

CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH, KOLKATA

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No. O.A. 1575 of 2013

Date of order: 13.09.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Shri Rabindra Nath Kar,  
Son of Late Shib Nath Kar,  
Aged about 54 years,  
Working as Assistant Accounts Officer,  
TR-City - I & III of Calcutta Telephones,  
BSNL and residing at  
Marisatala Bazar, GIP Colony,  
P.S. Jagacha, Dist. - Howrah,  
Pin - 711 112.

Applicant

VERSUS -

1. The Chairman & Managing Director,  
Bharat Sanchar Nigam Ltd.,  
Bharat Sanchar Bhawan,  
Harish Chandra Mathur Lane,  
Janpath, New Delhi - 110 001.

2. Director (Finance),  
Bharat Sanchar Nigam Ltd.,  
Bharat Sanchar Bhawan,  
Harish Chandra Mathur Lane,  
Janpath,  
New Delhi - 110 001.

3. The Chief General Manager,  
BSNL,  
Calcutta Telephones,  
Telephone Bhawan,  
34, BBD Bag (E),  
Kolkata - 700 001.

..... Respondents

For the Applicant : Mr. A. Chakraborty, Counsel

For the Respondents : Mr. S. Panda, Counsel

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ORDER

Per Dr. Nandita Chatterjee, Administrative Member:-

This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

"(i) An order quashing and/or setting aside the impugned Charge Memorandum dated 30.6.2007, impugned disagreement Memorandum dated 3.7.2010 and punishment order issued by Disciplinary Authority dated 10.5.2011;

(ii) An order quashing and/or setting aside the impugned Appellate Order dated 19.12.2012 issued by Director (HR);

(iii) To direct the respondent to restore the pay of your applicant at the stage from where his pay has been reduced with all consequential benefits;

(iv) An order directing the respondents to produce all relevant records before this Hon'ble Tribunal for conscionable justice with a copy to the Ld. Advocate of the applicant;

(v) Any other order or further order/orders and/or direction/directions as to this Hon'ble Tribunal seem fit and proper

2. Heard both Ld. Counsel, examined pleadings, documents on record. Ld. Counsel for the applicant would cite **Trilok Nath v. Union of India 1967 SLR 759 SC** in his support.

3. The submissions of the applicant, as made through his Ld. Counsel, is as follows:-

(i) A major penalty charge sheet was served upon the applicant/charged officer wherein it was alleged that the applicant/charged officer while posted and functioning as Assistant Accounts Officer (Central), under CAO (Central, Calcutta Telephones, BSNL, committed gross misconduct during 2002 and 2003 inasmuch as he had not properly processed several bills of M/s Foujdar Construction and M/s. Saikat Traders in drawing of 10 & 20 pair PIVF overhead cables by the said firms and signed on several bills for payment without proper check resulting in huge wrongful pecuniary loss to Calcutta Telephones. It was further alleged that, by his above acts, the applicant/charged officer failed to maintain absolute integrity, devotion to duty, and also

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acted in a manner which is unbecoming of a public Servant, thereby violating Rule 4(1)(a), 4(1)(b) and 4(1)(c) of BSNL CDA Rules, 2006.

(ii) After completion of enquiry the disciplinary authority penalized the applicant/charged officer whereby his pay was directed to be reduced by one stage in the time scale of pay of Rs. 20,600/- to 46,500/- for one year. It is further directed that the applicant/charged officer will not earn increment of pay during the period of such reduction and on expiry of such period, the reduction will have the effect of postponing further increments of his pay. The applicant/charged officer preferred an appeal but the same was rejected by the Appellate Authority.

(iii) That the enquiry officer had come to a conclusion that charges as detailed in Article (b) of Annexure -II of the Memo No. VIG/2006/A/2(C) dated 30.6.2007 stands proved and all other charges as detailed in article (a), (c), (d), (e) & (f) of Annexure - II of the above Charge Sheet memo stood as NOT PROVED.

(iv) That the Disciplinary Authority, vide his memorandum dated 3.7.2010, however, served a disagreement note upon the applicant/charged officer, and, after, modifying the findings of the enquiry officer, held that all the charges leveled against the applicant are proved.

(iv) That on the self same charge, a major penalty charge sheet was issued against one Shri Dipankar Saha, the then Assistant Accounts Officer. He was exonerated from the charges. The case of Dipankar Saha was examined and reference was made to CVC seeking second stage advice against Sri Saha. Subsequently DOT, in consultation with CVC advised the exoneration of charged officer. In the case of the applicant/charged officer, however, no reference was made seeking second stage advice from CVC.

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(v) That on the self same charges a major penalty charge sheet was also issued against Bidhan Pal, Accounts Officer, BSNL. Punishment was also imposed upon him but the said punishment was set aside on the ground that the Disciplinary Authority, while disagreeing with the report of the enquiry officer, brought in issues extraneous to the scope of enquiry of the charges and supplemented the charges through the mechanism of disagreement memo. Liberty was granted to the Disciplinary Authority to pass fresh order based on the report of enquiry officer.

(vi) That, the applicant/charged officer, after issuance of charges, prayed for production of additional documents stating their relevancy. The applicant was informed vide office order No. 27.9.2007 that items from 1 to 40 and 44 cannot be made available to the applicant. As per DOS No. 4 dated 6.12.2007, another two additional documents No. 47 & 51 were also not supplied. The enquiry officer also had never informed the applicant that such additional documents are not vital in respect of Disciplinary Proceedings. Therefore, in absence of additional documents, the entire enquiry proceeding stood vitiated as per Para 9 (b) of Rule 36 of BSNL, Conduct, Discipline and Appeal Rules, 2006.

4. The applicant/charged officer has advanced the following grounds, inter alia, in support of his claim:

(a) That, the chargesheet was not based on admissible facts, that relevant materials were excluded while irrelevant materials were included in the charge-sheet.

(b) That, the principles of natural and procedural justice were violated flagrantly.

(c) Though the applicant had prayed for additional documents, the same has not been furnished to him thereby causing serious predujuce inasmuch as the

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applicant has not been allowed to defend himself appropriately in the proceedings sans such documents.

(d) That, the orders of the disciplinary authority was issued with a biased and prejudiced mind.

(e) That, the appellate authority failed to discharge his functions as per BSNL (CDA) Rules, 2006.

5. The respondents, per contra, have disputed the claim of the applicant by arguing as follows:-

(i) That, the applicant, while working as Assistant Accounts Officer (TR), City, Calcutta Telephones was issued with a charge sheet proposing inquiry against him under Rule 36 of BSNL CDA Rules, 2006, by issuing a charge memorandum vide No. VIG/2006/A/2(c) dated 30.6.2007 (Annexure - R1) along with a copy of the CVC advice, for the charges/allegations brought against him were mentioned in the Articles of Charge.

On denial of the charges/allegations brought against him in the said charge sheet, the Disciplinary Authority ordered an inquiry, by appointing an Inquiring Authority and a Presenting Officer to present the case on behalf of the disciplinary authority. The applicant participated in the departmental inquiry and defended himself in the inquiry proceedings after taking assistance of his Defence Assistant.

(ii) The applicant/charged officer, on receipt of Inquiry Report, (along with reasons for disagreement with the findings as intimated by the disciplinary authority), submitted a detailed representation dated 21.7.2010 on the inquiry report as well as the notes/points of disagreement, addressed to the disciplinary authority.

(iii) The disciplinary authority examined the said representation and considering all submissions and points raised by the applicant therein

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and taking into account all evidence and records of the case, and with full application of his mind, issued a self-contained, reasoned and speaking final order dated 10.5.2011 (Annexure R-4).

(iv) The applicant/charged officer thereafter preferred an Appeal dated 10.6.2011 addressed to the Appellate Authority against the said final order. The applicant/charged officer filed an O.A. in the Tribunal vide No. 680 of 2012.

The appellate authority thereafter issued a reasoned and speaking order dated 19.12.2012 addressing the issues raised by the applicant in his appeal, rejecting the claim of the applicant.

(v) That, although the applicant/charged officer had requested for additional documents and the same were allowed by the enquiring authority, the custodian of additional documents being other than the disciplinary authority, all the additional documents could not be furnished to the applicant but the documents, which were made part of the record of enquiry were entirely furnished to the applicant/charged officer.

In their written statements, the respondents would also refer to the daily order sheets on which the signature of the applicant/charged officer or his defence assistant indicated the concurrence of the applicant, who had not objected to the contentions of the said proceedings.

5. The primary issue before us is whether the principle of natural and procedural justice were vitiated in conducting the disciplinary proceedings against the applicant.

6.1. The applicant had averred that a major penalty chargesheet had been issued on the self-same charges against one Dipankar Saha, the then AAO, who was exonerated from the charges on the second stage

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advice of the CVC. According to the Ld. Counsel for the applicant, no such second stage advice was obtained by the respondents in the case of the applicant and an invidious and discriminatory treatment was made out to the applicant by the respondent authority in not obtaining second stage CVC advice thereupon. The respondents have clarified to our satisfaction that in the case of Dipankar Saha there was a difference of opinion between the disciplinary authority and the first stage advice of the CVC consequent to which the second stage advice was sought. In the case of the applicant/charged officer, there being no such difference of opinion, second stage advice was not required as per rules. The applicant, not being in a position to challenge the said contentions, agreed not to press the issue of second stage advice from CVC.

6.2. The main allegations of the applicant refer to:-

- (a) Non-supply of documents which has resulted in prejudice;
- (b) Extraneous issues introduced by the disciplinary authority in his disagreement note;
- (c) That no monetary loss was caused to the authority and, hence, the penalty was unwarranted.

6.3. The primary allegation of the applicant/charged officer being that he was prejudiced by the non-furnishing of additional documents by the respondents, we refer to the applicant's submissions made in reply to the written notes of arguments submitted by the respondents and we quote verbatim therefrom as follows with supplied emphasis:-

"It is stated by the respondents in their written note of argument that certified photocopies of all the 46 relied upon documents as listed under Annexure III to the charge Memorandum were supplied to the applicant which is a fact on record of enquiry. That out of additional 54 documents as prayed for by the applicant, 52 documents were allowed by the Enquiry Authority. But out of 52 additional documents, 9 documents were supplied as would be evident from daily order-sheet (DOS) 13, 14 and 15. The additional documents vide serial nos. 45, 46, 48, 49, 50, 51, 52 except 47 have been served upon the applicant during the proceedings. It is pertinent to mention in this connection that additional documents vide serial nos. 1 to 40 are respective files relating to issue of work order with regard to 40 bill of the contractor in connection which

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the allegations of committing misconduct were brought in the articles of charges.

In this connection it is submitted by the applicant that charge sheet was issued against the applicant under BSNL, CDA Rules, 2006. The said Rule, 36 deals with procedure for imposing major penalty Rule 36, Sub Rule 9 provides that if the employees does not plead guilty, the Enquiry Authority shall adjourn a case to a later date not exceeding 30 days, after recording an order that the employee may, for the purpose of preparing his defence.

- a) Inspect the documents listed with the charge sheet
- b) Submit a list of additional documents that he wants to examine and
- c) be supplied with the copies of the statement of witness, if any, listed in the charge sheet.

Note: Relevancy of the additional documents referred to 9(b) and the copies of statements of witnesses referred to in sub-rule 9(c) above will have to be given by the employee concerned and the documents and witnesses shall be summoned if the Inquiring Authority is satisfied about their relevance to the charge under enquiry."

The applicant on 25.09.2007 made a request for providing additional documents and also prayed for permission to utilize the additional documents. The applicants in support of his contention stated the relevancy of the additional documents. The sub-divisional Engineer vide letter dated 27.09.2007 informed the Divisional Engineer that he has searched all the available records in the office of SDE but did not find any record or documents of the items from 1 to 40 and 44 (Annexure A/4 to the petition).

2. The applicant states that Annual open estimates were maintainable for maintenance works but he could not defend from the point of preparation of Annual Maintenance Estimate owing to non supply of some relevant official document as requisition by him vide 4<sup>th</sup> para of page 4 of the Defence brief. The Enquiry Officer in his Enquiry Report pointed out the said statement made by charged officer. The applicant made a representation on 25.09.2007 requesting the Enquiry Officer to provide Additional Documents indicating the relevancy (Annexure A/3 of the OA). The Application made by the applicant for providing additional documents was forwarded to the Divisional Engineer/Entally/BSNL/Calcutta Telephones. The said officer/informed the Enquiry Officer vide Office Order dated 04.10.2007 that Reports submitted by concerned SDE in connection with Annexure (3 pages) that Item-1 to 40 and 44 is being forwarded for further necessary action. A certificate was given to the effect that as being the similar case with Sri Dipankar Saha, the same copy is handed over to R Kar (Annexure A/4 to the OA). But in the written argument submitted by the Respondents it is stated that certified photocopies of all 46 relied upon documents were supplied to as Listed under Annexure III of the charge Memorandum the applicant which is a fact on record of enquiry. Out of Additional 54 documents as prayed for by the applicant, 52 documents were allowed by the Enquiry Authority. But out of 52 additional documents, 9 documents were supplied as would be evident from daily order-sheet (DOS) 13, 14 and 15. The additional documents vide serial nos. 45, 46, 48, 49, 50, 51, 52 except 47 have been served upon the applicant during the proceedings. It is pertinent to mention in this connection that the additional documents vide serial nos. 1 to 40 are respect files relating to issue to work order with regard to 40 bill of the contractor in connection with the allegations of committing misconduct were brought in the articles of charge.

Therefore, from the written note of argument submitted by the Respondents, Additional Documents sought for by the applicant i.e. 1 to 40 which are relevant for the purpose of taking a decision on the charge sheet were not supplied to the applicant and therefore failure of the Enquiry Officer to furnish the copies of the documents to the applicant must have caused prejudice to the applicant. The Hon'ble Apex Court in the case of Triloknath vs Union of India had been pleased to hold that:

In our view the failure of the Enquiry Officer to furnish the appellant with copies of the documents such as the first information report and the statements recorded at the Shidipura house and during the investigation must be held to

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have caused prejudice to the appellant in making his defence at the Inquiry. The Inquiry held must, in these circumstances, be regarded as one in the violation not only of r.55 but also of Ar. 311(2). Accordingly we quash the order of removal of the applicant from service passed by the chief commissioner of Delhi. The costs of this appeal shall be paid by the respondent to the appellant.

It is the responsibility of inquiring authority to examine the request of charged employee on the basis of relevance mentioned by him and in the light of the nature of the accusations, and to decide which documents are to be allowed for defence.

The guiding principle is that the power to deny access to any document must be exercised in such a manner that it does not prevent the charged officer from defending himself properly or does not cause him any prejudice.

The Government of India have issued detailed instructions on the basis of the decided case-law vide, the MHA OM No. 30/5/61 - ADD dated the 25.08.1961, which prescribes guidelines to the inquiry officer as below:

- (i) Relevance of the documents should be looked at from the view point of defence, not of prosecution;
- (ii) Even if document is slightly or only in some way relevant, it should be allowed;
- (iii) In case the relevance is not clear to the inquiring authority at the time when the request is made, the request for access should not be rejected; and
- (iv) In case of refusal, reasons should invariably be recorded.

The question of relevance of documents shall be decided by the inquiring authority on the basis of the information before it. There is no procedure empowering the inquiring authority to examine any document (or a witness) for deciding its relevance to the matter under enquiry."

6.4 The respondents have controverted this contention mildly, their only excuse being that the disciplinary authority, not being the custodian of all documents, it was not possible for the disciplinary authority to furnish all the additional documents requested for by the applicant. According to the respondents, while 46 relied upon documents were supplied to the applicant out of 52 additional documents, 9 documents could be supplied and the additional documents 1 to 40 and 44 which were respective files relating to issue of work order with regard to 40 bills of the contractor, could not be furnished to the applicant/charged officer. The respondents would also rely upon the report of the enquiry authority in para 6 of which the enquiry authority has stated as follows:-

"During the course of hearings all reasonable opportunities were extended to the charged officer, Sri Rabindranath Kar, AAO (Central) viz. (i) he was allowed to nominate DA of his choice (ii) allowed to request for additional documents (iii) oral statement to CBI Authority of 10 witnesses had also been supplied to the

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Charged Officer vide DOS-15 (iv) allowed to present Defence witness, if any. The charged officer did not submit the name of any defence witness vide his letter dated 25.9.2007. The charged officer requested for 54 Nos. of additional document out of which 52 Nos. were admitted by my predecessor vide DOS-2. Nine (9) Nos. of additional documents were supplied to the charge officer. Forty three (43) Nos. of additional documents could not be supplied due to non-availability from the field unit."

The respondent authorities would also refer to the daily orders in which the counter signature of the applicant indicates his concurrence to the daily proceedings but as such daily orders have not been brought before us by either of the parties, we are not in a position to examine the same.

From the pleadings before us, we find that on 25.9.2007 (Annexure A-3 to the O.A.), the applicant had asked for the additional documents and in Annexure A-4 to the O.A., we find an admission from the respondents that the additional documents bearing Srl. No-1 to 40 and 44 are not readily available to be furnished to the applicant.

The applicant/charged officer had not raised this issue of non-furnishing of additional documents before the disciplinary authority in his written notes of defence against the disagreement. The applicant, however, did raise this issue in his appeal before the appellate authority in which in Annexure A-10 colly. to the applicant/charged officer, the applicant had stated as follows:-

" Right from the beginning I have been receiving jolts in expressing my stand. I did ask for 54 nos. of departmental documents with reasons and relevance, which, the court of inquiry accepted and asked P.O. to supply the same to me. I received only 9 such documents leaving 46 nos. in the dark. On giving cognizance over the documents, the court indicated that the documents were part of the inquiry process and without which the inquiry would be hampered. Moreover sir, the files I required were all omnibus ones with details of the billing transactions and contained every details from prior to placement of bills in them and depicting other ingredients of interest of knowledge of the Inquiring Authority. But access to such files and like documents were denied by the department, the prosecuting party (Annexure A/10/1 & A/10/2). The punishments were imposed, thus, on denial of principles of natural justice."

The appellate authority, however, issuing his orders in Annexure A-13 to the O.A. has dealt with this matter of production of additional documents cursorily whereby he has observed as follows:-

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"The contention of the applicant that access to certain files and documents were denied to him is not tenable. It is observed from the observations of the Inquiry Officer in his report that during the course of hearings, all reasonable opportunities were extended to the Charged Officer. Moreover, it is observed that 52 nos. out of 54 additional documents were admitted on the floor of the inquiry proceedings. Further nine additional documents were supplied to the Charged Officer. The Article of Charge is proved to the extent based on the listed documents, and additional documents supplied to the Charged officer and other oral evidence. Therefore, there is no merit in the contention of the appellant."

Judicial pronouncements are quite categorical in context of the duties of disclosure and the BSNL (CDA) Rules, 2006 rules contain provisions to ensure full disclosure of documents on which the disciplinary authority wishes to rely for proving the charges against the employee.

The Note below Rule 36(9) of BSNL (Conduct, Discipline & Appeal) Rules, 2006 lays down as under:-

"Rule 36.(9) If the employee does not plead guilty, the Inquiring Authority shall adjourn the case to a later date not exceeding thirty days, after recording an order that the employee may, for the purpose of preparing his defence:

- (a) Inspect the documents listed with the charge sheet;
- (b) Submit a list of additional documents that he wants to examine; and
- (c) Be supplied with the copies of the statement of witness, if any, listed in the charge-sheet.

NOTE: Relevancy of the additional documents referred to 9(b) and the copies of statements of witnesses referred to in sub-rule 9 (c) above will have to be given by the employee concerned, and the documents and witnesses shall be summoned if the Inquiring Authority is satisfied about their relevance to the charge under enquiry."

And, therefore, along with the chargesheet a list of documents that proposes to sustain the charges must be delivered to the charged employees and the enquiry authority is under the obligation to allow the charged officer inspection and documents for the purpose of preparing of defence.

In **B. Surinder Singh Kanda v. The Government of the Federation of Malaya, 1962 322** it was held that it was a long standing rule of natural justice that if relevant evidential material is not disclosed then the decision making process would be vitiated.

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The Hon'ble Apex Court in **Tirlok Nath (supra)**, as relied upon by the applicant/charged officer, and in:

- (i) **State of Punjab v. Bhagat Ram, 1975 (1) SLR 2 (SC);**
- (ii) **State of UP v. Mohd. Sharif, (1982) 2 SCC 376;**
- (iii) **Kashinath Dikshita v. Union of India, (1986) 3 SCC 229,**

had consistently held that non-disclosure of such documents would amount to denial of reasonable opportunity. Significantly, in **Suresh Pathrella v. Oriental Bank of Commerce, (2006) 10 SCC 572** the Hon'ble Court had held that non-supply of documents where such omission caused no prejudice to the delinquent, did not amount to denial of reasonable opportunity. In **Chandrama Tewari v. Union of India, 1987 (Supp) SCC 518** the Hon'ble Apex Court ruled that:

"While considering this question it has to be borne in mind that a delinquent officer is entitled to have copies of material and relevant documents only which may include the copy of statement of witnesses recorded during the investigation or preliminary enquiry or the copy of any other document which may have been relied on in support of the charges. If a document has no bearing on the charges or if it is not relied on by the enquiry officer to support the charges, or if such document or material was not necessary for the cross-examination of witnesses during the enquiry, the officer cannot insist upon the supply of copies of such documents, as the absence of copy of such document will not prejudice the delinquent officer. The decision of the question whether a document is material or not will depend upon the facts and circumstances of each case."

In this case, it is admitted that the relied upon documents were indeed furnished to the applicant and non-furnishing of the relied upon documents is not the bone of contention in this dispute.

The applicant/charged officer has stated in detail as to how non-supply of files relating to issue of work order with regard to 40 bills of the Contractor were relevant for the purpose of his defence and the absence of the same would be prejudicial to the applicant/charged officer.

Upon a perusal of the items 1 to 40, 44 and 47, it is seen each of the items 1 to 40 relate to work orders of June, 2001 and item 44 relates to certain records of sanction. Item 47 relates to a letter of Member (Finance), Telecom dated 27.2.1970. In the memorandum of charges,

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however, the alleged misconduct of the applicant were stated to have been committed during 2002-2003. Hence, it is necessary to decide as to whether the work orders of June, 2001, as prayed for by the applicant/charged officer as well as the sanctions & letter referred to, are essential to examine the allegation of misconduct committed by the applicant while passing the bills in 2002-2003. The basic allegations are based on non-availability of estimates on Maintenance Works, works having purportedly being shown in the bills as related to maintenance work while actually relating to project work and the DE's incompetence to make expenditure without any detailed approved expenditure by the competent authority, all of which were reportedly ignored by the applicant/charged Officer at the time of checking of the bills before release of payment. The list of documents as relied upon and furnished to the applicant/charged officer did contain, inter alia, the estimate register, the copy of the original bills, the financial handbook & P&T Manual as well as the Delegation of Financial Powers based on which the charges were framed.

Hence, the moot question, which require to be resolved is, whether the additional documents at 1 to 40, 44 and 47 at Annexure A-3 to the O.A. were relevant for deciding on the allegations made against the applicant. The enquiry authority admits that the 43 number additional documents could not be supplied due to non-availability from the field Unit. The disciplinary authority did not deal with this issue at all and the appellate authority had cursorily dismissed this aspect after observing Articles of Charge have been proved based on the listed documents as well as documents furnished to the charged officer.

We, however, are of the considered view, that,

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- (i) the appellate authority, particularly, in his powers under Rule 51(a) of the BSNL CDA Rules, 2006 was duty bound to decide on compliance to procedure as laid down in the Rules and whether non-compliance has led to failure of justice. Hence, the appellate authority ought to have paid more attention and issued a reasoned order as to whether the applicant was prejudiced on grounds of non-supply of additional documents;
- (ii) The applicant alleges that the DA in his disagreement note had brought in issues extraneous to the charges. The disagreement at Annexure A-6 to the O.A. dated 3.7.2010 is reproduced herein as under:-

BHARAT SANCHARNIGAM LIMITED  
 OFFICE OF CHIEF GENERAL MANAGER, CALCUTTA TELEPHONES  
 TELEPHONE BHAVAN, 34, B.B.D. BAG (SOUTH), KOLKATA - 700 001.

No. VIG/2006/A/2(i)

Dated at Kol-1, the 3-7-2010.

MEMORANDUM

A charge sheet under Rule 36 of BSNL CDA Rules, 2006 was issued to Shri Rabindranath Kar (Staff No. 180541), the then AAO(W&B)/Central, Calcutta Telephones now AAO(TR/City), Calcutta Telephones vide memo No. VIG/2006/A/2(c) dated 30-6-2007. A copy of the Inquiry Report dated 09-11-2009 submitted by Shri C.R. Phadikar, Inquiring Authority & Tech. Secretary to the CGM, Calcutta Telephones is being sent herewith. The disciplinary authority disagrees with the findings of the inquiring authority to the following extent:

For (a) of 'A' under para 6 of Inquiry Report:

The charged officer an Assistant Accounts Officer checked the bills and signed on the reverse side of the bills without abiding by the rules/guidelines/prior to issue pay orders by the AO. Though he did not certify the bills under the stamp where the term 'certify' is expressly mentioned like the officers who executed the works, but his signing on the reverse of the bills amounts to certifying the bills on necessary checking done towards issue of pay orders by the AO. Since AAO/JAO assists AO the issuing authority of pay orders who issues the same primarily on the basis of signature of the AAO/JAO on the bills which is as good as certification indicating that the particulars etc. mentioned on the bills are in consistence with the prevailing rules & guidelines, the signatures on the part of the charged officer on the bills in question were in violation of the prevailing rules & guidelines, thereby, the charge against the charged officer is established.

For (b) of 'A' under para 6 of Inquiry Report:

The 57 bills (amounting to Rs. 5,25,415) of M/s. Fouzdar Construction and 55 bills (Amounting to Rs. 4,90,155/-) of M/s. Saikat Trader relating to the period 2001-2002 were put up by the charged officer himself in 2003 for

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A/A and E/S approval for debiting against Prior Period Payment since provision for liabilities for bills had not been kept. But at that time the charged officer did not bring the facts of contravention of rules/guidelines like non-availability of detailed estimates thereby, inability to ascertain existence of billed amount within the provision of fund, booking expenditure simultaneously against project & mtce. Heads, passing of bills without having powers/authority as per rules etc. Thus, the charge against the charged officer is established.

Thus, the charges against the charged officer under (a) of Annexure-II of the charge sheet is partially established.

'D' under para 6 of Inquiry Report:

The bills of the two firms M/s. Fouzdar Construction & M/s. Saikat Trader were passed at an exorbitant rate i.e. Rs. 120/- per metre without preparing any estimate with the said rate. The charged officer tried to defend stating that the circular dated 11-05-1999 was not endorsed to AO(Cash) & AAO is not tenable as he did not even point out at the time of clearing the bills how the said rate was considered for issue of work orders and passing of bills. Hence, the charge brought against the charged officer under (e) of Annexure-II of the charge sheet is established.

'E' under para 6 of Inquiry Report:

Being AAO the charged officer was duty bound to assist the AO as per rules/guidelines. Though the CO assisted the AO as evident from the note sheets which were put up by himself for obtaining A/A & E/S from competent authority and signatures of the CO on the bills but he did not perform the job of assistance properly as expected of him as an AAO, thereby, he failed to discharge his duties and responsibilities. The P.O. duly pointed out the lapses on the part of the CO in his brief. Thus, the charge brought against the charged officer Shri Rabindranath Kar under (f) of Annexure-II of the charge sheet is established.

The contention of the CO in the statement in his defence brief regarding applicability of Rule 36 of BSNL (Conduct, Discipline & Appeal) Rules, 2006 does not hold good in view of Rule 58 of same Rules i.e., BSNL (Conduct, Discipline & Appeal) Rules, 2006. Further, the statement of the CO in Conclusion that none of the audit units have never put any query or question mark in the entirety of above episodes is not correct as per documentary evidence vide defence documents marked as D-2/23/57) page (p/4) and related pages.

Findings of the inquiry may therefore, be treated as modified accordingly towards respective charges viz. Charges as detailed under (a) of Annexure II of the charge sheet is partially Proved and charges as detailed under (b), (c) & (f) of Annexure-II of the charge sheet are Proved while all other charges under (c) & (d) of Annexure-II of the charge sheet are Not Proved.

Sri Kar, AAO is hereby given an opportunity to make representation, if any. The representation should be submitted in writing to the disciplinary authority within 15 days of the receipt of this memorandum failing which it will be presumed that he has no representation to make and further action will be taken by the disciplinary authority as per rules.

Receipt of this memorandum shall be acknowledged by Shri Rabindranath Kar, AAO, CTD.

Enclo: As stated

(A.K. Garg)  
Chief General Manager  
Calcutta Telephones"

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As no specifics on extraneous factors have been spelt out in the representation of the applicant/charged officer against the disagreement note, after examination of disagreement note, we are of the considered view that, prima facie, apart from a reference to prevailing rules and guidelines of the respondent authorities, the disciplinary authority does not appear to have brought in any extraneous issues in his disagreement note.

(iii) Regarding the averment of the applicant that no financial loss were caused to the respondent authorities, there is no absolute estimation of financial loss by the respondent authorities in this regard excepting to state that the bills of the two firms were prepared at an exorbitant rate of Rs. 120/- per meter without any standard estimate based on schedule of rates therein. The charge memorandum also refers to huge pecuniary loss to Calcutta Telephones. In the absence of any absolute estimate of such pecuniary loss, however, in any of the findings of the enquiry authority, disciplinary authority or appellate authority, no final conclusion can be arrived at in this regard.

(iv) The allegation of bias against the disciplinary authority, in the absence of specific averments, and following the ratio in **Khem Chand v. Union of India & ors. AIR 1958 SC 300** stands as not established.

7. In the interest of natural justice, therefore, we quash the orders of the appellate authority dated 19.12.2012 at Annexure A-13 to the O.A. and, we remit this matter back to the appellate authority to examine the scope of the prejudice caused to the applicant and to pass reasoned and speaking order, particularly on the issues of:-

- (a) Prejudice caused to the applicant on account of non-furnishing of documents as alleged by the applicant / charged Officer;

*hal*



(b) Whether the disciplinary authority had introduced extraneous issues in his disagreement note;

(c) The extent of financial losses caused to the respondent authorities as a result of the actions of the applicant/charged officer.

The applicant/charged officer would also produce before us the orders of the appellate authority in the case of one Bidhan Chandra Paul wherein the appellate authority exonerated the said charged officer on the ground that, after hearing the charged officer, the appellate authority found discrepancy in the orders of the disciplinary authority and thereafter set aside the orders of the disciplinary authority.

The appellate authority is, therefore, directed to give a personal hearing to the applicant/charged officer, in this regard and issue his final orders thereafter in accordance with law to decide on the charges brought against the applicant/charged officer and consequent effects thereupon.

8. The O.A. is partly allowed to the extent of the above directions. No orders on costs.

**(Dr. Nandita Chatterjee)**  
**Administrative Member**

**(Bidisha Banerjee)**  
**Judicial Member**

**sp**