

Central Administrative Tribunal

Principal Bench

OA No.1448/2013

MA No.3748/2018

New Delhi, this the 3rd day of April, 2019

Hon'ble Sh. Justice L. Narasimha Reddy, Chairman

Hon'ble Sh. Mohd. Jamshed, Member (A)

S.P. Sharma,
S/o Late Sri Ram Swarup Sharma,
R/o House No.1110, Gali No.1,
Gular Road,
District Aligarh (UP).

...Applicant

(None)

Versus

1. Union of India,
Through Secretary Telecommunication,
Sanchar Bhawan, 20 Ashoka Road,
New Delhi.
2. Bharat Sanchar Nigam Limited,
Through Chairman and Managing Director/Director
(HR),
Bharat Sanchar Bhawan, HC Mathur Lane,
New Delhi.

...Respondents

(By Advocate : Shri Subhash Gosain for R-1
Shri Rajnish Prasad for R-2)

ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman :-

The applicant joined the service of Department of Telecommunications (DoT) in the year 1967. In the year

2000, the BSNL was brought into existence and a substantial activity of the Department of Telecommunications was made over to it. The applicant became an employee of BSNL w.e.f. 01.10.2000.

2. While the applicant was in service, he was issued a Charge Memorandum dated 11.04.2007. It was alleged that while working as AO (Computer), he issued bills of two subscribers showing less number of calls, contrary to the record. The relevant particulars were mentioned. Another charge was in respect of different customers, in the context of issuing bills. The third article was about his attitude in the context of initiation of the disciplinary proceedings.

3. The applicant did not submit explanation. The Inquiry Officer submitted his report but the Disciplinary Authority (for short, DA) disagreed with the same. After giving an opportunity to the applicant, the DA has taken a view. The applicant retired from the service on 31.05.2008. The DA passed an order dated 24.03.2012 imposing 5% cut in pension for a period of three years. An appeal preferred by him was dismissed by the Appellate Authority on 17.01.2013. This OA is filed

challenging the order of punishment and the one passed by the Appellate Authority. A prayer is also made for interest on pensionary benefits for delayed payment.

4. The applicant contends that the so called act of indiscipline was referable to the period during which he was in the DoT and that the BSNL has no jurisdiction to initiate disciplinary proceedings with reference to those events, much less to impose punishment. He contends that though the Inquiry Officer filed a report stating that the charges are not established, the DA disagreed with the findings without taking into account, the explanations submitted by him. It is also stated that the punishment of cut in pension is not provided under the rules and the entire exercise was done contrary to the settled principles and relevant provisions of law. Reliance is placed upon an order passed by this Tribunal dated 08.10.2013 in OA No.2596/2012.

5. The BSNL on the one hand and the DoT on the other, filed separate counter affidavits together with supporting documents. According to them, the BSNL framed Conduct and Appeal Rules, 2006, dealing with various aspects of the employees, most of whom were

absorbed from the DoT. It is stated that Rule 58 thereof empowered the BSNL to initiate and continue disciplinary proceedings in respect of misconduct, committed prior to the notification of Rules and referable to the period during which an employee was in service of DoT.

6. As regards disagreement, it is stated that the Inquiry Officer held the charges as not proved only on the ground that the original records were not submitted despite the fact that the documentary evidence was placed before him. It is stated that the applicant resorted to acts of gross misconduct by issuing the fabricated bills to customers who made lacs of calls and thereby caused huge loss to the DoT and thereafter to the BSNL. As regards, the order passed by the Tribunal in OA No.2596/2012, it is stated that the provisions of Rule 58 and 61 of the BSNL Conduct and Appeal Rules were not brought to its notice and the result would have certainly been different had the Rules been framed.

7. We heard the applicant who argued the case in person and Shri Subhash Gosain and Shri Rajnish Prasad, learned counsel for respondents No.1&2.

8. The service of the applicant is spread over nearly four decades and the substantial portion thereof was in the DoT. It was only in the year 2000, he became an employee of BSNL. The charge memo was issued to him on 11.04.2007, wherein, three Articles were framed. They read as under :-

“Article-I

That the said Shri S.P. Sharma, while posted and working as AO (Computer) in the office of GMTD Noida during the period 09.07.98 to 26.10.1999 committed some serious irregularities which amounts to misconduct.

During aforesaid period, the said Shri S.P. Sharma AO (Computer) issued following bills in r/o telephone no 2524379 (Old no.524379) for very few calls despite record of heavy local calls.

Sl. No.	Bill No.	Calls recorded	Bills issued for
	01.11.1998	67710	1507
	01.01.1999	106203	389
	01.03.1999	128407	2125

The said Shri S.P. Sharma with the connivance of subscriber of telephone no 2524379 (old no 524379) issued bill for very few calls by using special commands thus favoured the subscriber for personal benefit.

This act on the part of the said Shri S.P. Sharma, resulted in short billing amounting to Rs.4,16,603/- in r/o telephone no 2524379 old no (524379). These short billing as detailed below was made by using special commands by the said Shri S.P. Sharma who was responsible to general telephone bills of SSA and custodian of password.

Sl. No	Bill No.	Calls recorded	Bills issued for	Difference loss (in Rs.)
1	01.11.1998	94024	1601	92423
2	01.01.1999	147914	319	147595
3	01.03.1999	179000	2425	176585

416603

On examination of bills register, SRC of above said number and cancelled bill register maintained in floppy/CD, it was observed that there is no proof available regarding cancellation of any bills pertaining to above said number. It clearly indicates that the said Shri S.P. Sharma extended undue favour to sub of telephone no.2524379 (old no 524379) for personal gain.

By this act, the said Shri S.P. Sharma failed to maintain integrity, showed lack of devotion in discharge of his duty and acted in a manner unbecoming of a BSNL employee, thereby contravened the provision of rule 4(1)(a), 4(1)(b), 4 (1)(c) of BSNL CDA Rules, 2006.

Article-II

That the said Shri S.P. Sharma, as AO (Computer) while working as aforesaid capacity during aforesaid period failed to issue bill in r/o telephone 2524379 (old no 524379) for local call charges w.e.f. 16.2.1999 to 15.4.1999 during which 52687 calls were recorded as per details below –

OMR	OMR date	CMR reading	CMR date	Calls metered
345096	16.02.99	397783	15.4.99	52687

During this period, local call charge from OMR 397783 were billed, resulting in short billing of 52687 calls. Thus a revenue loss of Rs.73673 was caused to BSNL by this act of negligence on the part of Shri S.P. Sharma.

By above act, the said Shri S.P.Sharma showed negligence in issuing bill for proper amount thereby causing revenue loss of Rs.73673/- to

BSNL. This violated provision contained in rule 4(1)(b), 4(1)(c) of BSNL CDA Rules, 2006.

Article-III

That the said Shri S.P. Sharma was summoned vide his office letter no. UPT(W)/Vig-66/014/INV/DOT/05-06 dated 30.11.06 through GMTD Aligarh to attend vigilance inquiry on 08.12.2006 at 11.00 AM. Though the officer attended the office on 08.12.2006 but did not record his statement rather produced a letter dated 07.12.2006 raising irrelevant queries i.e. of supply copy of complaint, copy of order from BSNL regarding appointment of CAO (Vig.) as investigating officer, biased attitude of vigilance wing and officer working in BSNL on deemed deputation basis have no statutory powers etc. The official was again requested to record his statement on 23.12.2006 but he did not respond.

By above act, the said Shri S.P. Sharma shown disregard to rules and procedure and failed to co-operate Investigation Officer in investigation of case, thus disobeyed order of superior office there by violated provision of rule 4(1)(b), 4(1)(c) and rule 5(5) of BSNL CDA Rules, 2006.

9. From a perusal of the same, it becomes evident that being a senior official of the BSNL in the Accounts Section, he issued the bills which did not reflect number of calls recorded. For example, as against the recorded calls of 106203, the bill was issued of 389 calls. Similarly, for the month of March 1999, as against recorded calls of 128407, bill was issued for 2125 calls. Almost 90 to 95% of the actual calls were written off. It would not have been difficult for the applicant to verify

the correctness of these figures. Assuming that there was any technical snag, the bills for the past months would have provided sufficient guidance. No such effort was made. The charge in Article II is of similar nature. In Article III, the acts and omissions on the part of the applicant and the manner in which he confronted the officials is provided in detail.

10. The Inquiry Officer submitted his report holding that the charges are not proved. It would have been different case altogether had it been a case where the evidence, oral or documentary, revealed that the charges are not proved.

11. A perusal of the record discloses that the only ground on which the charges were held not proved is that the original documents were not furnished. It is not in dispute that the attested copies of the relevant records were placed in the inquiry. Added to that, there was no explanation from the applicant to the charge memorandum. We repeatedly asked the applicant as to whether he submitted any explanation. The answer was uniformly 'No'. When the charges are not denied by an employee, the standard of proof required in the inquiry

undergoes a substantial change. It is not a criminal case where entire duty rests upon the prosecution to prove the charge.

12. Be that as it may, the disciplinary authority is conferred with the powers to disagree with the findings, of course, by issuing notice to the concerned employees. In the instant case, such an exercise was undertaken, duly giving opportunity to the applicant. It was only after taking that into account, the disagreement has taken place.

13. This is not a case in which the DA has disagreed with the findings recorded by the inquiry officer, simply by issuing a disagreement note and giving an opportunity to the employee. After the applicant submitted his explanation/representation to the disagreement note, the DA has undertaken extensive discussion in the impugned order, almost dealing with every important paragraph of the representation and having reached to the conclusion that the charges are grave, the disciplinary authority proceeded to impose the punishment of 5% cut in pension for a period of three years. If one takes into account, the gravity of the charges levelled against the

applicant, the punishment imposed cannot said to be disproportionate at all.

14. The appellate authority has considered the matter in detail and passed a six typed pages order, and one can hardly expect such a detailed consideration, at the level of appellate authority. In the order in OA No.2596/2012, the purport of the relevant Service Rules was not taken into account.

15. We do not find any merit in the OA and the same is, accordingly, dismissed.

Pending MAs, if any, also stand disposed of.

There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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