

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No. 735 of 2013

Reserved on: 16.11.2018

Pronounced on: 26.04.2019

Between:

T. Satyanarayana, S/o. Janardhan,
Aged about 61 years, Occ: Telephone Supervisor (Operative),
(Under the orders of removal),
R/o. 10-14-1836, Seetharamnagar Colony,
Warni Road, Nizamabad.

... Applicant

And

1. Union of India, Rep. by its Secretary,
Department of Telecommunications,
20 Ashoka Road, New Delhi – 110 001.
2. Bharat Sanchar Nigam Limited, Rep. by its
Chairman cum Managing Director,
Harischandra Mathur Lane, Janpath, New Delhi – 110 001.
3. The Chief General Manager, Telecom,
A.P. Circle, BSNL, Door Sanchar Bhavan,
Nampally Station Road, Abids, Hyderabad -1.
4. The General Manager Telecom District,
BSNL, Nizamabad District, Nizamabad.
5. The Deputy General Manager (A & P),
BSNL, Nizamabad District, Nizamabad.
6. The Divisional Engineer (Admn),
O/o. GMTD, Nizamabad District, Nizamabad.

... Respondents

Counsel for the Applicant ... Dr. A. Raghu Kumar

Counsel for the Respondents ... Mr. T. Hanumanth Reddy, Sr. PC for CG
Mrs. K. Sridevi, SC for BSNL

CORAM:

Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. Applicant is challenging the order of removal issued by the disciplinary authority and confirmed by the appellate authority.

3. Applicant joined the respondents organisation as a telephone operator in 1979 and a colleague of his has made a complaint on 3.9.1994 stating that the applicant has entered the organisation by producing a false caste certificate. A case was registered and the competent court found the applicant guilty under certain sections of IPC on 29.10.1998. Appellate court reversed the lower court decision on 11.1.1999. Respondents issued charge sheet to the applicant on 9.1.2001 which was replied by the applicant on 30.1.2001. However, without proceeding with the first charge sheet issued, respondents issued another one with almost similar charges on 5.12.2001. An inquiry officer was appointed and who submitted his report on 27.10.2003. Applicant objected to procedural irregularities and based on the same approached the Tribunal in OA 1404/2003 which on being dismissed carried the issue to the Hon'ble High Court of A.P in WP No11652/2004 and there too, it was dismissed. 4th respondent based on the reply received, imposed the penalty of removal and it was confirmed by the appellate authority on appeal. Aggrieved over the same, OA has been filed.

4. The contentions of the applicant are that the charge memo dated 5.12.2001 was not issued by the competent authority. The impugned orders dated 8.2.2005 and 25.2.2013 are without jurisdiction as the applicant is not a BSNL employee. The documents relied upon are Xerox copies, which is in violation of the basic principle of evidence. The proceedings of the Joint Collector dated 12.12.1992 were not authenticated and not vouched by relevant witnesses. The applicant having been acquitted in criminal proceedings in similar set of charges cannot be

subjected to disciplinary proceedings as per Hon'ble Apex Court judgment in Paul Anthony's case. Respondents having knowledge of the evidence available in criminal court cannot ignore the same in departmental proceedings. Only witness proposed to be examined by the respondents was section supervisor who is not the relevant witness for any of the documents introduced during the course of inquiry.

5. Respondents, *per contra*, claim in the reply statement that the applicant is an employee absorbed by BSNL and since the case relates to appointment which is service related matter it is within the domain of BSNL. The 1st respondent is thus no way connected with the issue. Applicant was issued charge memo dated 5.12.2001 for producing bogus caste certificate for obtaining employment. Disciplinary authority, after providing due opportunity to the applicant as envisaged in the rules, has imposed the penalty of removal and which, on appeal, was confirmed by appellate authority. The caste certificate issued on inquiry by the competent revenue authorities was found to be false. Applicant has submitted the attestation form confirming SC caste and got relaxation. Applicant did not inform the respondents about his conviction in CC No 402 of 95. Further, applicant failed to follow provisions of Rules 55 and 55A in informing about CC No.305/98 before the Hon'ble High Court. Using the bogus caste certificate applicant has secured seniority, promotions and other roster point benefits. Applicant is relying on technicalities and has not denied the basic fact of production of fake caste certificate. As per settled law, there is no bar to proceed against the applicant in departmental proceedings even though he has been acquitted in a criminal case since the procedures and standards are different. A similar case was dismissed by the Tribunal in TA 31 of 2009 which was challenged in Hon'ble High Court and Hon'ble Apex court but the order of the

Tribunal was upheld. In the present case, when the inquiries were made by the Revenue Divisional Officer it came out that the caste of the applicant is BC and not SC. In the attestation form his date of birth was shown as 6.6.1952 and with this date of birth he was not qualified to be recruited except under age relaxation provided to SC employees. The Hon'ble 9th Metropolitan Magistrate, Hyderabad has found the applicant guilty and the appellate court of the Hon'ble 6th Metropolitan Magistrate has acquitted the applicant without forbidding respondents to initiate disciplinary action. A charge sheet was issued on 9.1.2001 but later dropped due to certain material inaccuracies after giving due notice to the applicant. A fresh charge sheet was issued on 5.12.2001. There is no bar to issue the charge sheet by the DE on behalf of the DGM or competent authority.

6. Heard both the counsel and went through the documents/material papers placed on record.

7. I) The issue is about securing appointment by producing fake caste certificate. On a complaint lodged by a colleague of the applicant a criminal case was lodged in the competent court which found the applicant guilty and on appeal was reversed by the appellate court. As the appellate Court did not issue any order to restrict the respondents in proceeding against the applicant on disciplinary grounds, respondents issued a charge sheet on 5.12.2001 which culminated in the removal of the applicant by the disciplinary authority and confirmed by the appellate authority.

II) Applicant has taken objection by stating that when he is acquitted in a criminal case it is not correct to proceed against the applicant with similar charges by citing the Hon'ble Apex court in Paul Anthony's case. However, the Hon'ble Apex Court has also observed that an acquittal in a criminal case does

not restrain the administration in proceeding against the employee on disciplinary grounds since standard of proof required is different, as under:

a) *Pratap Singh v. State of Punjab, (1964) 4 SCR 733*

The Government is also free to conduct departmental proceedings after the close of the criminal proceedings, if instituted. There is, therefore, nothing illegal in the Government instituting the departmental proceedings against the appellant.

b) *State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya, (2011) 4 SCC 584, at page 588:*

10. The fact that the criminal court subsequently acquitted the respondent by giving him the benefit of doubt, will not in any way render a completed disciplinary proceedings invalid nor affect the validity of the finding of guilt or consequential punishment. The standard of proof required in criminal proceedings being different from the standard of proof required in departmental enquiries, the same charges and evidence may lead to different results in the two proceedings, that is, finding of guilt in departmental proceedings and an acquittal by giving benefit of doubt in the criminal proceedings. This is more so when the departmental proceedings are more proximate to the incident, in point of time, when compared to the criminal proceedings. The findings by the criminal court will have no effect on previously concluded domestic enquiry. An employee, who allows the findings in the enquiry and the punishment by the disciplinary authority to attain finality by non-challenge, cannot after several years, challenge the decision on the ground that subsequently, the criminal court has acquitted him.

The above verdict being later to Paul Anthony's case will hold ground.

Hence action of respondents is apt and appropriate.

III) The other ground taken by the applicant is that he is not an employee of BSNL. On the formation of BSNL in 2000 and after being absorbed in BSNL the applicant is governed by the rules and regulations of BSNL. Therefore the submission of the applicant that he is not governed by the norms of BSNL is untenable.

IV) Besides, applicant raised certain technical objections like consideration of Xerox copies without being authenticated and not examining of relevant evidence. The charge sheet was signed by the Divisional Engineer on behalf the Deputy General Manager. A charge sheet has to be

issued by the disciplinary authority and not by any other authority. Article 311 of the Constitution stipulates as under:

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State

(1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed.

Albeit, in the present case the disciplinary authority has issued the penalty order of removal vide order dated 8.2.2005, but he did not issue the charge sheet. Issue of charge sheet is a statutory function which cannot be delegated to a subordinate authority. Therefore, the charge sheet being issued on behalf of the disciplinary authority by the DE is invalid. We draw support from the direction given by the Hon'ble Supreme court in Union Of India & Ors vs B.V.Gopinath on 5 September, 2013 in Civil Appeal No.7761 of 2013 as under:

“40. **Disciplinary** proceedings against the respondent herein were initiated in terms of Rule 14 of the aforesaid Rules. Rule 14(3) clearly lays down that where it is proposed to hold an inquiry against a government servant under Rule 14 or Rule 15, the **disciplinary authority** shall draw up or cause to be drawn up the **charge sheet**. Rule 14(4) again mandates that the **disciplinary authority** shall deliver or cause to be delivered to the government servant, a copy of the articles of **charge**, the statement of the imputations of misconduct or misbehaviour and the supporting documents including a list of witnesses by which each article of **charge** is proposed to be proved. We are unable to interpret this provision as suggested by the Additional Solicitor General, that once the **disciplinary authority** approves the initiation of the **disciplinary** proceedings, the **charge sheet** can be drawn up by an **authority** other than the **disciplinary authority**. This would destroy the underlying protection guaranteed under [Article 311\(1\)](#) of the Constitution of India. Such procedure would also do violence to the protective provisions contained under [Article 311\(2\)](#) which ensures that no public servant is dismissed, removed or suspended without following a fair procedure in which he/she has been given a reasonable opportunity to meet the allegations contained in the **charge sheet**. Such a **charge sheet** can only be issued upon approval by the appointing **authority** i.e. Finance Minister.”

The disciplinary authority has to apply his mind and draft the charges backed by relevant documents and witnesses. The documents are to be introduced by the concerned witness during inquiry.

V) Respondents did submit the attestation form submitted by the applicant which indicate that he has claimed to be an SC with date of birth as 6.6.1952. The certificate issued by the Tahsildar, Karimnagar, certifies that the applicant belongs to schedule caste community. However, the respondents need to proceed against the applicant with available evidence in accordance with law. Procedures are prescribed so that there is fairness in dealing with employees and that justice is not miscarried.

VI) Therefore on the ground that the charge sheet has not been issued by the disciplinary authority we need to intervene as it is against the legal principle laid down by the Hon'ble Supreme Court. Therefore respondents are directed to initiate the disciplinary action afresh from the stage of issue of fresh charge sheet as per rules and law and decide the issue within 6 months from the date of receipt of this order. It is left open to the respondents to treat the period from confirmation of removal by the appellate authority till the date of finalising the case afresh, as per extant rules & regulation of the respondents organisation.

VII) With the above direction, the OA is disposed of. There shall no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated, the 26th day of April, 2019

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