

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
(Circuit Bench at Nainital)

Original Application No. 331/00727/2017

Dated: This the 23rd day of April 2019.

PRESENT:

HON'BLE MR. JUSTICE BHARAT BHUSHAN, MEMBER (J)
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)

Nit Ram Arya, S/o Late Sri Chandra Ram, R/o Manas Vihar Paniyali near Kathgharia, Haldwani, Distt. Nainital, Uttarakhand.

. . . Applicant

By Adv: N.K. Papnoi

V E R S U S

1. Bharat Sanchar Nigam Ltd. through its Chairman cum Managing Director, H.C. Mathur Lane Janpath, New Delhi - 110001.
2. Director H.R. O/o C.M.D, Bharat Sanchar Nigam Limited, New Delhi.
3. Chief Vigilance Officer, B.S.N.L., Ground Floor, Eastern Court Complex, Near Sanchar Haat, Janpath, New Delhi - 110001.
4. Chief General Manager, Telecom, U.P West Telecom Circle, B.S.N.L, T.E. Building, Shastri Nagar, Meerut - 250001.
5. The General Manager, Telecom, District - BSNL, Bareilly, CTO Compound cantonment Bareilly - 243001.

. . . Respondents

By Adv: Shri D.S. Shukla

O R D E R

Delivered by Hon'ble Ms. Ajanta Dayalan, Member(A)

The present OA has been filed by the applicant Nit Ram Arya seeking quashing of inquiry report dated 30.09.2014, order of disciplinary authority dated 07.09.2014 (correct date is 17.09.2015 – Annexure No. 1) and appellate authority's order dated 07.02.2017 resulting in imposition of penalty of 5% deduction from his pension for one year. The applicant has also sought refund of deducted amount from his pension with 18% interest as well imposition of damages of Rs. 20 lakhs on the respondents

for the agony suffered by the applicant due to arbitrary and malicious act of the respondents.

2. The applicant was working as Deputy General Manager in Bharat Sanchar Nigamm Limited (in short BSNL). He was due to retire on 31.10.2011. However, just two days prior to retirement on 28.10.2011, he was suspended. The applicant has stated that the suspension order was not directly served on him but was sent to his village address which is 300 km away from his office where he was posted. Further, during his whole service he was never served any document to show any disciplinary proceeding pending against him even till his retirement. Suspension was done without any preliminary inquiry or serving him show cause notice. Moreover, it was actually served on him 10 days after his retirement on 06.11.2011 antedating the same as 28.10.2011. In support of his claim the applicant has annexed postal envelop at Annexure-3 to OA. Consequent to this, the applicant was provisionally retired from service on 30.10.2011 (Annexure-4). The applicant has alleged malafide on the part of Shri Rajeev Yadav, the then General Manager (TD), who wanted to help his favourable contractor Shri G.K. Sharma which was reported to the higher authorities by the applicant vide letter dated 15.03.2011 (Annexure A-5). Thereafter, he was illegally suspended and disciplinary proceedings were initiated against him after his retirement. He was served with chargesheet on 06.06.2012 i.e. over seven months after his retirement. According to the applicant, charges were flimsy and the disciplinary authority accepted in the chargesheet itself that the bills in question were disputed. It is further averred that the charges were levelled against him with deliberate motive to withhold his terminal benefits. Inquiry Officer was appointed on 15.02.2013 and inquiry was completed on 30.09.2014. The Inquiry Officer held only Article I of the chargesheet as 'proved' and Article II as 'not proved'. Thus the only charge proved against the

applicant was in respect of the alleged delay / stoppage of settlement of bills of some contractors on account of the note of the applicant dated 26.03.2009 which was considered unreasonable and untenable. According to him, total delay in settlement of bills in question was of 535 days out of which file was with him for only three days. The applicant has then gone on to explain in detail as to how his actions in regard to the pending bills were correct and higher authorities were also kept informed. He has concluded that due to his observations, payment of only 90% of the claims made in the bills in question was allowed. He has finally concluded that the Inquiry Officer committed gross irregularities in holding the inquiry proceeding.

3. The applicant has further pleaded that the disciplinary authority, without considering the reply submitted by him, passed the impugned order dated 17.09.2015 imposing penalty of 5% cut in pension for a period of one year. He has further stated that the appellate authority also failed to consider the points raised in the appeal and decided the appeal in casual manner. He has also stated that the bare perusal of the order of the disciplinary authority as well as appellate authority reflects that the applicant was found guilty after his retirement and was punished with 5% cut in pension for one year while the applicant has unblemished record of service. He has stated that the action of the respondents is an outcome of malice on the part of the respondents. According to the applicant, he has been harassed for over six years after his retirement and hence he is entitled for damages of Rs. 20 lakhs to be recovered from the respondents.

4. The respondents have contested the claim of the applicant. They have argued that the total amount of loss suffered by the applicant is insignificant and runs in only few thousand rupees. This is because pension has been reduced by 5% for one year only. The respondents have stated that there is no illegality in suspension order as no inquiry or

preliminary inquiry is mandatory prior to suspension. The applicant was suspended as disciplinary proceedings were contemplated against him and this was as per Rule 30(1) of BSNL CDA Rules 2006.

5. The respondents have further stated that the disciplinary proceedings against the applicant were initiated as per the CVC advice dated 11.05.2012. Chargesheet was issued to the applicant after due investigation and thereafter inquiry was conducted as per procedure. They have also averred that Inquiry Officer and Presenting Officer were appointed as per BSNL CDA Rules 2006 and there was no deviation from the laid down procedure. No illegality or infirmity in procedure was there. The inquiry was held as per rules. The inquiry authority took cognizance of available facts and documents produced by the applicant during the inquiry. Findings of inquiry authority and the submissions of the applicant were taken into account before issue of order by the disciplinary authority. The penalty was imposed strictly as per rules and there is no illegality in passing of the order by the disciplinary authority. The appellate authority took into cognizance the facts as well as submissions made by the applicant before passing its order. They have also stated that there is no malafide or malice and the OA lacks merit and deserves to be dismissed.

6. We have heard learned counsels for both the parties and have gone through the pleadings of the case. We have also given our thoughtful consideration to the entire matter.

7. We observe that the applicant was suspended on 28.11.2011 just prior to his retirement. He has alleged that no inquiry or preliminary inquiry was conducted prior to his suspension. We are, however, clear that no inquiry or even preliminary inquiry is mandated to be conducted prior to suspension and, hence issue of suspension order without inquiry

or preliminary inquiry cannot be questioned. Applicant's argument that he was not heard or was not given any opportunity to explain his case prior to suspension is also not justified. The applicant would have had opportunity to explain his case during the inquiry which was undisputedly conducted in this case after issue of chargesheet.

8. We further observe that the main ground taken by the applicant is the alleged wrong conclusions drawn or opinions formed by the inquiry officer, the disciplinary authority and the appellate authority while passing the impugned report/orders. His main contention is not regarding procedural lapses or competence of the authorities concerned. Rather, he is trying to prove his point by taking us through detailed facts of the case so as to make us reach a different conclusion than the ones reached by the Inquiry Officer or the Disciplinary Authority or the Appellate Authority. It is settled law that this Tribunal has limited scope in respect of the judicial review of disciplinary cases. Hon'ble Apex Court in a number of cases has held that the Courts cannot interfere in the disciplinary cases unless there is violation of the Rules or of the principles of natural justice. In the case of **B.C. Chaturvedi vs. Union of India & Ors reported in 1995(6) SCC 749**, Hon'ble Apex Court has observed as under: -

“18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief,

either directing the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare case impose appropriate punishment with cogent reasons in support thereof.”

9. From the above judicial pronouncement, it is clear that the Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. This can be done only if that punishment is so unreasonable as to shocks the conscience of the court / Tribunal. We do not find to be the case in this OA. The punishment imposed is 5% cut in pension only for one year. This has been done after issue of chargesheet after CVC advice. Inquiry was held as per procedure. The officer was given reasonable opportunity to be heard. His replies were considered before the disciplinary authority and the appellate authority before passing the impugned orders.

10. We also do not find any ground for malafide or malice. In fact, we find that in para 4.6 of the OA, the applicant is referring to complaints made by him against Shri G.K. Sharma, GMTD to his higher authority. He has enclosed a copy of a letter at Annexure A-5. In fact, letter written by him is in reply to a complaint made on which the applicant was directed to file reply. Even otherwise no person has been impleaded by name by the applicant in the OA. Hence, no ground for malafide is made out in this case.

11. Further, we have also gone through the impugned orders and find no error apparent on the face of the orders which justify interference of this Tribunal for quashing them. We find that the orders passed by the disciplinary authority and the Appellate Authority are quite detailed. They are reasoned and speaking and have been passed after considering

submissions made by the applicant. We, therefore, feel that there orders do not call for any interference of this Tribunal.

12. In view of the above, the OA lacks merit and is dismissed accordingly. No order as to costs.

(Ajanta Dayalan)

Member (A)

Anand...

(Justice Bharat Bhushan)

Member (J)

The other grounds taken by the applicant are either considered not significant or not born out on the basis of records. For instance his contention, the suspension order was antedated is not born out by Annexure A-3 which clearly shows first dispatch of the letter on 31.10.2011 itself. The fact that it was sent to his home address 300 km away from office is not considered material as the same has been found to be dispatched both at his Bareilly address on 31.10.2011. In any case, such correspondences are addressed to permanent address as well as other correspondence address given by the employee in the office. The charged officer normally avoids taking receipt of such documents.