

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11152 of 2013

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1. The Chief General Manager, Bharat Sanchar Nigam Limited, Patna
 2. The General Manager (Finance), B.S.N.L., Bihar Circle, Patna
 3. The Asstt. General Manager C And A O/O Cvo, B.S.N.L., H.Q., New Delhi

.... Petitioner/s

Versus

1. Kameshwar Dubey Son Of Deo Narayan Dubey Retd. Chief Accounts Officer (Ifa), The Tdm, Sasaram, Resident At Sasaram
2. The Union Of India Through The Chairman-Cum-Managing Director, Bharat Sanchar Nigam Limited, New Delhi

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 10151 of 2014

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The Union Of India

.... Petitioner/s

Versus

Kameshwar Dubey & Anr

.... Respondent/s

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Appearance :

(In CWJC No. 11152 of 2013) (In CWJC No. 10151 of 2014)

For the Petitioners : Mr. Harendra Pd. Singh, Advocate
Mr. Rajiv Kumar Singh, Advocate
Mr. Santosh Kumar, Advocate
For the Respondent/s : Mr. Gautam Bose, Sr. Advocate
Mr. Ajay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 30-03-2015

These two writ petitions have been filed by Bharat Sanchar Nigam Limited, Patna (hereinafter referred to as the BSNL), a Government of India Undertaking, being aggrieved by the orders as passed in O.A. No. 677 of 2012 being final order dated 22.2.2013 and O.A. No. 488 of 2013 being order dated 20.1.2014. Both of which were instituted before the Central Administrative



Tribunal, Patna Bench, Patna (hereinafter referred to as the Tribunal) by Kameshwar Dubey the sole private respondent in both these writ petitions. By order dated 22.2.2013, passed in O.A. No. 677 of 2012, the Tribunal has held the suspension of the sole private respondent to be bad in law and by order dated 20.1.2014, passed in O.A. No. 488 of 2013, the Tribunal has quashed the memo of charges served on the sole private respondent holding it to be bad and in contravention of Rules governing the BSNL Conduct, Discipline and Appeal Rules, 2006 (hereinafter referred to as the Rules, 2006).

We have heard learned counsel for the BSNL and learned counsel for the sole private respondent, who was the applicant before the Tribunal, at length and with their consent these two writ petitions are being disposed of at this stage itself.

There is no factual controversy. The private respondent was Chief Accounts Officer, (Internal Financial Advisor) in the office of the Telecom Divisional Manager, Sasaram. On 25.7.2012, the sole private respondent was informed by the Department that he would superannuate with effect from 31.7.2012 and accordingly, he was directed to hand over the charge of the office of the Chief Accounts Officer, Sasaram to Sri Ghanshyam Das. It is not in controversy that in the afternoon of 31.7.2012, the sole private respondent handed over charge to the said Ghanshyam Das. At 5.40 pm, the same day i.e. the date on which he had to superannuate, he was served with an order suspending him with immediate effect. This became the subject matter of challenge in the first O.A. before the Tribunal. While the sole private respondent was, thus, suspended, he was superannuated and thereafter, on 19.07.2013 the sole private respondent was served with memorandum of charge, dated 01.05.2013. This became the subject matter of the second O.A. before the Tribunal. The common prayer, in both the

Original Applications, was for a direction to the authorities to settle and finalize the pensionary benefits and release monetary benefits upon his superannuation after setting aside the order of suspension and memorandum of charge.

The Tribunal, so far as the suspension is concerned, held that on the facts the suspension order was served on the sole private respondent after his superannuation and accordingly, the suspension order was void and of no effect. It further held that there could not be provisional superannuation. The correctness or otherwise of the view is under challenge before us in the first writ petition by BSNL.

So far as the charge is concerned, that was set aside by the Tribunal on the ground that it related to an incident which was more than four years prior to the superannuation, and as such, the departmental proceedings not having been initiated within time, it could not so be done. The correctness or otherwise of that order is under challenge in the second writ petition by BSNL.

Having heard learned counsels and considered the matter, in our view, both writ petitions have to be allowed and the orders of the Tribunal be set aside, for the reasons as follows:

From the facts noted above, the Tribunal was wrong in noting that the suspension order was invalid inasmuch as it was issued and served upon the sole private respondent after he superannuated. There is no dispute that the suspension order was issued on 31.7.2012, i.e. the date on which the sole respondent was to superannuate. It was served upon him at 5.40 pm. It makes little difference whether he had then handed over the charge or not. Handing over charge does not mean superannuation. Superannuation's date and time was 31.7.2012 being the last working day of the sole private respondent. Service of suspension order upon him at 5.40 pm, even though, after he handed over the

charge, cannot be said to be served after his superannuation. It was well within time. He was in service, and as such, he was put under suspension validly.

On behalf of the sole private respondent, it was submitted that in the factual background, if it is seen, then, there were no sufficient materials at all to justify the suspension. In our view, we have noted this contention only to reject the same. The reason is that it is not open to the Tribunal or for this Court, at this stage of the proceeding, to go into sufficiency of materials available to the authority to suspend an employee, so long as there is material to take action. It is well settled principle of law that existence and insufficiency is the text, at this stage, that there is existence of materials is something, which the department has to look into. Here, there are serious allegations, whether they are correct or not is not to be decided by the Tribunal or for that matter this Court, at this stage, while the departmental proceedings are still pending. It would be for closing an issue which is not permissible.

Thus, on this very count, the first writ petition has to be allowed and the order of the Tribunal as passed in O.A. No. 677 of 2012 dated 22.2.2013 has to be set aside.

Now, we come to the second order by which the Tribunal has set aside the memo of charge holding that it could not have been so served, the incident being four years old. First, we must consider the question whether the department could order suspension. Rule 30 of the Rules, 2006 is clear that a person can be suspended in contemplation of disciplinary proceedings against him. Thus, the jurisdiction to suspend is there. The action was taken while the person was still in employment and the master and servant relationship is in existence, then, we may refer to Rule 61. Rule 61 (i) provides that where an employee against whom disciplinary proceedings have been **initiated** will cease

to be in service on the date of superannuation but the disciplinary proceeding will continue as if he was in service until the proceedings are terminated. The important provision, thereafter, is that the concern employee will not receive any pay or allowance after the date of superannuation. He will not be entitled for the payment of retrial benefits till proceedings are completed and final orders are passed. The question arises as to when proceedings are said to be initiated.

Learned counsel for the sole private respondent submits that the Apex Court in the case of **Union of India Versus K. V. Jankiraman and Others** since reported in (1991) 4 SCC 109 held that the disciplinary proceeding would be deemed to be initiated with the day charges are served. With due respect, we are unable to ascribe the proposition as propounded by the learned counsel. The Apex Court in the case of Janki Raman (**Supra**) was not dealing with the case which we have at hand. It was in different context and under different factual situation. The Apex Court was not to consider what we will say is Rule 61 (4) (5) of the present Rules. All we can say in this respect was that Lord Earl of Halsbury said in famous case of **Quinn v. Leathem** since reported in 1901 AC 495, which is quoted with approval umpteen number of times by the Apex Court including the Division Bench in the case of **State of Orissa (in all the appeals) v. Sudhansu Sekhar Mishra and Others** since reported in AIR 1968 Supreme Court 647 which are as follows:

“Now before discussing the case of Allen v. Flood, (1998) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the



whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all.”

Why we are holding so, would be apparent when we refer to Rule

61 (4) (5) (a) which is quoted for ready reference:

“(a) disciplinary proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the absorbed employee or the pensioner, or if the absorbed employee has been placed under suspension from an earlier date, on such date; and”

It is the last part of the Rule which says “ or if the absorbed employee has been placed under suspension from an earlier date, on such date”. This or similar provisions have not been incorporated in those judgments. Thus, in view of this provision of disciplinary proceedings, in respect of sole private respondent, undoubtedly, who is an absorbed employee, would be deemed to have been initiated, the day he was suspended i.e. on 31.7.2012. Once the disciplinary proceedings are deemed to have been initiated on that day then Rule 61 (i) would automatically come into operation and the proceedings would then continue till they are finally concluded depriving the employee of his retrial dues and the provision and Rule 61 (4) (2) (b) as a whole would not come into being and there would be no bar of serving charge later on and the memo of charge cannot be said to be without jurisdiction and the consequence would be that the

second order of the Tribunal in the second O.A. would thus, be wrong and cannot be sustainable. The result would be both writ petitions are allowed, both orders of the Tribunal in two O.As. are set aside, the writ petitions are allowed but there is no order as to cost.

In view of the judgment of this Court aforesaid, it was for the authority to proceed in accordance with law.

(Navaniti Prasad Singh, J)

(Jitendra Mohan Sharma, J)

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