

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.2.2015

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
AND

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

Writ Petition No.24873 of 2014

K.Kathiresan

...Petitioner

Vs

1. The Registrar, Central Administrative Tribunal, Madras Bench, Chennai-104.

Union of India rep.by

2. The Chairman/Managing Director, Bharat Sanchar Nigam Limited (BSNL), New Delhi-110001.

3. The Director (HR) & Disciplinary Authority, Bharat Sanchar Nigam Limited (BSNL), New Delhi.

4. The Chief General Manager, Chennai Telephones (BSNL), No.78, Purasawalkam High Road, Chennai-10.

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records relating to the order dated 3.7.2014 given in O.A.No.483 of 2012 passed by the first respondent and quash the same.

For Petitioner : Mr.S.Ramaswamy Rajarajan

For Respondents 2 to 4 : Mr.K.R.Rameshkumar

ORDER OF THE COURT WAS MADE BY V.RAMASUBRAMANIAN, J

The writ petition arises out of the dismissal of an application filed by the writ petitioner, on the file of the Central Administrative Tribunal, questioning the correctness of the penalty of compulsory retirement imposed upon him.

2. Heard Mr.S.Ramaswamy Rajarajan, learned counsel for the petitioner and Mr.K.R.Rameshkumar, learned Standing Counsel appearing for the respondents 2 to 4.

3. The petitioner was issued with a charge memo on 28.2.2009, by the Chief General Manager, in terms of Rule 36 of the BSNL Conduct, Discipline and Appeal Rules, 2006. An enquiry followed, which ultimately resulted in a penalty of compulsory retirement by proceedings dated 18.1.2011 imposed by the Chief General Manager.

4. As against the said order of compulsory retirement, the petitioner filed an application in O.A.No.197 of 2011 on the file of the Central Administrative Tribunal. Finding that the petitioner had an appeal remedy, the Tribunal disposed of the application on 2.8.2011. Immediately, the petitioner filed a statutory appeal on 1.9.2011 to the Chairman and Managing Director.

5. One of the main contentions raised by the petitioner in his appeal was that the Chief General Manager was not competent to initiate or impose a major penalty of compulsory retirement upon him.

6. Finding that the petitioner was an officer belonging to STS Cadre, carrying a scale of pay of Rs.10000-15200, the Appellate Authority allowed the appeal by an order dated 13.12.2011 holding that the imposition of penalty by the Chief General Manager was not in accordance with the statutory rules and that the Chief General Manager was not competent to impose a major penalty. However, the Appellate Authority remitted the matter back to the Competent Authority namely the Director (Human Resources), in accordance with Rule 51(2)(ii) of the Rules, to take appropriate view as a Disciplinary Authority of the case. The relevant portion of the order passed by the Appellate Authority on 13.12.2011 requires to be extracted. Hence, it is extracted as follows :

"Therefore, taking into account the records of the case, submission of the appellant and on an objective assessment of the facts, I, R.K. Upadhyay, CMD, BSNL, New Delhi, hereby remit the

case to the Director (HR) BSNL in accordance with Rule 51(2)(ii) of the BSNL CDA Rules with a direction to take an appropriate view as a Disciplinary Authority of the case."

7. Thereafter, the Competent Authority namely the Director examined the case and passed an order on 13.2.2012, imposing the penalty of compulsory retirement. As against the said order, the petitioner filed an application in O.A.No.483 of 2012. The said application was dismissed by the Tribunal by a final order dated 3.7.2014. It is against the said order that the petitioner is before this Court.

8. The maintain contentions of Mr.S.Ramaswamy Rajarajan, learned counsel for the petitioner are as follows :

(i) that when the Appellate Authority had set aside the order of penalty imposed by an incompetent authority, the Competent Authority can only initiate de novo proceedings, but not proceed from the stage at which the irregularity had crept in; and

(ii) that in any case, the order of the Government of India dated 25.11.2013 with regard to the purchase of lands, vis-a-vis the question of disproportionate assets had not been taken into consideration by the respondent Department.

9. In support of the first contention namely that once an order of penalty is set aside as having been passed by an incompetent authority, the respondent Department can only initiate de novo proceedings, the learned counsel for the petitioner relies upon the following decisions :

- "i. Mohd. Yunus Khan Vs. State of U.P. [2010 (10) SCC 539];
- ii. Coal India Limited Vs. Ananta Saha [2011 (5) SCC 142];
- iii. Anant R.Kulkarni Vs. Y.P.Education Society [2013 (6) SCC 515]; and
- iv. Union of India Vs. R.P.Singh [2014 (7) SCC 340]."

10. We have carefully considered the submissions of the learned counsel for the petitioner.

11. On the first contention, there is no dispute about the fact that the petitioner, who was working as an Assistant Engineer (Electrical), was promoted to the cadre of Executive Engineer (Electrical) in P & T Building Works (Group - A) Service in the scale of pay of Rs.10000-15200, by order dated 21.2.2003. There is also no

dispute about the fact that the said post is equivalent in cadre to STS. In the Schedule to the BSNL CDA Rules, there are two Tables, the first concerning the Appointing Authorities, the Disciplinary Authorities and the Appellate Authorities for the imposition of minor penalties and the second concerning the Appointing, Disciplinary and Appellate Authorities for the imposition of major penalties. In the first Table that relates to minor penalty, it is indicated that for officers in the cadre of STS, drawing a scale of pay of Rs.10000-15200, the Appointing Authority is the Director. However, the Disciplinary Authority for imposition of minor penalty is the Chief General Manager or Senior DDG or the DDG. The Appellate Authority is the Director and the Reviewing Authority is the Chairman and Managing Director. It is only for the imposition of major penalty that the Director himself is the Disciplinary Authority and the Chairman and Managing Director is the Appellate Authority for an officer of the STS cadre drawing a pay in the scale of pay of Rs.10000-15200.

12. In other words, the Rules very clearly demarcate the Disciplinary Authorities for the imposition of minor penalties and the imposition of major penalties. The Rules recognise the fact that though the Appointing Authority for the post held by the petitioner is the Director, the Chief General Manager is competent to impose minor penalty.

13. Keeping the position indicated in the two Tables in the Schedule to the Rules, let us now turn over to the substantive rule.

14. Rule 35 gives the procedure for imposition of minor penalties and Rule 36 lays down the procedure for imposition of major penalties. It is true that Rule 36(2) empowers the Disciplinary Authority to frame charges and initiate an enquiry. However, it is subject to what is provided under Rule 34(3). Rule 34(3) reads as follows :

"The Disciplinary Authority competent to impose penalties specified in Clause (a) to (e) of Rule 33 can institute disciplinary proceedings against any employee for the imposition of any of the penalties in Clause (f) to (j) of Rule 33."

15. As per the above rule, even an Authority competent to impose minor penalties, can initiate major penalty proceedings. However, if such an authority does so, it should be forwarded to the Disciplinary Authority, as can be found in the detailed procedure laid down in Sub-Rule (19) of Rule 36. Sub-Rule (19) of Rule 36 reads as follows :

"(19) (a). Where a Disciplinary Authority competent to impose any of the penalties

specified in Clause (a) to (e) of Rule 33 (but not competent to impose any of the penalties specified in Clause (f) to (j) of Rule 33), has itself inquired into or caused to be inquired into the articles of any charge and that authority, having regard to its own findings or having regard to its decision on any of the findings of any Inquiring Authority appointed by it, is of the opinion that penalties specified in Clause (f) to (j) of Rule 33 should be imposed on the employee, that authority shall forward the records of the inquiry to such Disciplinary Authority as is competent to impose the last mentioned penalties.

(b) The Disciplinary Authority to which the records are so forwarded may act on the evidence on the record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, recall the witness and examine, cross-examine and re-examine the witness and may impose on the employee such penalty as it may deem fit in accordance with these rules."

16. Therefore, it is clear that the competence of the Chief General Manager to initiate departmental enquiry even for the imposition of major penalties, cannot be questioned. As a matter of fact, the rule position has to be understood in the context of the provisions of Article 311(2) of The Constitution. The right of a person not to be dismissed, removed from service or reduced in rank by an officer not below the rank of the person, by whom, he was appointed, flows out of the protection given under Article 311(2). All statutory rules issued in terms of the proviso to Article 309, merely incorporate the protection granted under Article 311(2). Hence, it is not a question as to who initiated the proceedings. But, the real question is as to who imposed the penalty. Accordingly, the first contention of the learned counsel for the petitioner is bound to fail.

17. The decisions relied upon by the learned counsel for the petitioner are also of no avail.

18. In Mohd.Yunus Khan, the Prosecutor, the witness and the Appointing Authority all rolled into one and the Supreme Court frowned upon the same. That case has no application to the facts of the present case.

19. Even the decision in Ananta Saha, is of no avail to the petitioner, in view of the fact that the Supreme Court found in that case that the direction issued by the High Court was only to initiate proceedings afresh. Once there is a direction by a court of law, setting aside the proceedings and directing the initiation of proceedings afresh, the Executive cannot over-reach the orders of the Court. However, in the present case, the Appellate Authority did not set aside the whole proceedings. We have extracted the operative portion of the order of the Appellate Authority in one of the preceding paragraphs. It would be clear that what was set aside was only the penalty and not the whole of the proceedings. Therefore, the decision in Ananta Saha is also of no application.

20. In Anant R.Kulkarni also, there was a categorical finding by the Tribunal as well as the High Court that the initiation of departmental proceedings was done with mala fide intention and that the charges were not specific and precise. In the background of such findings, it was not open to the Authorities in that case to proceed from the stage at which the irregularities crept in. In that case, the Division Bench also could not go into the merits of the case. Therefore, the said decision is of no avail.

21. The decision in R.P.Singh arose out of entirely different circumstances. The advice tendered by the Union Public Service Commission was not supplied to the delinquent in advance and hence, the Supreme Court found that there was violation of the principles of natural justice.

22. In fine, none of the decisions relied upon by the learned counsel for the petitioner supports his contention that the Chief General Manager would not have initiated proceedings. Consequently, the first contention is to be rejected.

23. In so far as the second contention is concerned, the reliance placed by the petitioner upon a communication dated 25.11.2013 as to how the acquisition of properties has to be dealt with and as to how the non intimation of acquisition has to be dealt with, has no relevance to the charges framed against the petitioner. In any case, this is a matter for evidence, which the Enquiry Officer appears to have appreciated. This was not actually the issue that was projected before the Appellate Authority or the Disciplinary Authority or the Tribunal. Hence, the second contention cannot also be accepted.

24. In the result, we find no reason to interfere with the order of the Tribunal. Accordingly, the writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

RS

To

1.The Registrar, Central Administrative Tribunal,
Madras Bench, Chennai-104.

2.The Chairman/Managing Director,
Bharat Sanchar Nigam Limited (BSNL),
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3.The Director (HR) & Disciplinary Authority,
Bharat Sanchar Nigam Limited (BSNL),
New Delhi.

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Chennai Telephones (BSNL),
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Chennai-10.

1 CC to Mr.S.Ramaswamy Rajarajan, Advocate SR.No. 8478

1 CC to Mr.K.R.Rameshkumar, Advocate SR.No. 8155

W.P.No.24873 of 2014

KK (CO)
PSI (26.02.2015)

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