

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA**

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O.A. 1345 of 2016

Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. N. Chatterjee, Administrative Member

Tapan Kumar Das,
Son of Late Sachindra Nath Das,
Aged about 62 years,
Residing at 18, East Kantalpara,
Post Office – Naihati,
Police Station – Naihati,
District – North 24 Parganas,
Pin – 743 165,
Retired Senior Accounts Officer (Audit),
Bharat Sanchar Nigam Limited,
Calcutta Telephones;
..... Applicant.

Versus

1. Union of India
Service through the Secretary,
Ministry of Communication &
Information Technology,
Department of Telecommunication,
Government of India,
Sanchar Bhavan, 20, Ashoka Road,
New Delhi – 110 001.
2. Bharat Sanchar Nigam Limited,
A Government of India Enterprise
Service through the Chairman-cum-Managing
Director, Bharat Sanchar Bhavan,
Harish Chander Mathur Lane, Janpath,
New-Delhi – 110 001.
3. The Director (HR),
Bharat Sanchar Nigam Limited,
Bharat Sanchar Bhavan,
Harish Chander Mathur Lane, Janpath,
New Delhi – 110 001.
4. The Chief General Manager,
Bharat Sanchar Nigam Limited,
Calcutta Telephones,
Telephone Bhavan,

34, B.B.D. Bag (South),
Kolkata - 700 001.

..... Respondents.

For the applicant : Mr. A. Ghosh, Counsel
Mr. K. Sarkar, Counsel

For the respondents : Mr. R.N. Pal, Counsel
Ms. D. Nag, Counsel

Reserved on : 22.08.2019

Date of Order : 24.11.19

ORDER

Per : Bidisha Banerjee, Judicial Member

This application has been preferred to seek the following reliefs:

"8.a) DIRECTION do issue quashing and setting aside the charge memorandum dated 15.05.2010 being Annexure "A-4" hereto, the enquiry report dated 26.03.2013 of the Inquiry Authority being a part of Annexure "A-28" hereto holding the applicant guilty of charge under Article II, the final order of the Disciplinary Authority dated 18.05.2013 being Annexure "A-30" hereto, the Appellate Authority order dated 06.10.2015 being Annexure "A-36" hereto and there upon direction do issue upon the respondent authorities to grant all consequential benefits and/or retirement benefits with restoration of seniority to the applicant as if there had been no such departmental proceeding;

b) INJUNCTION do issue restraining the respondent authorities from acting in any manner or any further manner on the basis of the final order dated 18.05.2013 being Annexure "A-30" hereto as affirmed by the Appellate Authority order dated 06.10.2015 being Annexure "A-36" hereto;

c) DIRECTION in the nature of certiorari do issue upon the respondent authorities directing them to produce and/or cause to be produced the entire records of the case and thereupon to pass necessary orders for rendering conscientious justice;

d) Cost and costs incidental hereto;

e) And/or to pass such other or further order or orders as to Your Lordships may deem fit and proper."

2. The parties were heard at length and have exchanged their affidavits.

Applicant in addition has filed his written notes of arguments.

The written notes of Arguments of the applicant is extracted hereinbelow to enable one to visualise the basic grievance of the applicant and his contention.

1. A charge memorandum dated 15.05.2010, under the signature of Chief General Manager, Calcutta Telephones containing charges under Article-I, Article-II and article-III was served upon the applicant to hold an enquiry under Rule 36 of BSNL Conduct, Discipline and Appeal Rules, 2006. It is alleged that the said Sri Tapan Kumar Das (Staff no 87594), Senior Accounts officer/ Audit working under DGM(SEA) /Calcutta Telephones while functioning as Accounts Officer(cash)/Central, Calcutta Telephones during the year from 1999-2001 committed grave misconduct by having deliberately signed on a number of bills and giving pay orders without ascertaining the fund position / financial viability resulting in wrongfull loss to the Calcutta Telephones and consequential gain to the said firm thus the applicant conducted himself in most irresponsible manner and failed to maintain absolute integrity, devotion to duty and also acted in a manner which is unbecoming of a Public Servant contravening Rule (4)(1)(a), (4)(1)(b) and (4)(1)(c) of BSNL CDA Rules, 2006. Article-I and Article-III were not proved but charge under Article-II were alleged to be proved.

That the humble submissions of the applicant will be restricted to controvert the alleged charges under Article-II claimed to be 'proved', specifically controverting the impugned charge memorandum and the prejudiced, arbitrary, high handed enquiry report which violates the principle of natural justice which finally culminated into major punishment awarded arbitrarily to the charged official by the impugned Disciplinary Authority and also to controvert the arbitrariness and non application of mind on the part of the impugned Appellate Authority and thus adversely affecting the pension and other retirement benefits.

2. That the applicant in this OA has prayed for grant of following reliefs :-
An order quashing and setting aside the following:

- Charge Memorandum dated 15.05.2010 being Annexure "A-4".
- Enquiry report dated 26.03.2013 of the Inquiring Authority being a part of Annexure "A-28" holding the applicant guilty of charge under Article – II.
- Final order of the Disciplinary Authority dtd 18.05.2013 being Annexure "A-30"
- The impugned Appellate Authority order dated 06.10.2015 being Annexure "A-36" issued by Director (HR), and
- to direct the respondent authorities to grant all consequential benefits and/or retirement benefits with restoration of seniority to the applicant as if there had been no such departmental proceeding.
- Any order directing the respondents to produce and/or cause to be produced the entire records of the case and thereupon to pass necessary orders for rendering conscionable justice;

g) And/or to pass such other or further order or orders as to Your Lordships may deemed fit and proper.

3. A few important dates and service conditions of the charged employee may kindly be noted here as were detailed in para 4.5 of the instant O.A.

I) List of dates :

Important dates	Descriptions of important facts of service tenure
1973	Applicant/ C.O appointed under Government of India Rule
1973 to 30.09.2000	C.O was subjected to all the rules and regulation applicable to Government Servants including CCS(CCA) Rule.
30.09.2000	Setting up of BSNL – transfer of staff, (Annexure – I, page 38-47)
29.11.2004	Presidential Order of absorption-terms and conditions (Annexure A3, page 67).
10.10.2006	BSNL CDA Rule, 2006 came into force.
15.05.2010	Charge Memorandum issued under the signature of CGM, BSNL, Calcutta Telephones (Annexure – A4, page 68)
02.06.2011 & 02.09.2011 (reminder)	I A accepted the relevancy of additional documents prayed for and asked the P.O and the custodians to make it available to the applicant for proper self defense. (Annexure A-15, pg-107), (Annexure A-17, pg-112), Annexure A-7(a), pg-129 to 133)
29.01.2013 (reminder)	CGM, BSNL, Calcutta Telephones claimed privileged not to supply the preliminary CBI report to the charged official (Annexure A-26, page 127)
28.01.2013	CGM, BSNL, Calcutta Telephones claimed privileged not to supply the preliminary CBI report to the charged official (Annexure A-26, page 127)
30.01.2013	Other Custodians of relevant records /Documents also did not supply the said relevant records /Documents on the pretext that it was not traceable' (Annexure-27(b), pg-134)
02.02.2013	Deposition of Mr. Prabir Bose, SW2, (DOS-8, Annexure-27(c), pg-135-140)
26.03.2013 & 16.04.2013	Inquiry report forwarded by D.A, (Annexure-A-28, pg-358-368)
18.05.2013	Major punishment order issued by D.A, (Annexure-A-30, pg-374-386)
30.04.2014	'Provisional retirement' w.e.f 30.04.2014(A/N) order issued, Annexure-A-32/1, pg-396)
24.06.2014	Again 'final Retirement' w.e.f 30.04.2014(A/N) order issued, Annexure-A-32/2, pg-397. (Two different retirement orders were issued and both the order issued on the basis of same vigilance report.)
01.05.2014	Received adversely affected Pension under rule 37A of CCS pension rule of Government of India

and back to Government of India fold (Para 21,22,23 of Rule 37A, as per presidential order of absorption

II) Service conditions:

In BSNL two types of employees work side by side with two different sets of service conditions :

- i) **Absorbed employee** – Applicant was a DOT employee absorbed in BSNL whose service conditions are covered by the Recruitment rules as applicable to the Government servants. Before final absorption he belonged to the P&T Accounts and Finance Services, Telecom Wing, and Member (F), DOT was his appointing authority as Senior Accounts Officer (SRAO for short) (SL.No 194 vide O.M 10-1/2001/SEA-II Dated 03-08-2001 issued under the signature of Under Secretary (SEA). Applicant is entitled to Government pension under Rule 37A of CCS pension rule.
- ii) **Direct recruited employee** – Recruited under BSNL recruitment rule and not covered under Rule 37A of CCS pension rule.

III) Law Points of adjudication to be considered :

A.) Whether the Charge memorandum dated 15.05.2010 issued under the signature of CGM, BSNL, Calcutta, telephones is liable to be set aside and quashed on the following grounds:

- i) It is not in conformity with law and Rules were not properly determined.
- ii) It is issued by an incompetent authority i.e not by the appointing authority.
- iii) It is based on stale allegation.

B.) Whether the enquiry was conduct in strict adherence to the statutory provisions and the principle of natural justice;

C.) Whether the major Punishment order issued by 'incompetent D.D' is liable to be quashed and set aside as it is arbitrary and violated the note below Rule FR-29 of FRSR; and

D.) Non application of mind on the part of impugned Appellate Authority.

A.) i) It is not in conformity with law and Rules were not properly determined.

The alleged time of misconduct was for the period 1999-2001 and the charge memorandum was issued under Rule (4)(1)(a), (4)(1)(b) and (4)(1)(c) of BSNL CDA Rules, 2006. Vide order dated 15.05.2010.

Therefore the misconduct was allegedly committed by the charged official relates to the period when he was working under Government of India rules and his service condition was regulated by CCS(CCA) Rules (vide para(v), page 41, Annexure-I). The BSNL CDA rules, 2006 came into force with effect from 10.10.2006. Even for a fair amount of time during 1999-2001 the respondent BSNL were not even in existence.

Your applicant deemed to have absorbed in the respondents BSNL w.e.f 01.10.2000 under Terms and Conditions of Setting up of Bharat Sanchar Nigam Limited – transfer of staff-orders issued-regarding vide No-2-29/2000-Restg dated 30.09.2000 read with Presidential order of absorption dated 29.11.2004. It is well settled in law that issuing charge memorandum, disciplinary proceedings resultant punishment, if any, all are to be regulated under the then existing law.

Vide Article 20(1) of Constitution of India 'No person shall be convicted of any offence except for violation of law in force at the time of the commission of the act charged as an offence'

In Canara Bank Vs M. Mahesh Kumar [(2015) 2 Supreme Court Cases (L&S), 539] the Hon'ble apex Court observed vide para 24 (page 549) that '...all the appeals preferred by the appellant-bank are dismissed and the appellant bank is directed to consider the case of the respondents for compassionate appointment as per the Scheme which was in vogue at the time of death of the concerned employee.'

In State Bank of India Vs T.J. PAUL [(1999) 4 supreme Court Cases 759] the Hon'ble apex Court observed vide para 18 (page 769) that 'The amalgamation of Bank of Cochin with State Bank of India took place only on 27-04-1985' and '....the State Bank of India (Supervising Staff) Service Rules which admittedly, is not applicable to charges pertaining to the period 1977-81 when the Rules of Cochin Bank applied.'

In the Chief General Manager (CTD) & others Vs Manik Lal Kar & others (W.P.C.T no 408 of 2012) the Hon'ble High Court, Calcutta observed (vide para 4 and 5, page 2) that

'It is submitted by the learned counsel for the petitionersthat once the BSNL took over the employment of the respondent, he having opted for employment with the BSNL, it is BSNL (Conduct, Discipline & Appeal) Rules, 2006 which would prevail over the Central Civil Services (Classification, Control and appeal Rules.

We are not convinced by the submission made by the learned advocate of the petitioners. There is no dispute that the BSNL took over Calcutta Telephones in the year 2006 (? 2000) 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 Services (Classification, Control and appeal Rules prevailed and covered the service conditions of the employees working in the erstwhile department, prior to take over. The new rules became operative only in October, 2006.

In the Shri M.L. Sharma Vs Bharat Sanchar Nigam Limited, The Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi, O.A No 2596 /2012 and O.A. 3465/2012 vide order pronounced dated 08.10.2013 (in para 13) opined that '..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 by under the CCS(CCA) Rules, 1965. Therefore the Disciplinary proceedings initiated against the applicant by BSNL for alleged misconduct committed when he was not on the strength of the Respondent-Corporation in terms of the aforesaid Rules is without jurisdiction.

Thus the Rule of the instant impugned charge memorandum dated 15.05.2010 issued under BSNL CDA Rule 2006 for alleged misconduct committed the applicant during the period 1999-2001 was not properly determined and is not in conformity with law hence to be quashed and set aside.

A.) iii) It is issued by an incompetent authority i.e not by the appointing authority

The charged official was a DOT employee absorbed in BSNL whose service conditions are covered by the Recruitment rules as applicable to the Government of India servants. Before final absorption Your applicant belonged to the P&T Accounts and Finance Services and Telecom Wing and Member(F), DOT was the appointing authority for the applicant as Senior Accounts Officer (SR.A.O for short) (SL.No 194 vide O.M 10-17/2001/SEA II Dated 03.08.2001 issued under the signature of Under Secretary (SEA) i.e appointing authority was Member (Finance), DOT.

In Union of India & Ors. vs B.V. Gopinath, the Hon'ble Supreme Court of India vide Civil Appeal no 7761 of 2013 arising out of SLP @ No 6348 of 2011 observed (vide para 40) that 'Such a charge can only be issued upon approval by the appointing authority i.e Finance Minister' here no approval of Member (Finance) taken for issuing the said charge memorandum' and in the instant O.A. punishment order (Annexure A-30, page-386) issued by CGM(CTD) said that 'Now on receipt of confidential communication conveying approval of Appointing Authority for imposing penalty' therefore it is evident that the respondents were aware of the legal position.

Therefore, here the CGM(CTD) is neither the appointing authority nor the Disciplinary authority nor the Appellate authority and the charge sheet not having been issued upon the approval by the appointing authority, the impugned disciplinary authority is without authority of law and, therefore, non-est in the eye of law (para 46) and hence liable to be quashed and set aside.

A.) iii) It is based on stale allegation

The alleged period of misconduct between 1999-2001 and the charge memorandum issued vide order dated 15.05.2010, i.e after almost more than 11years thus it is based on stale allegation and prejudice caused to the C.O on account of delay as the several relevant additional documents for

self defense, relevancy of which were also accepted by the Inquiry Authority but which were not made available to the applicant from different custodians with note 'Note traceable' but I.A proceeded with the enquiry violating Principle of natural justice. In the *State of Madhya Pradesh vs Bani Singh, AIR 1990 Supreme Court, 1308* the Hon'ble Supreme Court opines that '...There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage' (para-4)

In the *Shri M.L. Sharma Vs Bharat Sanchar Nigam Limited, The Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi, O.A No 2596 / 2012* vide order pronounced dated 08.10.2013 it is observed that '....After 12 years, it is not easy task for him to prove or disprove those allegations ...' (para-11) and also opined in para 14 that disciplinary proceedings initiated against the Applicant is not only badly delayed but they were also without jurisdictionConsequently, we quash and set aside the Memorandum'. Therefore, the charge Memorandum dated 15.05.2010 for alleged misconduct for the period 1999-2001 was issued after 11 years hence to be quashed and set aside as it is badly delayed and stale and without jurisdiction.

B.) Whether the enquiry was conducted in strict adherence to the statutory provisions and the principle of natural justice and for violation of the principle of natural justice is liable to be declared as invalid and quashed and set aside?

The Enquiry officer accepted the relevancy of the additional document for self defense and accordingly directed the P.O. to make available the said documents to the applicant, charged official herein, and wrote to the custodians of said record to make it available. (Annexure-A-15, dated 02.06.2011 page 107-111) and again on 02.09.2011 (Annexure-A-16&17, dated 02.09.2011, page 111 & 112) and on 29.01.2013 (Annexure-A27(a), page 128-133).

The CGM, Calcutta Telephones, respondent no 4 and custodian of the preliminary investigation Report of CBI or preliminary departmental inquiry /report refused to supply the said report to the applicant claiming to be 'privileged document though the names of CBI officers from SL. 10 to 13 and names two vigilance officials from SL8 & SL.9 appeared in the list of witnesses in ANNEXURE-IV of said charge sheet. (Annexure- A-26, dated 28.01.2013 page 127). The evidence of CBI officers and vigilance officers were taken without supplying the relevant document to the C.O 'but it has been used against him behind his back, in violation principle of natural justice, (para 11, *Shri M.L. Sharma Vs Bharat Sanchar Nigam Limited*).

And also for other relevant records from other concerned custodians the I.A recorded 'the said documents are not available in his office' vide reply of other custodian, DE/Entally Extl given to DGM (NWO-Central) (Annexure-'27(a), page 128, DOS-7, dated 29.01.2013 and for another relevant documents, the custodian DE/CIR/Extl/Mtc vide letter dated

30.01.2013 informed that '....in spite of my best efforts to trace the documents called for, no document could be traced out'.

In the Union of India & others vs R.P. Singh, (2014) 7 Supreme Court cases 340 the Hon'ble Appex Court observed that 'non supply enquiry report to the delinquent is a breach of principles of natural justice since it prevents delinquent employee from making adequate representation- 'Advice from UPSC when utilized as a material against delinquent officer, it should be supplied in advance'. (para-23).

Therefore, for violation of the principle of natural justice the enquiry report is liable to be declared as invalid and quashed and set aside.

C) Moreover, the arbitrariness in the punishment orders is very much evident and DA has violated the strict NOTE below FR-29 of FRSR vide D.G.,P&T.,Letter No 6/8/70-Disc.1, Dated the 16th December, 1970 and thus made the punishment order permanent which is not permissible and thus violated the FR-29 of FRSR and which resulted in a fiasco of issuing two different retirement orders in two different dates for retirement w.e.f 30.04.2014(A/N). One being termed as 'Provisional retirement' dated 30.04.2014 (Annexe-A32/1, page 396,) and other being dated 24.06.2014 (Annexure A32/1, page 397). No rule have been shown by the respondents for existence of the 'Provisional retirement' in service rules.

Therefore, the major punishment order is liable to be declared as invalid and quashed and set aside.

D) Moreover, there is non application of mind on the part of the Appellate authority who is an incompetent authority also, travelled beyond her jurisdiction.

That the Appellant was charged for contravening the Rule (4)(1)(a), (4)(1)(b) and (4)(1)(c) of BSNL CDA Rules, 2006 but impugned Appellate Authority upheld the major punishment order of the incompetent D.A for contravening the Rule 5(i) thus going beyond the charge memorandum hence it is to be quashed and set aside. (Para 5.6 of the said report (Annexure A-36, page 409).

3. The respondents have refrained from using any written notes of arguments. What has been averred by respondent No. 1 in its reply is as under:

"8. The Respondent No. 1 does not admit the statement made in paragraphs no(s). 4 and its sub- paragraphs of the said application save and except what are matters of records.

The Respondent No. 1 specifically states that a Notification No. 2-30/2000 restg. Dated 30th September, 2000 issued by the Government of India, Ministry of Communication, Department of Telecommunications where it is clearly stated that Transfer of all assets and liabilities of Department of Telecommunication to Bharat Sanchar Nigam Limited with effect from 1st October, 2000 where the said charge memorandum was issued on 15.5.2010 under Rule 36 of BSNL Conduct, Discipline and

Appeal Rules, 2006 under the signature of Respondent No. 4 of the O.A. No. 350/01345 of 2016."

4. Respondents 2-4 have averred as under:

- "a) Admittedly the applicant was proceeded under rule 36 of BSNL CDA Rules, 2006 vide charge memorandum No. VIG/2006/A/7 dated 15.05.2010 alleging his misconduct during the period of 1999-2001 while he was functioning as Senior Accounts officer(case)/Central, Calcutta Telephones under Department of Telecommunication/BSNL.
- b) The applicant duly participated in that department inquiry proceeding with his defence assistant to defend himself against the charges brought against him trying to prove his innocence and thereby the applicant was extended reasonable opportunity to defend his case.
- c) The inquiring authority after due considering his defence and also the evidence (both oral & documents) as adduced before him, has completed the inquiry and submitted his report dated 26.03.2013 to the disciplinary authority.
- d) On the basis of documentary and oral evidence adduced in the case before the inquiring authority and in view of reasons given in the inquiry report the charges against Japan Kumar Das under Article-II is proved and charges under Article-1 & Article-II are not proved.
- e) The disciplinary authority after considering the inquiry report has acknowledged the same and forwarded a copy thereof to the applicant vide memo no. VIG/2006/A/7 dated 16.04.2013 giving him an opportunity to submit his defence.
- f) In response to the said memo dated 16.04.2013 the applicant has submitted his representation dated 30.04.2013 to the disciplinary authority denying all the material allegations brought against him.
- g) The disciplinary authority after due consideration of the inquiry report and taking in to account the submission/representation of the applicant thereto dated 30.04.2013 and after observing all necessary formalities under the law has passed his speaking and reasoned final order dated 18.05.2013 imposing penalty of reduction of pay of Rs. 24,000/- to 50,500/- till retirement with immediate effect on the applicant and further ordered therein that the applicant will not earn any increment of his pay and such reduction of pay will have the effect of postponing of his future increment of pay. The applicant received and acknowledged the said final order dated 18.05.2013 and preferred an appeal dated 18.06.2013 in time before the appellate authority under the BSNL CDA Rules, 2006.
- h) The applicant on attainment of his age of superannuation retired from his service w.e.f. 30.04.2014.
- i) The appellate authority after giving him a reasonable opportunity of hearing in terms of order dated 29.04.2015 passed in O.A. No. 350/00418/2015 and considering all the relevant records has disposed of the said appeal of the applicant by passing a speaking order dated 06.10.2015 on merit in accordance with law and confirmed the order of penalty dated 18.05.2013 of the disciplinary authority.
- j) Under rule 54 of the CDA rules 2006 the applicant has not filed any application and/or prayed for review of the order of the appellate authority dated 06.10.2015 till date and thereby has not availed and/or exhausted the remedy available to him as provided

under the said BSNL CDA Rules, 2006 i.e. in context of section 20 of the Central Administrative Tribunal Act 1985.

k) The penalty imposed on the applicant upon establishment of his misconduct based on the evidence on record after holding a departmental inquiry under rule 36 of CDA Rules 2006 and extending reasonable opportunity to the applicant, is in commensurate with misconduct committed by the applicant and the principle of natural justice has been maintained in this proceeding.

l) The misconduct during the period of 1999-2001 of the applicant is squarely applicable under Rule 58 of the CDA Rules 2006. So, the disciplinary proceeding initiated against the applicant and completed with due participation of the applicant in departmental inquiry availing reasonable opportunities extended to him to defend himself in the inquiry, cannot be challenged in this regard by raising such contention in the Hon'ble Tribunal, thereby, praying for interference by the Hon'ble Tribunal especially when the applicant already raised such a contention on his second O.A. No. 350/00418/2015 in connection with disciplinary proceeding against him and the Hon'ble Tribunal disposed of the said O.A. by an order, dated 29.04.2015 directing the respondents to consider and dispose of the appeal preferred by the applicant against the punishment order issued by the disciplinary authority. The competent Appellate authority, respondent of the said O.A. complied with the direction of the Hon'ble Tribunal by disposing of the appeal of the applicant, on merit. proceeding initiated thereto against him cannot be interfered with by this Hon'ble Tribunal.

5. We note that O.A. 2252 of 2010 was filed with a different prayer and decision in O.A. 418 of 2015 was not rendered on merits hence the bar of res judicata would not apply here.
6. The issues raised by applicant vide written submissions, about application of different rules, stale allegations and framing of charges by incompetent authority etc., have not been met by the respondents, despite opportunity.
7. 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 5th 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 Services (Classification, Central & 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."

8. 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.

9. In **Manik Lal Kar O.A. 946 of 2012 decided on 11.4.2019**, having considered the aforesaid decision, this Tribunal held as under:

"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, post 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 retiral dues 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."

10. In the **Shri M.L. Sharma Vs Bharat Sanchar Nigam Limited, O.A No 2596 /2012 and O.A. 3465/2012**, the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi, vide order pronounced on 08.10.2013 (in para 13) opined that

.. 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 by under the CCS(CCA) Rules, 1965. Therefore the Disciplinary proceedings initiated against the applicant by BSNL for alleged misconduct committed when he was not on the strength of the Respondent-Corporation in terms of the aforesaid Rules is without jurisdiction.

11. We discern that the charge sheet has been issued by BSNL on 15.05.2010, under the BSNL CDA Rules that was promulgated in 2006, for an alleged conduct of the applicant of 1999-2001 while he was irrefutably and admittedly under the disposition of Dept. of Telecommunication. It was clearly not maintainable.

12. Therefore, having considered the matter in the light of the decisions enumerated supra, we are of the concerned opinion that the chargesheet deserve to be quashed with liberty to the respondents to act in accordance with law and consequential orders in the proceedings. We order accordingly and dispose of the O.A. No costs.

(Dr. N. Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

drh