

CENTRAL ADMINISTRATIVE TRIBUNAL
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O.A. No.350/01918/2015

Hon'ble Mrs.Bidisha Banerjee, Judicial Member

Hon'ble Dr.(Ms) Nandita Chatterjee, Administrative Member

Shri Subrata Gangopadhyay
Son of Late Sambhunath Gangopadhyay
Aged about 56 years,
Presently residing at 22/A, Hari Sabha Road,
2nd Lane, P.O. Nona Chandan Pukur,
Barrackpore, Kolkata - 700122.

.....Applicant



By Advocate : Mr B. R. Das.

- Versus -

1. Union of India
Through the Secretary,
Department of Telecommunication,
20 Ashoka Road,
New Delhi - 110 001.
2. The Chief General Manager,
Calcutta Telephones,
Telephone Bhawan,
34, B.B.D Bag,
(South), Kolkata - 700001.
3. Bharat Sanchar Nigam Limited(BSNL),
Having its office at Telephone Bhaan,
34, B.B.D Bag,
(South), Kolkata - 700001.
4. The General Manager (Finance)
Calcutta Telephones,
Telephone Bhawan,
34, B.B.D Bag,
(South), Kolkata - 700001.
5. The Director (HR) BSNL,
Bharat Sanchar Bhavan,
Janpath, New Delhi - 110 001.

.....Respondents

By Advocate : Ms M. Bhattacharya, Mr B.P.Manna

Date of Hearing 24.09.2019

Date of Order : 26-11-2019

ORDER

MS BIDISHA BANERJEE, MEMBER(J)

This application has been preferred to seek the following reliefs :

"a) Quash the purported charge sheet being Memo No.VIG/2005/A/1 dated 08.09.2015 as well as the follow steps relating to appointment of Enquiry Officer and Presenting Officer.

b) Such other order/orders be passed as this Hon'ble Tribunal may deem fit and proper."

2. The case of the applicant in a nutshell is as under :

The applicant joined the department of Telecommunication (DOT) sometimes in 1982. Later on he was deputed to BSNL and ultimately absorbed in BSNL on or about 01.10.2000 as Assistant Accounts Officer (AAO). The CBI on or about 02.02.2005 seized some documents from the applicant's house. A case being CBI/SPE/ACB/Kolkata Case No.RCCAA 20050006 dated 18.02.2005 was started following which the applicant was suspended on or about 23.04.2005. A special Case No.18 under various sections of the Prevention of Corruption Act, 1988 was lodged. A charge sheet was filed for alleging disproportionate assets pertaining to the period 01.04.1993 to 03.02.2005 which according to the applicant is presently in a advance stage. The respondent No.2 vide Memo dated 08.09.2015 issued article of charges against the applicant on the same ground with same set of charges, witnesses and documents. The applicant prayed for stay of the proceeding as the subject matter was identical to that of the matter pending before the CBI Court. The applicant's service was restored but respondent No.2 decided to proceed with the enquiry by appointing an Enquiry Officer and a Presenting Officer. Hence the O.A.



3. In this O.A the applicant has alleged that the charges of the disproportionate assets being of the period, while he was serving under department of Telecom (DOT in short) could not have been taken up by his present employer BSNL under CDA Rules which was promulgated only in 2006 and could not have been retrospectively applied to a charge sheet an employee for an allegation alleged to have committed prior to its promulgation. In support, learned counsel for the applicant would cite a decision of the Tribunal rendered in O.A.1918 of 2015.



4. Per contra, the respondents would submit that the proceedings were absolutely in order as the CDA Rules empowered the BSNL authorities to proceed against the absorbed employees.

5. The learned counsels were heard and materials on record were perused.

6. Having heard the learned counsel, having considered their rival contentions and having delved in depth into the materials on record, we infer as under :

(i) That the charges/indictments, as contained in the charge memo dated 08.09.2015, issued under Rule 36 of BSNL Conduct, Discipline and Appeal Rules, 2006, by the Chief General Manager, Calcutta Telephones, Kolkata, in fact related to the period 01.04.1993 to 03.02.2005, i.e. prior to promulgation of BSNL CDA Rules, out of which the period 01.04.1993 to 30.09.2005 fell even prior to applicant's absorption in BSNL.

In order to decide whether the provisions of BSNL CDA Rules could be invoked to penalize an absorbed employee for an alleged act of commission of a period prior to promulgation of Rules, we would refer to the decision in O.A. 946/2012, wherein it was held as under :

"17. Further, Hon'ble Calcutta High Court, in WPCT No. 408 of 2012 while dealing with the present applicant noted the following facts:

".....respondent was employed with the Calcutta, Telephones which was taken over by the Bharat Sanchar Nigam Limited (BSNL). An FIR was lodged against the respondent on 5th April, 2005 under section 13(1)(a) and section 13(2) of the Prevention of Corruption Act, 1988. The respondent was suspended on 6th October, 2005. The allegation against him was acquisition of assets, disproportionate to his known source of income. While the respondent was under suspension, he was absorbed in service with the BSNL.

The application was submitted by the respondent to his erstwhile employer, i.e. the Calcutta Telephones on 10th November, 2005 for revocation of the order of suspension. However, that was not done and a charge sheet was issued to him on 23rd March, 2007.

On 14th July, 2010 the respondent preferred O.A. No. 1660 of 2010 for quashing the continued suspension against him. He contended therein that the order of suspension cannot be continued endlessly against an employee."

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On 16th October, 2011 the departmental enquiry concerned against the respondent, was concluded and the Enquiry Officer held that the charge was not proved against the respondent".

The learned counsel for BSNL has also "submitted that once the BSNL took over the employment of the respondent, he having opted for employment with the BSNL, it is the BSNL (Conduct, Discipline & Appeal), Rules, 2006 which would prevail over the Central Civil Services (Classification, Control and Appeal) Rules.

Hon'ble High Court in the said matter held as under:

"we are not convinced by the submission made by the learned advocate for the petitioners. There is no dispute that the BSNL took over the Calcutta Telephone in the year 2006 and the rules came into effect on 10th October, 2006. Therefore, although the BSNL had taken over the establishment of the Calcutta Telephones and the service of the respondent, the old rules of the Central Civil Service (Classification, Control & Appeal) Rules prevailed and covered the service conditions of the employees working in the erstwhile department, prior to the take over. The new rules became applicable only in October, 2006."

We would note that the Rule 58 of BSNL CDA, particularly Rule 58(iv) was neither challenged, nor was in issue or discussed in the aforesaid judgments. We however noted that although ruled in favour of the employee, Hon'ble High Court in its judgment has not altogether debarred BSNL from invoking CCS (CCA) Rules to deal with its employees for their conduct prior to promulgation of BSNL CDA Rules.

18. In *P. Selvaraj vs. BSNL, in W. P. (M.D.) 13341 of 2010, M.D. (M.D.) 1 of 2010*, Hon'ble Madras High Court has upheld the decision of CAT, Chennai Bench, of permitting BSNL to continue proceedings against a BSNL employee initiated vide charge memo dated 22.3.2006 under CCS (CCA) Rules, for his acts while serving as TTA at Sholavandar Telephone Exchange prior to promulgation of CDA rules. Hon'ble Court brushed aside the claim of the

employee that the proceeding was badly delayed and both Department and criminal proceedings were one and same and therefore upon acquittal in criminal case Departmental case should not continue in view of U.O.I represented by its **Commissioner of IT &Anr. Vs. CAT represented by its Registrar &Anr.** (2005) II LLJ 307 Madras, rendered referring to Supreme Court decision in **Corporation of the City of Nagpur vs. Ram Chandra &Ors. [AIR 1984 SC 626 = (1981) 2 SCC 714]** " that if authority feels there is sufficient evidence and good grounds to proceed with the enquiry it can certainly do so" and **UOI vs. Naman Singh Shekhawant (2008) 4 SCC 1** that initiation of departmental proceedings must be viewed on the background of total exoneration by criminal court and cannot be initiated on account of delay. Therefore, proceedings initiated under CCS (CCA) Rules that were pending when BSNL CDA came into effect, can be safely concluded by BSNL in view of the saving clause.

19. In the aforesaid backdrop, so long the applicant served in DOT until his absorption in BSNL i.e. while he was in the strength of DOT, the Central Govt. that had the right to proceed against him and punish him either under CCS (CCA) as a serving employee, or in terms of Rule 9 of CCS (Pension) Rules, after he retired from DOT, subject to the limitation and restrictions imposed by Rule 9 (iv) of Pension Rules. Misconduct during such period can never be determinable by BSNL as BSNL would not have the power to initiate proceedings or withhold pension and other retiral dues that were payable by Central Govt. in terms of CCS (Pension) Rules or became payable in terms of Rule 37A of CCS (Pension) Rules, 1972, amended in 2000.

20. Accordingly, having understood the true import and implication of the judgments and orders, extracted *supra*, we conclude as under that:

(i) when the questionable conduct of an employee is while the employee was on the strength of DOT i.e. prior to formation of BSNL, such conduct that was determinable by DOT under CCS (CCA) Rules, would remain determinable under the CCS (CCA) Rules, or the CCS (Pension) Rules, as the case may be, but only by the Central Govt.,

(ii) when the questionable conduct is post absorption in BSNL i.e. post Oct, 2000, while in disposition of BSNL but prior to promulgation of BSNL CDA Rules such, as was determinable under CCS (CCA) Rules in view of Rule 58(iv) of BSNL CDA Rules would be determinable by BSNL under CCS (CCA) Rules if CCS (CCA) stood already invoked or else if not instituted then under BSNL CDA Rules;

(iii) while such questionable conduct of an employee of BSNL, past promulgation of BSNL (CDA) would irrefutably and inarguably be determinable under BSNL (CDA) Rules.

21. Having so concluded, we noticed the misconduct is allegedly committed between 28.02.1995 to 30.09.2000 when it was determinable by DOT in terms of CCS (CCA) Rules. Given the saving clause in Rule 58 of BSNL CDA it would still be determinable by DOT and not by BSNL under its CDA Rules. Therefore, the chargesheet issued in the present case by the BSNL under the guise of exercise of power under Rule 58 *ibid*, was issued absolutely without authority and jurisdiction and was therefore unsustainable and liable to be quashed.

22. In the present case having so concluded, we discern that the applicant, who was erroneously prosecuted under BSNL CDA rules for the period of service rendered in DOT rendering the chargesheet a nullity is not yet acquitted of all criminal charges. But he has been allowed to superannuate.



23. In the aforesaid backdrop, having already concluded that disciplinary action under BSNL (CDA) for alleged misconduct while serving under DOT as illegal, while we have no hesitation to quash the charge memo and hold that the applicant would be entitled to receive all held up retiraldues within a period of one month from the date of receipt of a copy of this order, we also grant liberty to the respondents to act in accordance with law in regard to the questionable conduct while in BSNL and the outcome of criminal proceedings."

(ii) We further note that in **O.A. 3465/2012, Shri M.L.Sharma vs. Bharat Sanchar Nigam Ltd., CAT, Principal Bench** held as under :



"Further, we find that the Respondents have initiated action against the Applicant in some cases under the BSNL Conduct, Discipline and Appeal Rules, 2006, and in some cases under the CCS (CCA) Rules, 1965. While the disciplinary proceedings against the Applicant in respect of the lapse in supervising work of trenching and laying of O.F. Cables while he was functioning as DE (OFC), Guwahati during the period 1995-96 was initiated under Rule 35 of BSNL, CDA Rules, 2006, for certain alleged related lapses committed by him in the year 1996-97 in Guwahati itself, the proceedings have been initiated under Rule 36 of BSNL, CDA Rules, 2006. Again, for some other six related alleged misconduct committed by the Applicant during the said period in the same place, the Respondents have proposed to take action against him under Rule 14 of the CCS (CCA) Rules, 1965. The Respondents are totally confused. They are not sure as to which Rule is applicable in the cases against the Applicant.

While determining whether the past action/conduct of an employee in DOT when he was not in the strength of BSNL could be questioned by BSNL, the Bench held as under :

In any case, for the same offence relating to the period 1995-96/1996-97 alleged to have been committed by the Applicant while he was working in Guwahati under the Government of India, he cannot be tried under the different set of rules. The Respondents aforesaid action is against their own submission that till finalization of BSNL CDA Rules, 2006, the applicant was subject to the CCS (Conduct) Rules 1964 and CCS (CCA) Rules, 1965 and from 10.10.2006 BSNL CDA rules, 2006 superseded these rules.

13. As rightly argued by the learned counsel for the Applicant, the Applicant became an employee of the Respondent-Corporation only with effect from 01.10.2000 and the BSNL, CDA Rules, were admittedly promulgated in the year 2006. Till such time, as submitted by the Applicant, he was to be governed under the CCS (CCA) Rules, 1965. Therefore, the disciplinary proceedings initiated against the Applicant by the BSNL for the alleged misconduct committed when he was not on the strength of the Respondent-Corporation in terms of the aforesaid rule is without jurisdiction. As far as CCS (CCA) Rules, 1965 are concerned, the Applicant has already retired from service on 1.10.2000 and no disciplinary proceedings could have been initiated against him under the said Rules. If at all any proceedings had to be initiated, it

is possible only under the provisions of Rule 9 of CCS (Pension) Rules, 1972. Even the Central Government could not have issued any charge sheet to him in the year 2005/2006 for the misconduct alleged to have been committed in the year 1995-96/1996-97 in terms of Sub-Rule 2 (b)(ii) of the said Rules.

14. In the above facts and circumstances of the case, we agree with the counsel for the Applicant that the disciplinary proceedings initiated against the Applicant is not only badly delayed but they were also without jurisdiction. We, therefore, allow both these OAs. Consequently, we quash and set aside the Memorandum dated 28.06.2007, the order of the Disciplinary Authority dated 18.11.2008 imposing the penalty of Censure upon him, Appellate Authority's order dated 22.05.2009 and the Reviewing Authority's order dated 28.07.2011 in OA No.2596/2012. Similarly, we quash and set aside the impugned charge sheets dated 7.10.2005, 15.12.2005, 18.09.2006, 18.11.2006 and 23.12.2006 in OA No.3456/2012 with all consequential benefits. The Respondents shall also pass appropriate orders withdrawing the aforesaid Memorandum/Order in compliance with the aforesaid directions within a period of 2 months from the date of receipt of copy of this order.



7. In view of the decision in O.A.946/2012 rendered on the basis of a decision of the **Hon'ble Calcutta High Court at Kolkata in WPC 408/2012** and having noted the decision rendered by Principal Bench under identical circumstances in **O.A. 3465/2012, Shri M.L.Sharma vs. Bharat Sanchar Nigam Ltd.** both of which bind us, we hardly have any scope to take a contrary view. Accordingly, we quash and set aside the charge sheet dated 08.09.2015 with liberty to the respondents to act in accordance with law.

8. O.A accordingly stands disposed of. No order as to costs.

(DR NANDITA CHATTERJEE)
MEMBER (A)

(BIDISHA BANERJEE)
MEMBER (J)