

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No. 210/538/2012

Dated this *Tuesday*, the *5th* day of March, 2019

CORAM: DR. BHAGWAN SAHAI, MEMBER (ADMINISTRATIVE)
R.N.SINGH, MEMBER (JUDICIAL)

K.L.Dhua, Aged 55 years,
 Occup : Service as Sub Divisional Engineer (Civil),
 at Office of the E.E. (Civil), E-1, MTNL
 Thane, Mumbai,
 R/at D-5/5, P&T Colony, Mulund (W),
 Mumbai 400 080. ... **Applicant**
 (By Advocate Shri *V.G.Indrale*)

VERSUS

1. Mahanagar Telephone Nigam Ltd. (MTNL),
 A Govt. of India Enterprise,
 Through its Corporate Office at Jeevan Bharti,
 Tower -I, 124, Canought Circus, New Delhi – 110 001.
2. Director (HR),
 Mahanagar Telephone Nigam Ltd. (MTNL),
 Through its Chairman Managing Director,
 Corporate Office at Jeevan Bharti,
 Tower-I, 124, Canought Circus, New Delhi 110 001.
3. Executive Director, MTNL, Mumbai
 Office at 15th Floor, Telephone House,
 Veer Savarkar Marg, Dadar (W),
 Mumbai – 400 028. ... **Respondents**
 (By Advocate Shri *V.S.Masurkar*)

Reserved on 05.02.2019

Delivered on 05.03.2019.

O R D E R

Per: Dr. Bhagwan Sahai, Member (Administrative)

Shri K.L.Dhua filed this OA on
 05.09.2012 when he was working as Sub-
 Divisional Engineer (Civil) with the office

of Executive Engineer E-1, MTNL Thane, seeking quashing and setting aside of order dated 19.08.2011 passed by Director (HR), MTNL, Corporate Office at Jeevan Bharti, Tower-1, Connaught Circle, New Delhi by which appeal of the applicant dated 10.11.2010 against the order of Disciplinary Authority dated 22.09.2010 was rejected. That appeal had been filed against the punishment of reduction by one stage in time scale of pay for a period of one year with immediate effect with further direction that Shri Dhua will not earn increment of pay during the period of reduction and after expiry of the period, the reduction will have the effect of postponement of further increment in his pay.

2. Brief facts :

2(a). The applicant when posted as Assistant Engineer (C-East) under DGM (C-East), MTNL was transferred as Sub-Divisional Engineer (SDE), MTNL, Vashi under respondent No.3 i.e. Executive Director, MTNL, Dadar, Mumbai. The respondent No.3 is the Disciplinary Authority of the applicant

and respondent No.2 i.e. Director (HR), MTNL, Corporate Office, Jeevan Bharti, Tower-1, Connaught Circle, New Delhi is the Appellate Authority for the applicant.

2(b). By charge memo dated 29.10.2007 (Annex A-2 page 25 to 34), the respondent No.3 initiated Disciplinary Proceedings against the applicant as per Rule 25 of MTNL Conduct, Discipline and Appeal Rules, 1998 for contravention of several provisions of Rule 5 such as :-

(i) disobedience of instructions of EE (BD) II East by not handing over charge on his transfer to Shri N.S.Kothawade, SDE (Civil) which amounted to violation of Rule 5(6) of MTNL Conduct, Discipline and Appeal Rules, 1998;

(ii) not discharging of his duties to supervise the work and taking joint measurements of work and prepare payment bill of the work done which amounted to gross dereliction of duty and violation of Rule 5(9) and Rule 4(1) of MTNL CDA Rules, 1998;

(iii) exposing of MTNL to avoidable

litigation with the Contractor which may cause financial loss to the MTNL with expenditure on litigation and weaken the case of the MTNL before the Arbitrator Tribunal or the judicial authority which amounted to violation of Rule 5(5) of MTNL Conduct, Discipline and Appeal Rules 1998; and

(iv) sending of his explanation called by EE (BW) to Ministry of Communications, Government of India, CMD, Director HR, MTNL, New Delhi and all other General Secretaries of MTNL Associations, which amounted to violation of Rule 5(30) of the MTNL CDA Rules, 1998;

2(c). The applicant submitted his representation / explanation on 15.11.2007 claiming that he was not at fault at all for not taking measurements, while he was on leave he was marked by the Higher Authority as absent and the representation to Higher Authorities was made through proper channel. However, that representation was not considered by the respondents and without giving him further opportunity of hearing,

the inquiry was concluded. Based on the inquiry report, the respondent No.3 sought explanation of the applicant which the applicant claims to have submitted but it was not considered and concurring with the finding of the Inquiry Officer, the Disciplinary Authority passed the order on 22.09.2010 (Annex A-6, page Nos.96 to 99) by imposing penalty as mentioned in paragraph No.1 above.

2(d). There was difference of opinion between the Inquiry Officer and respondent NO.3 with respect to charge of not obeying direction of the Higher Authority. While the Inquiry Officer found that the said charge had been proved, the respondent No.3 concluded that the charge was not proved.

2(e). Subsequently, the applicant filed the appeal to respondent No.2 on 10.11.2010 (page Nos.99 to 117). Vide the impugned order dated 19.08.2011, the appeal of the applicant was rejected. Hence this OA.

3. Contentions of the parties :-

The applicant has contended that -

3(a). the impugned order passed by the

respondent No.2 is opposed to the facts, law and principles of natural justice. It is based on surmises and conjectures, this order was passed hastily on his appeal without giving him personal hearing; the finding / conclusion of the respondent No.3 deferred from the Inquiry Officer on one of the charges, the Contractor had not started the work within stipulated time and did not complete it and also there was no complaint by the contractor for non-payment and even then the applicant has been charged on this count. The grievances submitted by the applicant to the Higher Authorities were through proper channel;

3(b). the authorities concerned failed to appreciate the fact that the Inquiry Officer was not justified in concluding in his report that the applicant had himself given copies of his letters to all MTNL Associations. The applicant being the Union Leader, the impugned order has been passed in a prejudiced manner by using provisions of MTNL Conduct (Discipline and Appeal) Rules, 1998 as a tool for settling personal

scores with him due to his activities as Union Leader for protecting rights of the employees;

3(c). there is no substance in the contention of the respondents that the applicant could have challenged the order of the Disciplinary Authority, which he has not done and therefore, the OA is liable to be dismissed. The respondents referred to seven rulings in the reply but did not provide their copies to him. The Inquiry Officer did not consider the evidence and wrongly held that the charges were proved against the applicant. Hence the OA be allowed.

The respondents have contended that -

3(d). the Disciplinary Authority i.e. the Executive Director, MTNL, Mumbai passed the order dated 23.09.2010 imposing penalty on the applicant but this order of the Disciplinary Authority has not been challenged by the applicant and only the order of the Appellate Authority confirming the order of the Disciplinary Authority has been challenged in the present OA. Hence

the OA is liable to be dismissed on this ground;

3(e). the applicant was given reasonable opportunity to defend himself at every stage and personal hearing was also granted to him, including giving of copies of documents to him and providing opportunity to him for their inspection. Thus, there is neither any procedural flaw nor violation of the statutory rules in conducting the disciplinary proceedings. The OA is devoid of merit and therefore, based on the judgments in these six case laws, the OA be dismissed :-

"(i). AIR 1996 SC 1232 S/o Tamil Nadu Vs. S.Subramaniam.

(ii). 1997 (1) SCSLJ 227 Govt. of Tamil Nadu Vs. S.Vel Raj.

(iii). 1998(1) SLJ(SC) 63 Govt. of Tamil Nadu Vs. K.N. Ramamurthy.

(iv). JT 1998(4) SC 2366 Commissioner and Secretary to the Govt. Vs. S.Shanmugam.

(v). 1998(1) SCSLJ 74 Union of India Vs. B.K. Nagamalleshwari.

(vi). JT 1998 SC 61 Apparel Export Promotion Council Vs. A.K.Chopra."

3(f). the punishment imposed on the

applicant was commensurate with the gravity of his misconduct as proved during the disciplinary proceedings. During the inquiry, the applicant himself had admitted that he had given copies of his letter to all General Secretaries, MTNL Associations due to harassment by his superiors. This was in violation of the provisions of Rule 5(30) of MTNL Conduct, Discipline and Appeal Rules, 1998. The applicant did not record measurements and did not prepare bills for payment of the work assigned to him although he was deputed for this purpose from 23.07.2007 to 30.07.2007. The applicant never submitted the measurements and bills for payment during that period;

3(g). giving personal hearing by the Appellate Authority to the appellant is at the discretion of the Competent Appellate Authority. The applicant himself did not ask for the personal hearing in the appeal and therefore, the Appellate Authority did not find it necessary to grant him personal hearing;

3(h). as per Rule 5(3) of the MTNL CDA

Rules, 1998, "misconduct" means the act of making representations or sending grievance petitions to Members of the Board of Directors or Senior Management Officers except through proper channel. This misconduct the applicant had committed;

3(i). the allegations of the applicant about his being Union Leader, etc is frivolous, an after-thought and;

3(j). Judicial review is not an appeal from a decision but a review of the manner in which the decision is made to ensure that the delinquent receives fair treatment and not to ensure that the conclusion of the authority is necessarily correct and when certain conclusion reached by the Competent Authority is based on evidence, the Tribunal is not having authority to re-appreciate the evidence and come to its own conclusion on the proving of the charge. As held in the case of **Government of Tamil Nadu Vs. K.N.Ramamurthy** reported in 1998 (1) SLJ 63, the Tribunal cannot interfere with findings if there is no flaw in the procedure; and

3(k). as per the Supreme Court decision

in Civil Appeal No.128 of 2007 dated on 08.11.2011 (*Oriental Bank of Commerce & Anr. Vs. R.K.Uppal reported in 2011 (8) SCC 695*), in which it has been held that a right of appeal is not an inherent right, none of the facets of natural justice requires that there should be right of appeal from any decision.

The Rule of natural justice does not necessarily in all cases confer a right of audience at appellate stage. When principles of natural justice require an opportunity to be given before an adverse order is passed on any appeal or application, it does not in all circumstances mean a personal hearing. If the principle of affording personal hearing is extended whenever statutory authorities are vested with the power to exercise discretion in connection with statutory appeals, it shall lead to chaotic conditions.

Any order passed after taking into consideration the points raised in the appeal or the application shall not be held

to be invalid merely on the ground that no personal hearing had been afforded. Therefore, the present OA having no merit, it should be dismissed.

4. Analysis and conclusions :-

We have perused the OA memo and its annexes, rejoinder of the applicant, reply and sur-rejoinder filed by the respondents, MTNL CDA Rules, 1998, various case laws cited by the respondents and considered the arguments advanced by both of them on 05.02.2019. Based on consideration of all these, our conclusions are as follows :-

4(a). The claim of the applicant that there was difference of opinion between the Inquiry Officer and the Disciplinary Authority about proof of the charge-C [paragraph No.4(b) page 8 and 9 of the OA], has no substance. Just because the Disciplinary Authority formed his opinion that the particular charge had not been proved although the Inquiry Officer had concluded that it had been proved, there is nothing wrong in this.

4(b). We have carefully considered the

order of the Disciplinary Authority dated 22.09.2010 and the impugned order of the Appellate Authority dated 19.08.2011. Both these orders are well reasoned and have been passed after proper and full application of mind by the concerned authorities to the facts of the cases, evidence on record, etc. We do not find any flaw or infirmity in these orders.

4(c). During the course of the disciplinary proceedings, the applicant had been provided adequate opportunity of defence, which had been availed of by him.

4(d). From the above facts, we conclude that the requirements of principles of natural justice have been fully complied with by the Disciplinary and Appellate Authorities. The contention of the applicant that the Appellate Authority did not provide him personal hearing also does not have substance. As elaborated in the case laws cited by the respondents, providing of personal hearing to the appellant by the Appellate Authority is as per its discretion and it can be provided only if felt

necessary by that authority. It is not a vested right in the appellant. Also the appellant has not provided on record anything to prove that he had sought personal hearing with reference to his appeal. In view of these findings, we conclude that the present OA is totally devoid of merits and deserves dismissal.

5. Decision:-

Hence, the OA is dismissed. The parties to bear their own costs.

(R.N.Singh)
Member (Judicial)

(Dr. Bhagwan Sahāi)
Member(Administrative)

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