

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.21/1044/2015

Date of Order: 20.06.2019

Between:

Dr.K.V. Subbarao, S/o. Sri K. Satyanarayana,
Aged about 56 years, Joint Secretary Level Officer
Working as D.D.G., NT-AP, 2nd Floor,
Kavadiguda Telephone Exchange,
Hyderabad – 500 080.

... Applicant

And

1. Union of India, Rep. by its Secretary,
Department of Telecommunications,
Ministry of Communication and Information Technology,
Room No. 210, Sanchar Bhavan,
20 Ashok Road, New Delhi-1.
2. Member Services,
Department of Telecommunications,
Ministry of Communication and Information Technology,
Room No. 212, Sanchar Bhavan,
20 Ashok Road, New Delhi-1.
3. The Central Vigilance Commission,
Satarkata Bhavan, GPO Complex,
Block – A, INA, New Delhi – 23.
4. Chief Vigilance Officer,
Department of Telecom,
Ministry of Communication and Information Technology,
Room No. 901, Sanchar Bhavan,
20 Ashok Road, New Delhi-1.

... Respondents

Counsel for the Applicant ... Applicant in person

Counsel for the Respondents ... Mrs. K. Rajitha, Sr. CGSC

CORAM:

***Hon'ble Mr. Justice L Narasimha Reddy, Chairman
Hon'ble Mr. B.V. Sudhakar, Member (Admn.)***

ORAL ORDER***{As per Hon'ble Mr. Justice L Narasimha Reddy, Chairman}***

The applicant was selected in the All India Engineering Service, in the year 1981 and was allotted to Department of Telecommunications. He joined the service on 16.7.1983. By the year 2002, he rose to the level of Joint Secretary and was put in Pay Band-4. He was also posted as General Manager, BSNL, Nanded. Since the post of GM, BSNL, Latur was vacant, he was kept in-charge of that post.

2. In the context of exercise of financial powers, the BSNL issued orders dt. 04.10.2001 delegating the revised financial powers to the Chief General Managers/ PGMs/GMs and TDMs (Heads of SSAs). One such power was as regards the printing and binding of Forms, Telephone Directories and other documents. Full powers in that behalf were delegated.

3. The applicant was issued a charge memo dt. 30.06.2008 alleging that in the year 2003, he placed orders for printing of telephone directories of Latur, by inserting Marathi information pages in English Telephone Directory at the rate of 13 paise per page as against @ 8 per page, as per agreement dt. 15.01.1999. It was stated that the said exercise resulted in extra cost of Rs.5,91,500/-.

4. The applicant submitted explanation denying charge. He stated that, being under the bonafide impression that full powers are conferred upon the GMs, he incurred the expenditure to promote the interest of BSNL and it was only at a subsequent stage i.e. in the year 2004 that the BSNL issued clarifications stating that the full powers ought not have been issued in the context of printing of directories. The plea of the applicant was not accepted and Inquiry Officer (for short "IO") was appointed. The IO held the charge as proved, and taking the same into account, the disciplinary authority obtained the advice of the UPSC and passed an order dt. 09.11.2011 imposing the punishment of 'reduction to a lower stage in the time scale of pay by two stages for a period of three years, without cumulative effect and not adversely affecting his pension'. The applicant preferred a review, though it is not provided under law, and that was not of any avail.

5. This OA is filed challenging the charge memo as well as the order of punishment.

6. The applicant contends that the very charge was without any basis, particularly, when the respondents themselves have found defect in the relevant provision of law. It is also pleaded that no allegation of either favouritism or lack of integrity was made and the punishment was totally unwarranted.

7. The respondents filed a detailed counter opposing the OA. It is stated that the applicant has deviated from the prescribed procedure and caused loss to the Department to the tune of Rs.5,91,500. It is stated that the UPSC has examined the matter in detail, in the light of the report of the IO, and that the disciplinary authority has imposed the punishment on the basis of the advice tendered by the UPSC.

8. We heard the applicant, who argued the case in person and Mrs. K. Rajitha, learned Senior Central Govt. Standing Counsel.

9. The only Article of Charge framed against the applicant reads as under:

“Article : I

That Shri K. Venkata Subba Rao, was functioning as GMTD, Latur during the year 2003. He while working as above approved insertion of additional Marathi information pages in English Telephone directory @ 13 paise page/ copy, against the approved rates of Rs.8/- per copy and agreed vide agreement dated 15.01.1999 at extra cost of appx. Rs.5,91,500 without following dept. guidelines of the DOT and BSNL in this regard thereby causing pecuniary loss to the department.

Thus, by his aforesaid act, Shri K. Venkata Subba Rao, violated the provision of Rule 60 of FHB Vol.I and Rule 6 of GFR and instruction contained in the DOT's letter No. 1-3/98-PHB dated 27/11/98 and hence failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government servant and thereby contravened the Rule 3(1)(i), (ii) & (iii) of CCS (Conduct) Rules, 1964.”

From this, it is clear that the only allegation against the applicant is that he incurred extra cost of Rs.5,91,500/-. In case the applicant has

exceeded his limit, it would certainly amount to act of misconduct, even if there is no allegation as to misappropriation.

10. The applicant found himself in a peculiar situation. BSNL was incorporated in 2000 and substantial activity of the Department of Telecommunications was assigned to it. In the formative years, there was no clarity on many administrative aspects and efforts were being made, from time to time, to bring about clarity.

11. As regards financial powers, BSNL issued a Circular dt. 04.10.2001, which reads as under:

"No. 6-15/2000-EB
BHARAT SANCHAR NIGAM LIMITED
 (A Govt. of India Enterprises)

O/o. Sr. DDG (NW/WS)
 CTS Compound, Netaji Nagar,
 New Delhi – 110 023.
 Dated: 04.10.2001

To
All Chief General Managers,
Telecom Circles/ Metro Districts/
Maintenance Regions/ Project Circles and
other Administrative Organizations.

*Sub: Delegation of revised Financial Powers to Chief
General Managers/ PGMs/ GMs and TDMs
(Heads of SSAs)*

Consequent on formation of Bharat Sanchar Nigam Limited since 1.10.2000, a proposal for delegation of revised Financial Powers to Chief General Managers/ PGMs/ GMs and TDMs (Heads of SSAs) has been under consideration of BSNL Board. BSNL Board has now decided to delegate revised Financial Powers to Chief General Managers/ PGMs/ GMs and TDMs (Heads of SSAs) as per Annexure A, B and C enclosed subject to the following conditions:

1. *The exercise of Financial Powers is subject to strict observation of rules, orders, instructions and guidelines issued by DOT/DTS/DTO and BSNL from time to time and availability of funds.*
2. *These Financial Powers will be exercised strictly in consultation with IFA of the respective Circles/ SSAs respectively.*
3. *The powers sub delegated to subordinate officers will also be exercised with the concurrence of an appropriate level of Accounts & Finance Officer decided by the circle IFA.*
4. *It should be ensured that the expenditure on all occasion will be limited to the Budget allocation and cash drawl limit fixed by corporate HQ.*
5. *These Financial Powers in annexure A, B and C will replace schedules VI, VII and IX of old schedule of Financial Powers being exercised at present vide this office letter No. 6-15/2000-EB dated 23.11.2000.*
6. *Financial Powers in Annexure B will also be exercised by Area GMs and GMs in Maintenance Regions/ Project Circles and in other functional Units in BSNL.*

Similarly Financial Powers in Annexure C will also be exercised by the Directors in Maintenance Regions and Project Circles.

7. *This issues with the concurrence of BSNL Finance vide U.O. No. 1915/EF/01, dated 25.09.2001.*

*Sd/- (R.A. Gupta)
Jt. DDG (WS)"*

In para 5.4 of the Annexure, the powers relating to printing and binding of directories were delegated as under:

5.4	<i>Printing and Binding of forms, Telephone Directory and other documents of the company</i>	<i>Full powers</i>	
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12. Clause 5.4 extracted above, read with Clause 1 of the Circular gave an impression to the applicant that there are no limits for incurring expenditure to get the telephone directory printed. In case there existed any provision to the contrary, he could certainly be found fault with for

ignoring it. That the Memo dt. 04.10.2001 gave an impression that the General Manager can exercise full powers to get the telephone directories printed, was evident from Circular dt. 04.02.2004 issued by the BSNL, which reads as under:

“BHARAT SANCHAR NIGAM LIMITED

No.1-2/2001-PHB

Dated: February 4, 2004

Circular No. 3/2004-PHB

To

***All Chief General Managers,
Telecom Circles/ Metro Telephone Districts
Bharat Sanchar Nigam Limited.***

***Sub: Powers for printing of telephone directory –
clarification regarding***

Reference is invited to instructions issued vide letter No. 1-3/98-PHB dated 27.11.1998 vide which revised policy of directory printing was issued wherein almost all the powers for printing of the directories were delegated to the CGMs except the powers of printing the same on negative royalty/ cost sharing or departmentally. These powers still vest with the CGMS only.

2. *Subsequently, EB branch has issued revised instructions for delegation of Financial Powers to Chief General Managers/ PGMs/ GMs and TDMs (Heads of SSAs) vide letter No. 6-15/2000-EB dated 4.10.2001, vide which PGMs/ GMs and TDMs have wrongly been shown as having full powers for printing and binding of telephone directory causing doubts in the minds of some field officers as to whether the instructions issued by EB branch supercede those issued vide PHB Section's letter dated 27.11.1998 referred above.*

3. *The case is being referred to EB branch for issuing necessary amendment to their letter dated 04.10.2001. In the meanwhile, the CGMs are requested to continue to follow instructions issued vide PHB Sections letter dated 27.11.1998 in this regard.*

*Sd/xxxxxx
(C.R. Prasad)
Asst. Director General (PHB) ”*

13. The matter did not stop at that. To bring about further clarity, BSNL has changed para 5.4 of the Annexure - II to the Circle dt. 04.10.2001, as under:

<i>Item No.</i>	<i>Name of Item</i>	<i>Delegated powers to GM</i>	<i>Delegated to TDMs</i>	<i>Remarks</i>
5.4	<i>Printing & Binding of forms, Telephone Directory and other documents of the company</i>	<i>Full Powers</i>	<i>Full Powers</i>	<i>For Printing of Telephone Directory on negative royalty/ cost sharing basis, approval of CGMT is to be obtained.</i>

What was absolute power before the amendment came to be a restricted one, subject to the approval of the CGMT.

14. When this is the fluidity of the situation from the perspective of the respondents themselves, it is difficult to infer that the applicant was wrong in coming to that very conclusion. Though the applicant made a specific reference to the Circular dt.04.02.2004 and the amendment carried out on 04/07.06.2004 in his response to the report of the Inquiry Officer, the same was not dealt with either by the UPSC or the disciplinary authority. It is a clear case of non application of mind.

15. Therefore, we allow the OA by setting aside the impugned orders. However, we direct the disciplinary authority to examine the matter duly taking into account, the circular dt.04.02.2004 and the amendment dt. 04/07.06.2004 and pass fresh orders within three months from the date of receipt of this order. If no such order is passed within that time, the respondents shall release the amount, which was denied to the applicant on account of the order of punishment. There shall be no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(JUSTICE L. NARASIMHA REDDY)
CHAIRMAN

(Dictated in open court)
Dated, the 20th day of June, 2019

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