creation, addition, alteration and deletion of telephone numbers etc. from switch room whereby the BSNL sustained a loss to the tune of Rs.38.05 lakhs. The CBI Court vide judgment and order dated 24.12.2014 acquitted the applicant of the criminal charges. In the time between juniors to the applicant were granted 1st and 2nd financial upgradations to the next higher IDA scale, besides being promoted to the SDE(T) having come out successful in the Limited Department Competitive Examination (LDCE). Grievance of the applicant is that since he was not granted both the financial upgradations coupled with promotion as SDE(T) even on his qualifying the LDCE whereas his juniors were so granted, he submitted a representation to the authorities concerned and there being no response, he moved this Tribunal in O.A.No.260/00332/2016. This Tribunal vide order dated 23.05.2016 disposed of the said O.A. in the following terms:

"Since the representation dated 24.06.2015 (Annexure-A/11) submitted by the applicant is stated to be pending with Respondent No.2, without entering into the merit of the case, we dispose of this O.A. at the stage of admission itself by directing Respondent No.2 to consider the representation under Annexure-A/11, if the same is still pending, keeping in mind Annexure-A/12, as per the extant Rules and communicate the result thereof to the applicant by way of a reasoned/speaking order within a period of 02(two) months from the date of receipt of a copy of this order. If, after such consideration it is found that the applicant is entitled to the relief claimed by him then the same may be extended to him within a further period of 03 (three) months from such consideration. Though we have not expressed any opinion on the merit of the matter, we make it clear that all the points raised in the representation will be kept open for the Respondents to consider the same as per rules, regulations and law in force. However, it is made clear that if an the meantime the said representation has already been disposed of then the result of the same be communicated to the applicant within a period of two weeks from the date of receipt of a copy of this order".

3. Complying with the aforesaid direction of the Tribunal, the respondents issued a speaking order dated 14.07.2016 (A/4) whereby the grievance of the applicant has not been met. In the fitness of things, the relevant part of the speaking order dated 14.07.2016 which is impugned in this O.A. reads as follows:

"A criminal proceeding was initiated by CBI, Bhubaneswar against you vide T.R.No.03/10 of 2013/2008 arising out of R.C. 34(A)/2006 contemplating charges under Sec. 120-B, 420 IPC and under Sec. 13(2) read with Sec. 13(1) (d) of Prevention of Corruption Act for cheating/Telecom Department/BSNL by unauthorised and illegal creation of non existing telephones & providing ISD calls without metering while you were functioning as JTO, BSNL at MBM Exchange, Rairangpur during the period from June, 2003 to February, 2006. The alleged fraud amounted to a loss to the company to the tune of Rs.38,05,257/-. After appreciating the available evidence on record, the Hon'ble Court of Special Judge, CBI delivered the final judgment on dated 24.12.2014 and acquitted you from the charges holding you not guilty as the ingredients of the Sections of IPC and PC Act under which charges were framed could not be established by the prosecution beyond all reasonable doubts, granting appeal period of four months to the prosecution. After passing of such order of acquittal by the Hon'ble Court, you preferred the representation dated 24.6.2015 for redressal of your grievances as stated hereinabove. Your representation was processed and a vigilance

clearance had already been granted in your favour on the basis of the order dated 24.12.2014 of the Ld.CBI Judge for taking further necessary action in settling the same.

But, while the matter stood thus, after taking all the facts and circumstances into consideration, as per the provisions of Rule 5(22) of BSNL CDA Rule, 2006, the Disciplinary Authority decided to initiate a departmental proceeding against you for the alleged misconduct/fraud committed by you as JTO, Rairangpur during the period from June, 2003 to February, 2006. In accordance to ADG (VM-V) Vigilance Cell Corporate Office Ltr. No.262-29/08-VM-V dated 21.7.2008, RDA Major under Rule 36 of BSNL CDA Rules, 2006 has been initiated against you and the Memorandum of Article of Charges vide No.Vig.11/303/06 (Pt.) dated 06.02.2016 is handed over to you on 11.02.2016. In response to the aforesaid Memorandum you have given your reply vide your letter dated 19.02.2016. Further, you requested the CGM, BSNL, Odisha Circle vide your letter dtd. 27.04.2016 to change the Inquiry Officer, Sri Narhari Das, appointed to enquire the matter in the same departmental proceeding which was duly rejected being devoid of any merit by the CGM vide letter No.VIG 11-303/2006-15 (Part)/354 dated 05.05.2016.

It is further observed that you have filed another Original Application vide No.392/2016 in the Hon'ble CAT, Cuttack Bench praying thereunder to quash the Memorandum of Charges issued vide No.Vig.11/303/06 (Pt.) dated 06.02.2016 and Letter No.Vig.11-303/2006-15(Pt.)/354 dated 05.05.2016. At the time of admission on dated 21.06.2016, while issuing notice to the respondents, as an interim measure, the Hon'ble Tribunal has been pleased to issue direction to continue the departmental proceedings but to pass the final order with the leave of the Hon'ble Tribunal.

The said departmental proceeding is in progress. Unless and until you are exonerated in the disciplinary proceeding initiated vide Charge Sheet dated 05.02.2016, it is not possible to consider and settle your grievances espoused in your representation dated 24.06.2015. Accordingly your representation is disposed of".

4. Aggrieved by this, the applicant has filed the present O.A. praying for the reliefs as mentioned above.
5. By filing a detailed counter, respondents while opposing the prayer of the applicant have brought to the notice of the Tribunal that after applicant's acquittal by the CBI Court vide judgment dated 24.12.2014, a departmental proceeding was initiated against him as per the provisions of Rule-5(22) of

BSNL, CDA Rule, 2006 vide Memorandum No.Vig.11/3003/06(Pt.) dated 06.02.2016, in response to which the applicant has already submitted his reply vide his letter dated 19.02.2016. Thereafter, Shri Narahari Das was appointed as IO to enquire into the charges. But the applicant requested the CGM, BSNL, Odisha Circle vide his letter dated 27.04.2016 to change Shri Das as IO which has also been rejected vide communication dated 05.05.2016. It is the case of the respondents that challenging the Memorandum of Charge dated 06.02.2016 and the letter of rejection for change of IO dated 05.05.2016 the applicant has already filed O.A.No.392/2016 before this Tribunal and while issuing notice, this Tribunal, vide order dated 21.06.2016, as an interim measure, directed to continue the departmental proceedings, but to pass the final order with the leave of the Tribunal. According to respondents, the said departmental proceeding is in progress and unless and until the applicant is exonerated of the charges levelled against him, it is not possible to consider and settle his grievance.

6. We have heard the learned counsels for both the sides and perused the records. We have also examined all the pleadings of the parties threadbare. We also called for the records in O.A. No.392 of 2016 to know stand point of the Respondents. We found that the said O.A. has been directed to be listed on 24.01.2019 for hearing. In the said O.A., the applicant has sought for the following reliefs:

- i) To allow the Original Application.
- ii) To quash the disciplinary proceeding initiated against the applicant vide G.M.(HR & Admn.) cum Disciplinary Authority, office of the CGM, BSNL, Odisha Circle, Bhubaneswar vide No.Vig.11-303/06(pt.) dated 6.2.2016 (as per Annexure-A/6) as well as Letter No.Vig.11-303/2006-15(Part)/354 dated 5.5.2016 (as per Annexure-A/9) issued by the CGM, BSNL, Odisha Circle, Bhubaneswar-cum-Appellate Authority.

7. We have considered the rival submissions. In our considered view, the reliefs sought by the applicant in the instant O.A. are fully dependent upon the ultimate result of O.A.No.392/2016 and to this extent, the respondents are justified. In view of this, speaking order dated 14.07.2016 (A/14) is sustained.

8. In view of what has been discussed above, we are not inclined to interfere in this matter. Accordingly, the O.A. is held to be without any merit and the same is dismissed. No costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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