

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

Original Application No.1382/2013

Date of C.A.V. : 26.09.2018

Date of Order : 05.03.2019

Between :

A.Tirumal Raj
S/o A.Shiv Raj, aged 45 years,
Occ : Ex.Junior Telecom Officer (Civil),
(Under the orders of dismissal),
O/o The Sub-Divisional Engineer (Civil),
Bharat Sanchar Nigam Limited,
Mahaboobnagar.

... Applicant.

And

1. Bharat Sanchar Nigam Limited,
Represented by the Chairman-cum-
Managing Director,
BSNL Bhavan, New Delhi.

2. The Chief General Manager,
Door Sanchar Bhavan, Abids,
A.P.Circle, Hyderabad – 500 001.

3. The Chief Engineer (Civil),
BSNL Civil, Room No.701,
BSNL Bhavan, Adarsh Nagar,
Hyderabad – 63.

4. The Superintendent Engineer (Civil),
BSNL Civil Circle – II, BSNL Bhavan,
Room No.702, Adarsh Nagar,
Hyderabad – 500 063.

... Respondents.

Counsel for the Applicant	...	Mr.K.R.K.V.Prasad, Advocate
Counsel for the Respondents	...	Mrs.B.Geetha, S.C. for BSNL

CORAM:

Hon'ble Mr.Justice R.Kantha Rao ... **Member (Judl.)**
Hon'ble Mrs.Naini Jayaseelan ... **Member (Admn.)**

ORDER

{ As per Hon'ble Mr.Justice R.Kantha Rao, Member (Judl.) }

Heard Sri K.R.K.V.Prasad, learned counsel for the applicant and Smt.B.Geetha, learned standing counsel for the respondents.

2. While the applicant was working as Junior Telecom Officer (Civil), in BSNL at Hyderabad, his wife lodged a report with police alleging that he married another lady while his marriage was subsisting with her. Basing on the said report a case was registered and the applicant was arrested and remanded to judicial custody. In consequence thereof the applicant was suspended. Subsequently the order of suspension was revoked. The police investigated into the criminal case and filed charge sheet which is numbered as C.C.524 of 2007 on the file of XIII Additional Chief Metropolitan Magistrate Court (Mahila Court), Hyderabad. The Trial Court found him guilty for the offence under Section 494 IPC i.e. for marrying second time during the subsistence of a valid first marriage. He was convicted and sentenced to undergo imprisonment for three years and to pay a fine of Rs.1000/-. The applicant filed an appeal against the said order of conviction and sentence. On appeal the V Additional Metropolitan Sessions Judge (Mahila Court), Hyderabad acquitted him in Criminal Appeal No.296 of 2011.

3. Simultaneously the disciplinary proceedings were initiated against the

applicant and they were proceeded with. Two charges have been framed against the applicant. The first charge is on the allegation that he suppressed the pendency of criminal case against him and the second charge is that of bigamous marriage. The inquiry officer completed the inquiry and held that the charges have been proved and submitted report to the Disciplinary Authority who is the 3rd respondent herein. The Disciplinary Authority upon considering the inquiry report, exonerated the applicant of the first charge and confirmed the finding of the inquiry officer as regards the second charge finding him guilty. The Disciplinary Authority passed the final order dated 10.10.2012 dismissing the applicant from service. The applicant preferred an appeal and the Appellate Authority confirmed the order passed by the Disciplinary Authority. The applicant therefore filed the present OA to set aside the order passed by the Disciplinary Authority which was confirmed by the Appellate Authority and to reinstate him with all consequential benefits.

4. One of the grounds raised by the applicant to set aside the impugned orders is that when once the Criminal Court acquitted him of the very same charge on same evidence on merits the department is precluded from taking disciplinary action against him. As regards the question whether the acquittal is on merits, it is necessary to peruse the relevant paragraphs in the judgement of the Appellate Court which acquitted him of the charges under Section 494 of IPC, which reads as follows :

"Absolutely, no iota of evidence was brought on record to prove that

ceremonies required for valid marriage were performed at the time of marriage of A1 and A2. There is no direct witness to marriage to speak about ceremonies. As such, the prosecution failed to prove the necessary requirement like 'Saptapadi' for marriage between A1 and A2 so as to hold that there was valid marriage in sense of valid ceremonies. Further the documents under Ex.P2 to P5 as well as the evidence of PWs 4 and 5 is only helpful to the prosecution to show that A1 and A2 had been living together as wife and husband which is not the requirement contemplated to convict the accused for charged offence U/s 494 of IPC."

5. In this context it is essential to notice the distinction between the standard of proof of a criminal charge and a charge in the departmental proceedings and also the purpose for which both the proceedings are initiated. The purpose of criminal trial is to punish the offender for the criminal offence, whereas the departmental proceedings is aimed at taking the appropriate departmental action which is provided for under the service and conduct rules relating to an employee. The standard of proof required in regard to a criminal offence is that of proof beyond reasonable doubt, whereas in case of departmental inquiry it is preponderance of probability.

6. Here it could be relevant to mention about the judgement relied on by the learned standing counsel for the respondents in **1994 (2) SCC 37 State of West Bengal Vs. Prasenjit Dutta**, wherein the Hon'ble Supreme Court held as follows :

“Misconduct-Allegation of second marriage by the employee—The departmental authority can proceed to examine the question of second marriage for limited purpose of departmental action—However, after culmination of departmental proceedings, the employee can approach the civil court for determination of his matrimonial status—The High Court was not justified in holding that such matter could not be decided by the departmental authority.

The High Court was of the view that the second marriage was a serious matter which could not be left to be decided by the departmental authority in proceeding and a civil or matrimonial court needs to pronounce thereon properly and finally. The High Court may be correct that the question about existence of relationship of husband and wife is to be dealt by matrimonial and civil court but at the same time it cannot be said that the departmental authority cannot go into such question for limited purpose of sub-rule (4) of Rule 5 of West Bengal Services (Duties, Rights and Obligations of the Government Employees) Rules, 1980 to find whether it amounted to misconduct or not.”

7. In the instant case the acquittal was on the ground that the prosecution failed to establish the ceremonies in respect of second marriage. The Appellate Court also recorded a finding that there is evidence to show that the applicant and the second wife had been living together as wife and husband, but acquitted the applicant on the ground that is not sufficient to prove the requirements of the ceremonies contemplated to prove the charge of second marriage. Therefore, we absolutely see no merit in the contention that the acquittal of the applicant is on merits. Thus, he cannot in our view resist the departmental proceedings.

8. Foremost among the grounds urged by the applicant to set aside the

dismissal order and to reinstate him is that the 4th respondent – the Superintendent Engineer (Civil) has no competence and jurisdiction to initiate disciplinary action and the Chief Engineer (Civil) the 3rd respondent is incompetent to act as a Disciplinary Authority.

9. The respondents refuted the said contention and asserted that the 4th respondent can initiate proceedings and the 3rd respondent also as per the relevant disciplinary rules applicable to the applicant can act as Disciplinary Authority. They further asserted that the order passed by the 3rd respondent was approved by the 2nd respondent.

10. To address this issue we would like to refer to the judgement of the Hon'ble Supreme Court in **2006 (2) SCC 373 Union of India and Others Vs. Hasmukhbhai Hirabhai Rana**, wherein the Hon'ble Supreme Court held as follows :

“7. There is no dispute that the departmental proceeding can be initiated by a person lower in rank than the appointing authority. But the final order can be passed only by the appointing authority or an authority higher than it. The law relating to initiation (sic of disciplinary proceeding) by a person lower in rank than the authority competent to pass final order has been the subject matter of adjudication in many cases.

8. It is not in dispute that the respondent has been reinstated in the meantime but what appears not to have been done is to grant an opportunity to the appellants so that the appropriate authority can pass

the final order in the departmental proceeding. The distinction now sought to be made between the orders dated 1-1-1990 and 13-6-1990 does not appear to have been highlighted either before CAT or the High Court. It is only before this Court that such a plea has been raised.

9. *In the aforesaid background we modify orders of CAT and the High Court to the extent that the DRM can consider all relevant aspects after granting opportunity to the respondent on the basis of the enquiry report submitted. The departmental enquiry shall be concluded as early as practicable. Needless to say that the respondent has to cooperate in the departmental proceedings.”*

11. In view of the above judgement rendered by the Hon'ble Supreme Court, the 4th respondent who is lower in rank than the appointing authority can initiate disciplinary action against the applicant and the applicant cannot contend that the inquiry is vitiated. However having gone through the submissions made on either side and perusal of the material papers filed by them, we are of the view that the 2nd respondent i.e. the Chief General Manager is the Disciplinary Authority, but not the 3rd respondent who is the Chief Engineer (Civil). The approval of the 2nd respondent to the final order passed by the 3rd respondent does not cure the defect.

12. Consequently the dismissal order passed by the 3rd respondent / Disciplinary Authority dated 10.10.2012 which was confirmed by the Appellate Authority vide order dated 23.11.2013 is set aside. The respondents are directed to reinstate the applicant into service within a period of four weeks from the

date of receipt of this order. Further the 2nd respondent or any authority competent to pass final order is directed to serve a copy of the inquiry report on the applicant, afford him opportunity to make his submissions on the basis of the inquiry report and pass final order within a period of eight weeks.

13. The OA is partly allowed. There shall be no order as to costs.

(NAINI JAYASEELAN)
MEMBER (ADMN.)

(JUSTICE R.KANTHA RAO)
MEMBER (JUDL.)

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