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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00752/2015

Tuesday, this the 12th day of March, 2019

**Hon'ble Mr.Bharat Bhushan, Administrative Member
Hon'ble Mr.Ashish Kalia, Judicial Member**

M.Ramakrishnan, Retired Executive Engineer (Electrical)
Residing at Gitanjali, 26/1247-D
Kommeri P.O, Calicut – 673 007

..... **Applicant**

(By Advocate Mr.R.Sreeraj)

V e r s u s

1. The Chairman and Managing Director
Bharat Sanchar Nigam Limited
Sanchar Bhavan, H.C.Mathur Lane
Janpath, New Delhi – 110 001

2. The Director (HR)
Bharat Sanchar Nigam Limited
Sanchar Bhavan, H.C.Mathur Lane
Janpath, New Delhi – 110 001

3. The Chief General Manager (Telecom)
Bharat Sanchar Nigam Limited
Kerala Telecom Circle,
Trivandrum – 695 033

..... **Respondents**

(By Advocate – Mr.M.Salim)

This Original Application having been heard on 27.2.2019, the Tribunal on 12.3.2019 delivered the following:

OR D E R

Per: Mr.Ashish Kalia, Judicial Member

The reliefs prayed for in the Original Application are as follows:

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“(1) To quash Annexure A-1 & Annexure A-2 and to direct the respondents to grant the applicant all the consequential benefits flowing out of the setting aside of Annexure A-1 and Annexure A-2 orders.

(3) Such other relief as may be prayed for and this Tribunal may deem fit to grant

(4) Grant the cost of this Original Application.”

2. The applicant, while functioning as Executive Engineer (Electrical), Calicut was proceeded against under Rule 36 of BSNL CDA Rules 2006 on the following among other charges, as per memorandum dated 4.11.2010.

“ **Article I**

That Shri.M.Ramakrishnan, while functioning as Executive Engineer, Electrical Division, Trichy is alleged to have not followed the prescribed guidelines for opening of tenders and has violated the procedures and rules for maintaining records relating opening and awarding tenders. Thus Shri.M.Ramakrishnan EE(E) Calicut has failed to maintain absolute integrity and has acted in a manner unbecoming of a Public Servant, thereby violating Rule 4(1) (a) and Rule 4(1) (c) of BSNL CDA Rules 2006.”

There were altogether 3 charges leveled against the applicant. The applicant denied all the charges.

3. The Inquiry Officer found Charge I against the applicant partially proved and the other two charges not proved (Annexure A-1). What was found proved with regard to Charge I was that there were lapses in following the procedures. The IO has found that Shri.M.Ramakrishnan, EE(Electrical) was aware of the fact that there were no written instructions, permitting the Accounts Officer to entrust the cashier/auditor to participate

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in the tender opening on his behalf. Being the chairman of the tender opening committee, applicant should not have allowed it. Further, as there was no provision for submitting the third cover (rebate cover) in the NIT, acceptance of third cover was in violation of NIT clause.

4. The Disciplinary Authority has imposed penalty of withholding of increment of pay which is due on 1.9.2013 in the scale of pay Rs.32900-58000 for a period of 6 months without cumulative effect. Aggrieved by this, applicant submitted an appeal to the 2nd respondent on 20.12.2012 which was revised on 8.3.2013 incorporating the reasons for the delay in submitting the statutory appeal. However, the 2nd respondent by Annexure A-2 order rejected the statutory appeal. The applicant again submitted a review petition to the 1st respondent against Annexure A-2 appellate order which was not responded to. In the meanwhile, applicant retired from service. Hence, the applicant has approached this Tribunal for redressal of his grievances.

5. As grounds, applicant has submitted that there is no evidence against applicant, which is relevant and based on which a reasonable man could come to the conclusion that the applicant is guilty of the charge which was found partially proved against him. Applicants submits that finding of the Inquiry Officer that the Charge I leveled against the applicant was partially proved is illegal, unjust and unreasonable. The Disciplinary Authority failed to apply its mind objectively to the materials on record and come to a subjective satisfaction regarding the guilt or otherwise of the applicant after

eschewing the irrelevant and relying on the relevant. The Disciplinary Authority failed to ensure strict adherence to the provisions of the CDA Rules and thus violated the directives of the Hon'ble Apex Court in ***Kunj Behari Misra***'s case.

6. Applicant further submitted that the respondents ought to have accepted the plea taken by the applicant that as far as the technical and tendering procedures, the Civil and Electrical Wings work on the CPWD Guidelines as per which the presence of the Accounts Officer at the time of opening of tenders is desirable only and not mandatory.

7. Notices were issued. Respondents have a brief filed reply statement and submitted therein that Article I of the charge memo was found partially proved. It was proved based on the findings of the Inquiry authority that the applicant did not take any sincere effort to see that the Accounts Officer was present at the time of opening the tender. There was no tender opening on 27.7.2009 and 20.6.2009 in the Civil Division. It was revealed on cross examination of the applicant that he was aware of the fact that there was no written instruction permitting the Accounts Officer to participate in the tender opening on his behalf. Being the Chairman of the tender opening committee the applicant could not have allowed it. Since both the Civil and Electrical Divisions have the same Accounts Officer, the applicant could have arranged the dates of opening the tender in consultation with the Civil wing so that opening of tenders in both the Divisions on the same day could have been avoided. It is also established from the records that SDE/JTO

were entrusted to open the tenders without approval of the higher authorities. Hence the charge is proved partially. So the action of the respondents are justified. It is further submitted that the Disciplinary Authority has strictly adhered to the provisions of CDA Rules and hence there is no violation of natural justice. Respondents pray for dismissal of the Original Application.

8. Heard Mr.R.Sreeraj, learned counsel for the applicant. Perused the reply statement and other documents produced in this Original Application.

9. The applicant herein has relied upon the judgment of the Hon'ble Apex Court in ***Kunj Behari Misra***'s case wherein the Apex Court held as under:

“ The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof wherever the disciplinary authority disagrees with the Inquiry Authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer. ”

10. In the present case the Disciplinary Authority has observed and recorded its own finding without giving an opportunity to the applicant therein so that he could have represented against the observation made by the Inquiry Authority. Annexure A-1 reads as follows:-

“ Though the undersigned agrees with the findings of Inquiring Authority, certain lapses on the part of Sri.M.Ramakrishnan can not be overlooked. The IO has found that Shri.M.Ramakrishnan, EE(Electrical) was aware of the fact that there were no written instructions, permitting the AO to entrust the cashier/auditor to participate in the tender opening on his behalf. Being the chairman of the tender opening committee, he should not have allowed it. Further, as there was no provision for submitting the third cover (rebate cover) in the NIT, acceptance of third cover was in violation of NIT clause.”

11. Learned counsel for the applicant during the course of argument has submitted that the observation made by the Inquiry Authority ought not have been confirmed without giving an opportunity to the applicant herein for defending his case before imposing penalty. He also relied upon the judgment passed by the Apex Court in ***State of Punjab and Ors. v. Ram Singh*** reported in 1992 AIR 2188. On the contrary, respondents have given this Tribunal's judgment in the matter of BI v. ***The Chairman and Managing Director and Anr*** wherein this Tribunal has held that interference of the Tribunal in the departmental proceedings are very limited.

12. Keeping in view of the judgment passed in ***Kunj Behari Misra***'s case,

this Tribunal is of the view that the Disciplinary Authority in the present case have gone ahead of the finding given by the Inquiry Officer, without giving an opportunity to the charged officer (applicant herein), that the charge was partially proved while imposing penalty. The Disciplinary Authority has elaborated the procedure and provisions which has not been followed and even suggested what ought not have been done by the applicant. The Disciplinary Authority should have given one opportunity to the charged officer so that he could have presented his defence. Same is not followed by the Disciplinary Authority and confirmed the order of Inquiry Authority. Thus, the present action of the respondents is not justifiable in the eyes of law. We, hereby, strike down the penalty order and remand back this case to the Disciplinary Authority from the stage where the Disciplinary Authority had disagreed with the finding of the Inquiry Officer. An opportunity may be given to the applicant herein to present his side of defence. Thereafter the Disciplinary Authority may pass order in accordance with law. It is needless to mention that the Appellate Authority's order is also set aside. This process shall be completed within a period of 60 days. This Original Application is disposed of as above. No costs.

(ASHISH KALIA)

JUDICIAL MEMBER

(E.K BHARAT BHUSHAN)

ADMINISTRATIVE MEMBER

List of Annexures

Annexure A1 - True copy of the Order No.VIG/2-83/2010/17 dated 23.11.2012 issued by the 3rd respondent

Annexure A2 - True copy of the Order File No.219-52/2014-VM(Appeal) dated 10.7.2014 issued by the 2nd respondent

Annexure A3 - True copy of the Inquiry Report dated 12.7.2011

Annexure A4 - True copy of the comments dated 6.9.2011 offered by the applicant on Annexure A-4 Inquiry Report (Appeal Statement on Inquiry Report)

Annexure A5 - True copy of the appeal petition dated 20.12.2012 submitted by the applicant to the 2nd respondent

Annexure A6 - True copy of the revised appeal dated 8.3.2013 submitted by the applicant to the 2nd respondent

Annexure A7 - True copy of the review petition dated 10.10.2014 submitted by the applicant to the 1st respondent

Annexure A8 - True copy of the representation dated 9.12.2014 submitted by the applicant to the 1st respondent

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