

U/b

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI**

OA No.173/2013

Dated this

the 16th day of October, 2019

Coram: R. Vijaykumar, Member (A).
Ravinder Kaur, Member (J).

Shri N. L. Gaikwad,
Aged 45 years,
Sub Divisional Engineer,
O/O Deputy General Manager (Tech),
Charai Telephone Exchange,
Thane (W) PIN-400 601 residing
at 202-B, Paras Apartment,
Opp. Sona Mahal CHS, Shanti
Nagar, Ulhasnagar-421 003.

...Applicant.

(By Advocate Shri A. I. Bhatkar).

Versus

1. The Chairman & Managing Director, Mahanagar Telephone Nigam Ltd., Corporate Office, Mahanagar Doorsanchar Sadan, CGO Complex, New Delhi-110001.
2. The Director (Technical) Mahanagar Telephone Nigam Ltd., Corporate Office, Mahanagar Doorsanchar Sadan, CGO Complex, New Delhi-110001.
3. The General Manager (E-II) Mahanagar Telephone Nigam Ltd., 4th Floor, Charai Telephone Exchange Building Mouli Mandal Road, Dhobi Ali, Thane-400 601.

... Respondents.

(By Advocate Shri R. R. Shetty).

O R D E R

Per : R. Vijaykumar, Member (Administrative)

The applicant has filed this OA on

09.01.2013 under Section 19 of the Administrative Tribunal's Act, 1985 seeking the following reliefs:

- "a) That at this Hon'ble Tribunal be pleased to call for the records and proceedings relating to the orders dated 20.12.2011, 17.04.2012 and 29.09.2012 impugned herein above and after ascertaining the propriety and legality thereof quash and set them aside with all consequential benefits;
- b) That this Hon'ble tribunal be pleased to direct the respondents to refund the amount of recovery already made;
- c) Such other orders as may be deemed necessary in the facts and circumstances of the case;
- d) Cost of the application be provided for."

2. The delinquent employee was issued a charge-memorandum by respondent no.2 in their letter no. GME-II/ Disc.Proc./ NLG/76905/2011-12 dated 03.08.2011, under Rule 27 of MTNL CDA Rules 1998 relating to minor penalties detailed in Rule 23 imputing misconduct or misbehavior described in Annexure to the Charge Memorandum. The issue in question relates to missing or stolen cable lengths amounting to about 25 pounds of different sizes of cables of total length 86.05 metres and valued at Rs.1,38,011.15 when he was functioning as Stores in-charge in his capacity as SDE (Extl.) Kopari in

October 2007-10. These facts were brought to his notice by his subordinates by notes/letters dated 14.05.2010, 27.07.2010, 28.07.2010 and 29.07.2010 and for which, FIR was lodged for all these losses as intimated, only on 30.07.2010. Further, although 98 CLIP instruments were available in the Store, 80 more instruments (40+40) were brought from Waghle Area Store on 16.01.2010 and 17.02.2010 without any need for them and of these, 90 CLIP instruments worth Rs.67,412.70 were also found missing which was brought to his notice by his subordinates on 24.07.2010 but no FIR was lodged and this information on loss of cables and CLIP installments was reported by him to his superiors only on 29.07.2010. The memorandum also charged that the materials were either despatched without gate pass or using non-prescribed gate pass based on his instructions and further, store keys were kept with the security guards at the gate and not in his personal custody. Therefore, the imputation records in two relevant paras as below:

"That the said Shri N. L. Gaikwad, SDE (Dy. Mgr.), St. No.76905, while functioning as SDE (Extl) Kopari during the period October 2007 to October 2010 failed to monitor and supervise the receipt and issue of store materials and its entries in ACE-8."

"Thus, it is seen from above that if Shri N. L. Gaikwad, SDE (Dy. Mgr.), St. No.76905, would have exhibited the devotion to duty in monitoring and supervising the receipts and issue of store materials and its proper and timely entries in ACE-8, the revenue loss to the department to the tune of Rs.2,05,423/- would have been

3. The applicant replied to the charge-memorandum on 15.10.2011 denying the charges and the Competent Disciplinary Authority of the respondents has passed an order in his proceedings no.GM(E-II)/Disc-Prox./NLG/76905/Order/2011-12 dated 20.12.2011 holding that the charged officer had exhibited negligence of duty in not following store procedures and had failed to supervise the store activities as a result of which, there had been a loss caused to the respondents and for this reason the Disciplinary Authority imposed the following punishments:

" Thus, the said Shri N. L. Gaikwad SDE (Dy. Mgr) St. No.76905 violated the provisions of Rule 5(5), 5(9) and further violated Rule 4 (2)(i) of MTNL CD&A Rules 1998.

NOW THEREFORE, after going through the records made available to me, perusal of the representations dated 15.10.2011 made by the charged officer, considering the facts and material evidence available, in exercise of the powers conferred upon me under the provision of Rule 24 and Rule 23 under Minor Penalty of MTNL CD&A Rules 1998, a penalty of withholding of one

increment of pay for a period of one year without cumulative effect with immediate effect is hereby impose upon Shri N. L. Gaikwad SDE (Dy.Mgr.), St. No.76905.

Further it is ordered to recover an amount of Rs.1,36,950/- (Rupees One Lakh Thirty Six Thousand Nine Hundred Fifty Only), being the proportionate and part amount of pecuniary loss caused by him to the company due to his misconduct and negligence, from his salary in twenty four installments.

Receipt of this order be acknowledged."

3. The applicant filed an appeal on 16.01.2012 which has been considered at length by the Appellate Authority and orders were passed confirming the orders of the Disciplinary Authority. The applicant then filed a Review application in his letter dated 20.06.2012 which was considered and the Reviewing Authority declined to interfere in the orders passed by the Disciplinary Authority. This application has been filed thereafter within the time limit prescribed. In his OA, the applicant has urged that the punishment of withholding of increment for one year without cumulative effect was arbitrary and unreasonable. He has further stated that no inquiry was conducted which rendered it unlawful. Further, he also states that the recovery of alleged pecuniary loss without holding inquiry was in

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violation of the principles of natural justice.

5. The respondents have replied stating that disciplinary action was taken for imposition of minor penalty and only the actual proportionate loss was recovered from the applicant out of the total loss and was also ordered for recovery in 24 instalments from his salary which cannot be considered to be unreasonable. Further, they have explained that they had investigated the matter to identify his negligence and failure to monitor or supervise. They also state that under Rule 27 of the Rules, there is no provision for providing documents and that further opportunity to submit his representations and all relevant rules of natural justice had been observed as applicable in the case and that a reasoned and speaking order had been passed by the authorities concerned.

6. During arguments, the learned counsel for the applicant reiterated the issues raised in the pleadings that no inquiry was conducted although loss was not disputed. Other issues disputed were facts on the issue of reports filed by the subordinate officers and on who was responsible for the loss. He also urged that the respondents had not allowed the applicant to inspect various documents

that they had relied upon in the disciplinary action. In his view, if the charges are denied by the delinquent, inquiry was mandatorily to be held. The learned counsel for the applicant relies upon the judgment of the Hon'ble Apex Court in case of O. K. Bharadwaj Vs. Union of India and others decided on 01.04.1995 reported in Civil Appeal No.2002 SCC (L&S) 188 where the delinquent had been punished with stoppage of three increments with cumulative effect and while holding that this was minor penalty, the Hon'ble High Court had held that in the case of minor penalty it is not necessary to give opportunity to the employee and it is also not necessary to hear him before awarding the penalty nor was a detailed enquiry needed in a case in which minor penalty was awarded. The Hon'ble Apex Court differed on this point and considered that even in the case of a minor penalty, opportunity has to be given to the delinquent employee to have a say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee an enquiry would also be called for and is the minimum requirement of the principles of natural justice. Since the Hon'ble

High Court had not examined the matter from that angle, the case was remanded to the Hon'ble High Court for consideration and disposal. In the present case, the learned counsel for the applicant argues that the applicant had denied the charges and had disputed the facts in reference to the circumstances of the reports filed by his subordinates before him on the detection of loss. However, he admitted that the law as such was not disputed by the applicant. The learned counsel for the applicant argued that only an enquiry would determine who was responsible for the loss of goods from the stores under his control.

7. The learned counsel also relies on the order of the Ernakulum Bench of this Tribunal in OA No.890/2003 dated 07.06.2006 where the respondents had charged the applicant with delinquency by not reporting for duty at 7.00a.m. on 14.03.2003 although instructed. The applicant challenged this very fact and the Bench held that when this fact itself had been disputed and was the basis for the punishment, an enquiry must be held and is in keeping with the view expressed by the Hon'ble Apex Court in **O. K. Bharadwaj (supra)**. The Tribunal noted that the guilt of misconduct of the applicant was

determined after collecting evidence about which the applicant was not informed and based on this, a minor penalty order was passed. The learned counsel for the applicant contends that the present applicant had disputed the facts and had asked for copies of various statements of witnesses, letters reporting the loss, etc for which the respondents had advised him that there is no provision to provide documents under Rule 27 (minor penalty) of MTNL Rules 1998.

8. The learned counsel for the applicant also relies on an order of the Jaipur Bench of this Tribunal in case of Shanker Lal Meena Vs. Union of India and Ors. Decided on 18.04.2005 in which a minor penalty of reduction by one stage in pay for one year without cumulative effect adversely affecting his pension was passed and the Tribunal held that a penalty under Rule 16 which affects pensionary benefits adversely cannot be passed without a detailed and exhaustive enquiry. The Tribunal noted that the applicant's pension had been adversely affected because he retired during the period of punishment. On the aspect of recovery of loss that had been imposed, the Tribunal noted that there was no charge of misappropriation of amount

nor of doubtful integrity against the applicant and therefore, the penalty of recovery cannot be imposed.

9. The respondents argue that under Rule 6 of the CCS Rules, discretion is granted to the Disciplinary Authority to hold an enquiry. By reference to the judgment of the Hon'ble Apex Court in E. P. Royappa Vs. State of Tamil Nadu and Anr. decided on 23.11.1973 reported in 1974 AIR 555 1974 SCR (2) 348 1974 SCC (4) 3 they argue that the description is available although it cannot be exercised arbitrarily. For this purpose, they refer to the charge memorandum in which the applicant has been given opportunity to file his representation on the charges of failure to supervise the stores, failure to take action on the theft reports submitted to him, failure to abide by rules on the issue on materials with proper gate pass, for failure to follow instructions, and for depositing the door keys with the security guard at the gate. They also refer to the applicant's reply in which he confirms that the loss of materials was brought to his notice and accordingly, admits knowledge of details of the loss. He had also filed a police complaint, although on 30.07.2010, and had reported

the facts to the supervisors after much delay. The learned counsel for the respondents argues that the applicant was responsible for the failure to monitor and supervise the stores, mandatory requirements of record keeping, stock verification, handling of store keys. He had also been inquired on 20.09.2010 and admitted the various facts involved in the case. The Disciplinary Authority had held him responsible for negligence and disobedience of instructions which had led to the pecuniary loss to the respondents and therefore, the minor penalty awarded and the recovery of the proportionate loss was not disproportionate.

10. The learned counsel for the parties have been heard and pleadings on record have been examined with reference to the Rules concerned and law applicable.

11. The applicant was conveyed information on the loss of materials in May 2010 and again in July 2010 and it was only on 30.07.2010 that he reported the loss of the materials found missing and reported to him by the Store Keeper on 14.05.2010 to his superiors on 29.07.2010 and FIR was lodged on 30.07.2010. In regard to the CLIP instruments reported to him as lost on 24.07.2010, FIR was

lodged on 09.09.2010 after a delay of 15 days. During arguments, this Tribunal summoned the original file of Disciplinary Proceedings and it is found that upon discovery of the loss/theft, a preliminary enquiry was made by the respondents and statements recorded from all the concerned officers including the applicant. Thereafter, the applicant had been charged by way of a charge memorandum which imputes negligence by way of failing to monitor and supervise store department functions as a result of which, materials were lost and respondents suffered pecuniary loss. These facts are not disputed by the applicant in any manner and cannot be compared with the decision contained in the order passed by the Ernakulum Bench in **Baburaj Vallseri** * (supra) where the essential fact which was the basis for the imputation was alleged to be not within the knowledge of the applicant. In the present case, the applicant himself filed FIR in the police station for all the lost materials and all the evidence and views of witnesses were within his grasp. The charge memorandum concerns itself on the aspects of negligence, failure to supervise and non-implementation of the instructions of the respondents in regard to management of stores. The

order of the Jaipur Bench mentioned supra relied upon by the applicant relates to a case where the delinquent was imposed a penalty which actually adversely affected his pension and therefore, cannot be considered a minor penalty. That situation does not apply to the present case. Further, the judgment of the Hon'ble Apex Court in **O. K. Bharadwaj (supra)** explicitly observes that opportunity should be given to the delinquent employee to have a say or file his explanation and only if the charges are factual and are denied by the delinquent employee, inquiry is required. In the present case, the employee has filed his reply to the charge memorandum although he demanded some documents at that stage. These demands have to be seen in relation to the fact that he had himself filed the complaints to the police and all the facts were within his knowledge and those facts were not denied by him. What he was denying and contributes to the essential charge against him, was that of negligence and disobedience of instructions and therefore, the observations of the Hon'ble Apex Court in **O.K. Bharadwaj (supra)** are not applicable in the present instance. Even otherwise, the said decision remanded the matter to the Hon'ble High Court to reconsider the issue from the aspect of

whether the delinquent was accorded fair opportunity and as we have noted in this case, the facts differ.

12. Perusal of the order of the Disciplinary Authority, also shows that the delinquent was held negligent for not following store procedure, failure to monitor and supervise day-to-day stores activities, failure towards inspection and working of stores, periodical reconciliation with stock, issuance of gate pass as per the prescribed format and concludes by saying; "*From the records it is observed that the charged officer has virtually not exercised any control over either the movement of store items or the staff handling the stores.*" In the context that a minor penalty of withholding of increments for one year without cumulative effect has been passed and by perusal of the original record of the disciplinary proceedings, it is clear that the respondents have duly examined the matter and then determined the nature of his negligence.

13. Further, they have also ordered recovery of proportionate pecuniary loss of Rs.1,36,950/-, on account of his disobedience of rules, misconduct and negligence, from his salary in 24 installments. In this regard, the law is clear that recovery of pecuniary losses can be imposed only when the

delinquent was held responsible for a particular act or acts of negligence or breach of orders and rules and that such negligence or breach caused the loss.

In the present case, it is seen from the disciplinary file that the respondents held the present applicant and his immediate subordinate storekeeper as responsible for the pecuniary loss and have recovered the amount lost thereof. Such an action cannot be considered to have been done as against the principles involved in the matter.

14. In the facts and circumstances, the challenge of the applicant to the impugned orders of appointment is devoid of merits and this OA is accordingly dismissed without any order as to costs.

(Ravinder Kaur)
Member (J)

(R. Vijaykumar)
Member (A)

v.

JD
23/10/19

