

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

OA/310/00589/2013

Dated the 14th day of December Two Thousand Eighteen

PRESENT

HON'BLE MR. P. MADHAVAN, Member (J)

&

HON'BLE MR. T. JACOB, Member (A)

T.Jayaraj,
S/o.G.Thangavelu,
598, North Street,
Pudur,
Orathanadu,
Thanjavur District.

....Applicant

By Advocate M/s. A. Arulmozhi

Vs

- 1.The General Manager,
Office of the General Manager, BSNL,
Thanjavur-7.
- 2.The Deputy General Manager(Admn),
Office of the General Manager Telecom,
BSNL, Thanjavur.
- 3.The Divisional Engineer(R.M.),
Office of the General Manager,
BSNL, Thanjavur 613005.

....Respondents

By Advocate Mr. M.S.Velusamy

ORDER

(Pronounced by Hon'ble Mr. T. Jacob, Member(A))

Heard. The applicant has filed this OA seeking the following relief:

“To quash the impugned order of the 3rd respondent issued in Memo No.X/TJ-SSSO-ONT/2011/12 dated 08.08.2011 imposing a punishment of withholding one increment for a period of one year without cumulative effect which has been confirmed by the order of the 2nd respondent in Memo No.X/TJ-SSSO-ONT-APPEAL/2011-12/02 dated 20.01.2012 and the order of the 1st respondent in memo No. X/TJ-SSSO-ONT/REVIEW/2012 dated 03.05.2012 and direct the respondents to pay the amounts withheld with retrospect benefits and pass such further or other orders as this Hon'ble Tribunal may deem fit and proper and thus render justice.”

2. The applicant is a Senior Section Supervisor working as cash counter clerk in Customer Service Centre of BSNL at Orathanadu. He originally joined service as Time Scale Clerk in the year 1979. The applicant's wife has been suffering cancer which was diagnosed in the year 2007. The respondents have delayed issuing the referral letter to the Panel hospital to treat his wife for cancer. The bill amounts were also not paid to the hospitals. Hence the hospitals at Trichy and Thanjavur refused to treat the applicant's wife. In view of the arbitrary act of the respondents, the applicant's wife was denied treatment and the applicant had to change the treatment to Apollo Hospital at Chennai. Only after great persuasion, a Medical Advance of Rs. 1.20 lakhs was released. The applicant submitted actual bills for Rs. 88,874/- and credited the balance amount of Rs. 31,126/- of the BSNL account. The applicant was discriminated in granting incentive for collecting long pending dues. The applicant's representation for grant of incentive was treated with a grudge and the

respondents started harassing the applicant with demand to pay Rs. 55,341/- as an amount of outstanding against medical advance. The applicant made representation for the discrepancies in the medical bill calculation made in this regard. But the respondent passed recovery order without considering the facts. The applicant made continuous representations dated 17.08.2009, 14.09.2009, 09.10.2009 and 14.10.2008 to the 1st respondent. But the respondents issued memo to the applicant calling him to explain as to why disciplinary action should not be initiated against him for addressing the representations directly to the higher authority. The applicant submitted his explanation. The applicant's request for payment of incentive was also rejected by the 2nd respondent. Subsequently the applicant's name was included in the list of employees to be transferred. He submitted a representation for exemption from routine transfer in view of his wife's health condition. Even this request was rejected by the respondent. Thereafter, by wrong calculation of Income Tax, a sum of Rs. 11,225/- was recovered from the salary of the applicant. The applicant submitted a statement of accounts pointing out the irregular accounting of pay and allowances for the Income Tax calculation. In view of the continuous harassments by the officials, the applicant made a representation dt. 16.03.2011 to the 1st respondent and reported the continuous humiliations suffered by him. But there was no response for his representations. Finally the applicant opted to meet the 1st respondent in person during the Grievance Day meeting on 06.04.2011. But permission was not granted to him. Hence, the applicant

requested the PA to the 1st respondent to permission to meet on 20.04.2011. He was informed to meet the 1st respondent after 3 p.m on 20.04.2011. The applicant went to the 1st respondent office on 20.04.2011 at 5.15 p.m. But, he was not permitted to meet the 1st respondent. He again requested to PA to permit him to meet the 1st respondent. But he was further insulted and threatened by the PA. The above conversation was over heard by the 1st respondent who has inquired about the same through his peon. The applicant went to the chamber of the 1st respondent and explained his grievance. But the 1st respondent refused to listen to his plight. Thereafter, a memo dated 24.06.2011 was served on the applicant and his salary was withheld for 5 days and he was placed under suspension. The applicant submitted his explanation. But the 3rd respondent ordered for an enquiry and passed the impugned order dated 08.08.2011 imposing the penalty of stoppage the increment for one year without cumulative effect. The applicant made an appeal and the same was rejected. He made a review that was also rejected. Hence, the applicant has filed this OA.

3. The grounds of challenge by the applicant are as under :-

- (i) The punishment inflicted on the applicant by the impugned order violates the fundamental rights of the applicant.
- (ii) The act of the respondents are highly arbitrary, discriminatory and violative of the Article 14 & 16 of the Constitution of India.
- (iii) From the year 2007, the applicant has been subjected to unreasonable bias and prejudice exhibited by the respondents 2 and 3

and the acts of the respondents are nothing short of victimisation and lack of bonafides.

(iv) The authorities have failed to address the grievances of the employee which are pending for unreasonable length of time.

(v) The impugned order is passed without considering the sufferings of the applicant and the appeals are rejected mechanically.

4. Per contra, the respondents in the reply statement would submit that the applicant had some grievances and his representations were dealt in accordance with law and office procedure. But the applicant wanted to meet the 1st respondent and discuss the issue. On 20.04.2011, he went to the General Manager's Office at BSNL Complex, Ram Nagar, Thanjavur at about 1645 hours without obtaining proper permission from his Controlling Officer. He met the Personal Assistant (PA) to the General Manager (GM) and asked permission to meet the GM for conveying his grievance regarding excess Income Tax deduction by the AO Drawal Section. Earlier, he had called the PA to GM over phone on the same day morning and asked permission to meet the GM. He was told to contact in the afternoon. Instead of calling the PA over phone, the applicant came in person to GM's office at about 1645 hours and met the PA and asked permission to meet the GM. He was told to meet the DGM Finance as per the directions of GM. The applicant is alleged to have got annoyed after hearing this reply and raised his voice and started shouting at PA. GM heard noise in the PA's room. The reason for the noise and the applicant's attitude in PA's room was

confirmed through the Telecom Mechanic working in the GM's office and in the meantime the applicant entered the GM's chamber. GM told him to leave the chamber and he also left the chamber. The riotous and disorderly behaviour of the applicant in the GM's PA room had spoiled the peaceful office atmosphere. By the above act, the applicant had contravened Rule 5 (38) of BSNL CDA Rules, 2006 and acted in a manner which is unbecoming of a Public Servant and his conduct was not conducive to the best interest of BSNL and thereby violated Rule 4.1(c) & (d) of BSNL CDA Rules 2006. The memo was received by the applicant on 25.06.2011 and submitted his reply on 30.06.2011. The disciplinary authority namely, DE RM BSNL, Thanjavur after considering the reply and other connected documents of the case, found that the charges against the official proved and awarded the penalty of withholding of next one increment for one year without cumulative effect vide order dated 08.08.2011. The applicant also appealed against the above order vide his letter dt. 07.09.2011 with the competent Appellate Authority viz, DGM Finance, Thanjavur. The Appellate Authority after going through the case, had rejected the appeal and confirmed the punishment ordered by the Disciplinary Authority vide memo dated 20.01.2012. The respondent would further submit that they have never acted maliciously as admitted by the applicant himself. In fact, the applicant in his explanation to the show cause notice dated 19.05.2011 and in his reply to the charge memo dated 30.06.2011 has categorically admitted his guilt and requested to pardon him. Therefore, the allegation of victimization is a figment

born out of the fertile imagination of the applicant. Therefore, he has prayed for dismissal of the OA.

5. The counsel for the parties had presented the case in tandem with the respective pleadings.

6. Learned counsel for the applicant would submit that the applicant had suffered continuous humiliations due to indifferent attitude of the respondents. Hence, the applicant was constrained to make a representation dt. 16.03.2011 to the Chief General Manager on 16.03.2011. The applicant had reported the facts about the wrong recovery of Income Tax in his salary and about the non-payment of long pending Medical Bills. But he has not received any reply to his representation. The applicant was not permitted by the PA to meet the 1st respondent on 20.04.2011. The applicant went to the chamber of the 1st respondent to explain the problem. The 1st respondent refused to listen to the applicant and asked him to leave the chamber. The 3rd respondent ordered for an inquiry and passed an impugned order dt. 08.08.2011 withholding one increment for a period of one year without cumulative effect. His appeal was rejected confirming the punishment without considering the facts and circumstances and the review to the 1st respondent was also rejected. The learned counsel would further submit that the impugned orders record the fact that the applicant was given appointment to meet the 1st respondent on 20.04.2011 but he was not informed on that day that the GM will not meet him. Had the information given to the applicant, he would not have gone to meet the GM. Having recorded this

fact the respondents ought to have considered the facts and circumstances which led to raising of voice by an aggrieved employee. Further, she argued that the impugned order passed is not in accordance with law and it is liable to be quashed. The learned counsel has also relied on the following citations in support of her submission :-

- (i) Order of the Principal Bench dt. 28.09.2011 in OA 830/2010,
- (ii) Judgment of Hon'ble Kerala High Court dt. 12.06.2018 in OP (CAT) No. 62 of 2018.
- (iii) Judgments of Hon'ble Supreme Court dt. 17.02.1994 in CA No. 7484 of 1993, dt. 12.05.2008 in CA No. 7631 of 2002 & dt. 24.08.2009 in CA Nos. 5762-5763 of 2009.

7. On the other hand, the learned counsel for the respondents has submitted that impugned order is very much legal and follow the rules and regulation. The applicant has not raised any legal infirmity in the impugned order and hence is liable to be dismissed.

8. We have heard learned counsel for the parties and perused the material brought on record.

9. The charge that was levelled against the applicant reads as follows :-

By the above act Sri. T. Jayaraj had contravened Rule 5 (38) of BSNL CDA Rules, 2006 and acted in a manner, which is unbecoming of a Public Servant and his conduct was not conducive to the best interest of BSNL and thereby violated Rule 4.1 (c) & (d) of BSNL CDA Rules 2006.

The applicant has accepted the charges in his explanation but tried to justify his misconduct by telling about his grievance, grievance day, etc and he has regretted for the incident in GM's office. The applicant has agreed that he did not take any permission from his Controlling Officer to meeting the GM at Thanjavur during office hours on 20.04.2011. The explanation that his grievances were not settled, the PA instigated him, he was not allowed to meet the GM on the grievance day, the PA has not given refusal letter for not allowing to meet the GM are all irrelevant to the charges. When the permission for meeting the GM was not given, there are many other ways available to represent his grievance, instead demanding letter from GM mentioning the reason for refusal and arguing with the PA in a louder voice and spoiling the peaceful office working atmosphere is clearly misconduct. As guided by the concrete evidence on record, the disciplinary authority held that the articles of charges levelled against the applicant stood proved without any iota of doubt and imposed a minor punishment of withholding one increment for a period of one year without cumulative effect.

10. It is trite law that the scope of interference of this Tribunal in a punishment imposed in a disciplinary case is very limited. It is not the decision, but the decision making process that has to be subjected to judicial scrutiny. In the instant case, no fault could be found on the decision making process. The applicant has been given the opportunity to explain his case. Thus, principles of natural justice have been fully complied with. In so far as the quantum of

penalty is concerned, the Hon'ble Apex Court has time and again directed that the Tribunals/Courts should not interfere in the punishment imposed by the Disciplinary Authority unless the punishment so imposed is shockingly disproportionate to the charges proved against the delinquent. Here, on a comparison with the extent of punishment imposed is concerned, the minor penalty of stoppage of increment without cumulative effect for a period of one year is imposed which does not affect his pensionary benefits. Further, it is well settled that the misconduct shall be dealt with in accordance with law and not by considering the so called sufferings and grievances of the individual employees. Thus, we do not find any illegality or irregularity in the minor penalty proceedings nor is there any ground warranting with the imposition of penalty by the respondents. The cases cited by the applicant's counsel are not relevant to the facts of the instant case.

11. In the result, the OA is liable to be dismissed and is accordingly dismissed.

12. No costs.

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

14.12.2018

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