IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH, CALCUTTA

O. A. No. 350/00 302 of 2019

IN THE MATTER OF:

NIGAMANANDA SIKDER,

son of Late Narayan Chandra Sikder, aged about 57 years, residing at D-4, B. P. Township, Kolkata-700094 and working to the post of Sub-Divisional Engineer (Electrical Administration) in Bharat Sanchar Nigam Limited, Calcutta Telecom District, 2/5A, Judges Court Road, Kolkata- 700027;

...Applicant

-Versus-

1. **BHARAT SANCHAR NIGAM LIMITED** service through the Chairman & Managing Director, Bharat Sanchar Nigam Limited, 7th Floor, Harish Chandra Mathur Lane, Janpath, New Delhi-110001.

2. **THE CHAIRMAN & MANAGING DIRECTOR,** Bharat Sanchar Nigam Limited, 7th Floor, Harish Chandra Mathur Lane, Janpath, New Delhi-110001;

3. **THE CHIEF VIGILANCE OFFICER**, Bharat Sanchar Nigam Limited, 7th Floor, Harish Chandra Mathur Lane, Janpath, New Delhi-110001

4. **THE ADDITIONAL GENERAL MANAGER (VIGILANCE)**, W.B. Circle Calcutta Telephones, Bharat Sanchar Nigam Limited, Telephone Bhavan, 2nd Floor, B.B.D. Bag (S), Kolkata- 700001.

5. **THE CHIEF ENGINEER (ELECTRICAL)**, Bharat Sanchar Nigam Limited, Calcutta Telecom District, 2/5A, Judges Court Road, Kolkata- 700027.

6. **The Divisional Engineer (Vigilance), in the office of CGMT**, Bharat Sanchar Nigam Limited, West Bengal Telecom Circle, Kolkata-700001.

7. **THE D.E. (VIGILANCE)**, Calcutta Telephones, Bharat Sanchar Nigam Limited, 3rd Floor, Telephone Bhavan, 34, B.B.D. Bag (S), Kolkata-700001.

8. **THE CHIEF GENERAL MANAGER,** Calcutta Telephones, Bharat Sanchar Nigam Limited, Telephone Bhavan, 2nd Floor, B.B.D. Bag (S), Kolkata- 700001.

9. MR. D. HALDAR, **anonymous complainant, P&T Electrical Contractors' Association, Kolkata-**

...Respondents.

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

O.A/350/302/2019 Date of Order: 06.03.2019

Coram: Hon'ble Mr. A.K Patnaik, Judicial Member

Nigamananda Sikder –vs- Bharat Sanchar Nigam Limited

For the Applicant(s): Mr. P. C Das, Counsel
For the Respondent(s): Mr. R. N Pal, Counsel
Ms. M. Bhattacharya, Counsel

ORDER (ORAL)

A.K Patnaik, Member (J):

Heard Mr. P.C.Das, Ld. Counsel for the applicant, and Ms. M.Bhattacharya, Ld. Counsel appearing for the Official Respondents, in extenso.

2. This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985 with the following prayers:

" a) To declare that on the basis of warning issued by the Chief Engineer (E), BSNL, Calcutta Telecom District, Kolkata dated 29.09.2011 after considering the investigation report as well as deposition submitted by the applicant being Annexure A-5 of this original application and after submitted the report dated 11.11.2011 being Annexure A-6 of this original application by the Chief Engineer (E), BSNL, Calcutta Telecom District, Kolkata before the Vigilance Department, BSNL, Kolkata, the action on the part of Vigilance Department vide letter dated 11.02.2019 after a lapse of eight years is wholly arbitrary and illegal, only to harass the present applicant in an unethical manner.

b) To declare that on the basis of warning letter which has already been issued against the applicant on 29.09.2011, the impugned office letter dated 11.02.2019 in respect of re-opening the case which has already been closed by the Chief Engineer (E), BSNL, Calcutta Telecom District, Kolkata is illegal and for that under any circumstances issuance of the charge-sheet against the applicant is not maintainable in the eye of law.

c) The respondents be directed that as per the mandate of Central Vigilance Commission, the anonymous complaint made by somebody against the employee cannot be taken into cognizance under any circumstances to harass the employees of the department."

3. Brief facts of the case of the applicant, as submitted by Ld. Counsel, are that the applicant is working in the post of Sub-Divisional Engineer (Electrical Administration) under the respondent authorities. On 24.02.2011, anonymous complaint was made against him by one Mr. D. Haldar. On 29.03.2011, office letter of the Vigilance Cell was issued regarding complaint of illegal quotation submitted by some contractor. Thereafter, vide office letter dated 27.08.2011, the Superintending Engineer (E), BSNL, Electrical Circle-II submitted a detailed investigation report before the Chief Engineer (E), BSNL, Calcutta Telecom District, Kolkata, whereby the Investigating Authority also opined that there is no such existence of Mr. D. Haldar. Thereafter, on 29.09.2011, a warning has been issued to the applicant on the basis of investigation report submitted by the Superintending Engineer (E), BSNL, Electrical Circle-II before the Chief Engineer (E) BSNL, Electrical Circle -II. On 1.11.2011, office letter was issued by the Chief Engineer (E), BSNL, Calcutta Telecom District, Kolkata wherein it was opined by the Chief Engineer that the allegations in the anonymous complaint are not at all tenable since there is no concrete evidence against the persons concerned against whom such complaint was made. Thereafter, after a lapse of 8 years, again the DE(Vigilance), Respondent no. 7 herein, vide impugned office letter dated 11.02.2019, again requested the Superintending Engineer (E), BSNL, Electrical Circle-II to give the detailed particulars of the present applicant. Ld. Counsel for the applicant submitted that ventilating his grievance against reopening of the case, the applicant preferred representation dated 15.02.2019 (Annexure-A/8) before Respondent No.8 and, having received no reply till date, he has approached this Tribunal in this present O.A. He, however, submitted that the applicant's grievance may be redressed if a direction is issued to Respondent No. 8 to consider the representation of the applicant as at Annexure-A/8 within a specific time frame.

4. Having heard Ld. Counsel for both the parties, without going into the merit of the matter, I dispose of this O.A. by directing Respondent No. 8 to consider the representation of the applicant as at Annexure-A/8, if the same has been filed and is pending for consideration, and pass a reasoned and speaking order as per rules and regulations communicating the same to the applicant within a period of two weeks from the date of receipt of copy of this order.

5. Mr. P.C.Das, Ld. Counsel for the applicant, further submitted that till the representation is considered and disposed of, the Respondents should be restrained to take any further coercive action against the applicant. As I am of the view that mere issuance of notice cannot lead to any coercive action, Mr. Das has fairly submitted that no charge sheet has been issued till date. In my considered view no coercive action is possible to be taken by the Respondents against the applicant within a short period of two weeks, which is granted to the Respondents to take a final decision on the representation under Annexure-A/8.

To fortify his argument, Mr. Das further brought to my notice Annexure-A/6 dated 11.11.2011 issued by the Chief Engineer (E), CTD/Kolkata, in which it has been stated that "In view of the above, it is informed that the above made allegations are not at all tenable since there is no concrete evidence obtained from the detailed investigations, other than minor irregularities for which remedial action has already been taken." He submitted that issuance of any charge sheet will be against their own order dated 11.11.2011.

6. Ms. M.Bhattacharya, Ld. Counsel for the Official Respondents, vehemently opposed the grant of interim order by stating that the issuance of notice does not give rise to any cause of action and, therefore, she submitted that this O.A. is liable to be dismissed being premature as till date no decision has been taken to initiate the proceeding let alone passing of any order.

7. As I am not entering into the merit of the matter and disposing of this O.A. by directing Respondent No.8 to consider the representation as at Annexure-A/8, I hope and trust that till such representation is considered and disposed of, particularly, keeping in mind the documents as annexed under Annexure-A/4, A/5 and A/6, the Respondents may not take further coercive action in this regard.

8. It is also made clear that if in the meantime the aforesaid representation has already been disposed of then the result thereof be communicated to the applicant within a period of two weeks.

9. With the aforesaid observation and direction, this O.A. stands disposed of. No costs.

10. As prayed for by the Ld. Counsel for the applicant, copy of this order, along with paperbook be transmitted to Respondent No. 8, by Speed Post, for which, he undertakes to deposit the cost with the Registry within a week.

11. Copies of this order be handed over to the Ld. Counsel for the parties.

(A.K.Patnaik)
Member(J)

RK/PS