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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 6014/2014 & C.M. APPL. 14662/2014**

% *Date of judgment: 15th October, 2015*

BHARAT SANCHAR NIGAM LTD. & ORS. ..... Petitioners
Through: Mr. R. V. Sinha, Mr. A. S. Singh and Mr. R. N. Singh, Advocates.

Versus

SUBHASH CHAND GUPTA ..... Respondent
Through: Mrs. Rani Chhabra and Ms. Priyanka Soni, Advocates.

**CORAM:**
**HON'BLE MR. JUSTICE G.S.SISTANI**
**HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL**

**G. S. SISTANI, J.**

1. By way of the present petition, the petitioners challenge the order dated 04.04.2014 passed by the learned Central Administrative Tribunal, Principal Bench at New Delhi in O.A. No. 3067/2012, whereby the Tribunal quashed and set aside the order passed by the Disciplinary Authority dated 16.05.2012 and the order passed by the Appellate Authority dated 30.06.2012.

2. To appreciate the controversy at hand, it would be necessary to give a brief gist of the facts. The respondent i.e. Shri Subhash Chand Gupta, was posted as Sr. TOA (P) under the SDE (Phones), City Centre, now SDE (Phones), Shiv Chowk O/o GMTD Muzaffarnagar. Proceedings were initiated against the respondent under Rule 36 of the Bharat Sanchar Nigam Limited (BSNL)

Conduct, Discipline and Appeal Rules, 2006. The substance of the imputations of misconduct or misbehaviour in respect of which the enquiry was proposed to be conducted against him was as under:-

> *"Article-1*
> *That the said Shri Subhash Chand Gupta, while posted and functioning as Sr.TOA(P) under the then SDE (Phones), City Centre, now SDE (Phones), Shiv Chowk O/o GMTD Muzaffarnagar during the period 01.06.2004 to 31.07.2004 committed following irregularities while discharging his duties, which amounts to misconduct.*
>
> *During the period the said Shri Subash Chand Gupta, Sr. TOA (P) under the then SDE (Phones), City Centre, now SDE (Phones), Shiv Chowk was found guilty for submission of forged LTC Bill of his three family members from Muzaffarnagar to Kanya Kumari for block year 2002-05 on forged documents of tourism department. The tourism permit was not issued by ARTO Fatehpur to the bus by which the journey was performed by his family members from Muzaffarnagar to Kanya Kumari. As per tour programme, the bus No.UP-78 AN 0601 had gone to Kanya Kumari via Gwalior. The said bus has also not passed from the Transport Check Post Baretha, Dhaul Pur, Rajasthan during tour programme 19.06.2004 to 04.07.2004 while going to Gwalior, thereby violated Rule 5(31) of BSNL CDA Rules-2006.*
>
> *Thus by his above acts, the said Shri Subhash Chand Gupta. Sr. TOA (P) under the then SDE (Phones), City Centre, now SDE (Phones), Shiv Chowk, O/o GMTD, Muzaffarnagar failed to maintain absolute integrity and acted in a manner which is unbecoming of a company employee,*

*thereby contravened the provisions of Rule-4 (1)(a) & 4(1)(c) of BSNL CDA Rules-2006."*

3. The aforesaid substance of imputations of misconduct or misbehaviour was proposed to be proved by four listed documents mentioned in Annexure A-3 of the O.A. but according to Annexure A-4 of the O.A, there were no witnesses to prove the allegations. However, after conducting an enquiry into the matter, the Inquiry Officer, vide its report dated 14.10.2011, held that nothing could be proved against the respondent in respect of the charges framed against him. The relevant part of the said report reads as under:-

> *"To sustain the above charge the following four documents were proposed in Annexure-III of the memo of charges:-*
> *(1) Photocopy of LTC Bill.*
> *(2) AC (Cash) O/o GMTD Muzaffarnagar letter No.AO ( C)/Vig./2008-09/39 dated 11.10.2010.*
> *(3) Certificate given by Incharge Tax Collection Centre, Transport Department Baretha, Dhaupur (Rajasthan) and Other Incharge, Transport Check Post, Muraina, District Muraina (MP).*
> *(4) ARTO (Administration) Fatehpur letter No.5109/Samanya Prashashan-LTC Permit-Styapan/05 dated 02.05.2005.*
>
> *There was no witness proposed in Annexure-IV of the charge sheet to be produced in support of the article of charge.*
>
> *The preliminary enquiry was held on 01.03.2011. The delinquent confirmed receipt of the memo of charges and denied the charge leveled against him. He has desired copies of listed documents. PO was ordered to make available the copies of listed documents to CO.*
>
> *Next hearing was held on 26.03.2011, copies of listed documents were made over to the CO. The CO did not intimate any name of his*

*defence assistant. CO requested that the additional documents from defence side will be submitted on next hearing.*

*3rd and 4th hearing were scheduled on 11.4.2011 and 30.04.2011. CO submitted a list of additional documents which was examined and the PO was ordered to procure the documents and made over to the CO by the next hearing. The CO pleaded to defend his case himself.*

*On the 5th hearing on 03.06.2011, the PO could not provide the additional documents and desired another date for the purpose. He was allowed.*

*On 6th hearing dated 14.06.2011, the PO still could not supply the additional documents and further requested for some time. He was allowed.*

*On 7th hearing dated 21.06.2011, PO showed inability for procuring all additional documents and requested further time for this purpose. He was again allowed to submit the documents by next hearing.*

*On 8th hearing dated 16.7.2011, PO informed that all additional documents had been made over to the CO. The CO furnished acknowledgement of the additional documents and further submitted a list of certain additional documents after inspection of one file. The another file could not be shown due to administrative reasons. The CO did not stress for inspection of that file. The list now submitted for additional documents was examined and found materially related with case for defence and therefore was allowed. The PO supplied all these additional documents also. The CO confirmed receipt of all additional documents.*

*On 9th hearing dated 22.07.2011 the PO could not submit the attested copies of the listed* *documents of Annexure III of the memo of charges. He was allowed next date for this purpose.*

*On 10th hearing on 01.08.2011, PO supplied all the listed documents well attested to the CO. CO nominated three defence witnesses Shri R.S. Gupta Accounts Officer Meerut, Shri Sushil Kumar Sr. TOA (P) Muzaffarnagar and Shri Ashok Kumar Sharma Accounts Officer Meerut and BSNL employees. All they were allowed. The PO produced listed prosecution documents of serial 1 and 2 which were not disputed by the CO and therefore taken on records and marked Ex.S-1(i), Ex.S-2(i), S-2(ii). The CO did not accept the authenticity of the rest two documents.*

*PO desired to produce Shri Virendra Singh ADT (Vig) O/O GMTD BSNL Muzaffarnagar, who held the investigation of the case. He was allowed and summoned for the next hearing.*

*On 11th hearing dated 18.8.2011, Shri Virendra Singh ADT (Vig) O/O GMTD BSNL Muzaffarnagar was examined in chief and cross examined by the CO and his deposition was recorded and marked SW-1. Shri Virendra Singh ADT (Vig.) authenticated the remaining prosecution documents. Both these documents were then taken on records and marked Ex.S-3(i), S-3(ii) and Ex.S-4. The defence documents were also confirmed by the SW-1 and those were taken on records and marked Ex.D-1; Wx.D-2; Ex.D-3; Ex.D-4; Ex.D-5; Ex.D-6; Ex.D-7; Ex.D-8; Ex.D-9(i); D-9(ii); Ex.D-9 (iii) and Ex.D-10. One map of Uttar Pradesh is also taken on records and marked Ex.R-1.*

*Consequent upon taking on records, all the prosecution documents and examination of prosecution witness, PO declared the case over from prosecution side. The CO was ordered to* *submit his defence statement before his witnesses are examined on next hearing.*

*On 12th hearing of 25.08.2011, the CO submitted his statement of defence with a copy of the PO. CO also submitted rulings on LTC which are taken on records and marked Ex.R-2 and Ex.R-3. Two witnesses Shri Sushil Kumar Sr.TOA (P) Muzaffarnagar and Shri Ashok Kumar Sharma, Accounts Officer Meerut were adduced from defence side whereas the third Shri Radhey Shyam Gupta was dropped by the CO. The depositions of witnesses were recorded and marked as DW-1 and DW-2 respectively.*

*The case was also declared closed and both PO and CO were ordered to submit their briefs.*

*The PO submitted his written brief on 29.08.2011 and the CO submitted his brief on 14.09.2011.*

*During inquiry, full opportunity was provided to both PO and CO for presenting the case from their side.*

***Observation***

*On going through all the evidences before inquiry and hearing the prosecution witnesses as well as defence witnesses, it became clear that the LTC claim submitted by Shri Subhash Chand Gupta, Sr. TOA ( P) Muzaffarnagar is in order. All the evidences before the inquiry failed to prove any charge against him.*

***Conclusion***

*I, Ram Kumar, Asstt. General Manager (Marketing) BSNL Muzaffarnagar an inquiring authority in the case, has arrived on the decision that nothing could be proved against Shri Subash Chand Gupta, Sr.TOA (P) Muzaffarnagar for the charges framed against him in charge sheet No.DGM/MZN/Vigilance/2010-11/1 dated 21.01.2011."*

4. The Disciplinary Authority forwarded a copy of the enquiry report to the respondent, vide its letter dated 07.12.2011 and on receipt of the same, vide his letter dated 09.12.2011, he submitted that he did not dispute the same. However, the Disciplinary Authority, vide its letter dated 30.04.2012, disagreed with the findings of the Inquiry Officer and proposed to impose a suitable major penalty upon the respondent as per Bharat Sanchar Nigam Limited (BSNL) Conduct, Discipline and Appeal Rules, 2006. He was also given an opportunity to make a representation, if any, within 15 days from the date of disagreement note. The said disagreement note is reproduced as under:-

*"Bharat Sanchar Nigam Limited*
*(A Govt. of India Enterprise)*
*O/o General Manager Telecom District*
*Muzaffarnagar-251001 (UP)*

*To*

*Shri S.C. Gupta-Sr.TOA (P)*
*O/o SDIO (Shiv Chowk),*
*Muzaffarnagar*

*No.DGM/MZN/Dis. Case/Subash Chand Gupta/15*

*Dated: 30.04.2012*

*Sub: Reg. Disciplinary proceeding in connection with fabricated LTC Bill & payment.*

*As per the second stage advice received in the case, it is observed that –*

*(i) The Charged Official submitted the LTC Bills (S-1) from Muzaffarnagar to Kanyakumari,*

*claiming that the said journey was performed through a BUS No.UP-78 An.0601/route permit No.183/F/04 during 19.06.2004 to 04.07.2004 by his family members. But as per ARTO (Admn) Fatehpur office letter dated 02.05.2005, no such permit was issued to the said bus for the said journey (S-4). It does not seem to be possible to travel by a bus for such a long journey which was not have any route permit for said journey.*

*(ii) The said Government authorities have denied the passing of said bus through state borders on normal route (Delhi to Gwalior via Mureine [MP]/Barethe [Dholpur Raj.] S-3(i) & S-3(ii). The charged official has deposed that the journey from Delhi to Gwalior was performed through another route via Etwah-Bhind but charged official has not produced any documentary proof for journey via Etawah-Bhind route i.e. name of check post from where bus was passed on the diverted/changed route between New Delhi to Gwalior. The IO has considered the statement of charged official without any supporting document.*

*(iii) The charge official has returned/deposited the LTC advance/payment (with interest) without any protest.*

*In view of the above, the charge of submission of fake LTC bill by you is established and the competent authority has disagreed with the Disciplinary Authority and has advised for imposition of suitable Major Penalty on you as per BSNL CDA Rules, 2006.*

*Your comments on the above should reach to the undersigned within 15 days so that the further necessary action can be taken accordingly.*

*Anil Kumar*
*DGM(CM/CFA) cum Disciplinary Authority*
*O/o GMTD – Muzaffarnagar"*

5. Accordingly, the respondent made a representation on 09.12.2011 submitting that the disagreement note of the Disciplinary Authority was not substantiated by any of the findings/observations of the enquiry report dated 14.10.2011. However, the Disciplinary Authority, vide the impugned order dated 16.05.2012, imposed the following punishment upon the respondent:-

> *"(i) Reduction of pay of the Applicant by two stages lower in the time scale of pay from the date of decision till 31.12.2012 with cumulative effect. During this period he will not earn any increment. After expiry of this period, the reduction will not have the effect of postponing his future increments of pay.*
> *(ii) Disallow any type of LTC till retirement/superannuation due to grave misuse of LTC facility."*

6. The respondent preferred an appeal dated 17.05.2012 against the aforesaid order of penalty. The Appellate Authority reduced the punishment by way of modification, vide order dated 30.06.2012, which is reproduced as under:-

> *"(i) Reduction of pay to one stage lower in the time scale of pay for a period of six months with cumulative effect w.e.f. 16.05.2012. During this period he will not earn any increments of pay and on expiry of this period, the reduction will not have the effect of postponing his future increments of his pay.*

> *(ii) Disallow any type of LTC till retirement/superannuation due to grave misuse of LTC facility."*

7. Thereafter the respondent filed an O.A. 3067/2012 and by order dated 04.04.2014 the learned Tribunal quashed and set aside the order passed by the Disciplinary Authority dated 16.05.2012 and the order passed by the Appellate Authority dated 30.06.2012.

8. The learned Counsel for the petitioners contended that the respondent was found guilty of submitting forged LTC Bills along with forged documents of a tourist permit claiming Leave Travel Concession for his three family members from Muzaffarnagr to Kanya Kumari for the block year 2002-05.

9. The counsel for the petitioners further argued that during inquiry it was found that no such permit was issued by the officials of Assistant Regional Transport Officer (ARTO) Fatehpur to the bus No.UP-78 AN-0601 by which the journey was allegedly performed by his family members. As per the tour programme, the bus No.UP-78 AN-0601 had gone to Kanya Kumari via Gwalior. Whereas, while going to Gwalior the said bus had not crossed the Transport Check Post at Muriana, District Muraina (MP) and Transport Check Post Baretha, Dhaul Pur, Rajasthan as scheduled as per the tour programme from 19.06.2004 to 04.07.2004 thereby the respondent violated Rule 5(31) of Bharat Sanchar Nigam Limited (BSNL) Conduct, Discipline and Appeal Rules, 2006. The Rule is reproduced as under:

> *"5 (31) Deliberately making any false statement before a superior knowing it to be false."*

10. By the said act the respondent had contravened as per Rule 4(1)(a) and 4(1)(c) of Bharat Sanchar Nigam Limited (BSNL) Conduct, Discipline and Appeal Rules, 2006. The Rule is reproduced as under:

> *" Rule 4. GENERAL*
> *(1) Every employee of the Company shall at all times-*
> *(a) maintain absolute integrity;*
> *(b) maintain devotion to duty;*
> *(c) do nothing which is unbecoming of a Public Servant;*
> *(d) conduct at all times in a manner conducive to the best interest of the Company"*

11. Thereafter charge sheet was served upon the respondent and all the charges framed against the respondent were denied by him. The Inquiry Officer concluded that the Leave Travel Concession claim. Thereafter the Disciplinary Authority referred the matter to the Central Vigilance Commission for a second advice whereafter a penalty was imposed by the Disciplinary Authority vide order No.DGM/MZM/Rule 36/S.C. Gupta/ Sr.TOA(P)/17 dated 16.05.2012 which was modified by the Appellate Authority i.e. Senior General Manager Telecom, District Muzaffarnagar (U.P.) vide order dated 30.06.2012 as aforestated.

12. The learned counsel for the petitioners argued that the order dated 16.05.2012 passed by the Disciplinary Authority and the order dated 30.06.2012 passed by the Appellate Authority are speaking, well considered and reasoned orders and the learned Tribunal erred in quashing the said orders.

13. The counsel for the petitioners further argued that the adequacy or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts the evidence and the conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of charge. The Disciplinary Authority is the sole judge of facts. The Court/Tribunal in its power of judicial review does not act as Appellate Authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The counsel for the petitioners to support his case further relied upon the case of ***B.C. Chaturvedi v. UOI: AIR 1996 SC 484***.

14. Per contra, the learned counsel for the respondent argued that the Disciplinary Authority exceeded its jurisdiction in disagreeing with the findings of the Inquiry Officer who found that no charge levelled against him was proved.

15. The learned counsel for the respondent further contended that there is no provision in the Leave Travel Concession Rules that the official has to submit a bus permit in support of his LTC claim. Further, the letter No.9109/S.P./L.T.C./Permit Satyapan/05 dated 02.05.2005 sent to the Assistant Manager Telecom by the Assistant Divisional Transport Officer (Admn.) Fatehpur regarding the verification of bus permits relied upon in the note of disagreement was never proved before the Inquiry Officer. Furthermore the Inquiry Officer also found that the said document was not reliable.

16. We have heard the learned counsel for the petitioner as well as the respondent and we are of the view that not even a single prosecution witness has proved the charges against the respondent. The disagreement note issued

by the Disciplinary Authority was also found to be arbitrary in nature. It is only on the basis of the evidence placed on record; the Disciplinary Authority can act upon the report of the Inquiry Officer. Furthermore, the findings of the Inquiry Officer itself are not based on any evidence; until and unless some other material evidence is brought on record there is no question of the Disciplinary Authority disagreeing with the findings of the Inquiry Officer. Therefore, the disagreement note of the Disciplinary Authority is also not based on any evidence. Furthermore, In the case of ***Hardwari Lal v. State of U.P. & Others: (1999) 8 SCC 582*** the Hon'ble Apex Court held:

> *"3. Before us the sole ground urged is as to the non-observance of the principles of natural justice in not examining the complainant, Shri Virender Singh, and witness, Jagdish Ram. The Tribunal as well as the High Court have brushed aside the grievance made by the appellant that the non-examination of those two persons has prejudiced his case. Examination of these two witnesses would have revealed as to whether the complaint made by Virender Singh was correct or not and to establish that he was the best person to speak to its veracity. So also, Jagdish Ram, who had accompanied the appellant to the hospital for medical examination, would have been an important witness to prove the state or the condition of the appellant. We do not think the Tribunal and the High Court were justified in thinking that non-examination of these two persons could not be material, In these circumstances, we are of the view that the High Court and the Tribunal erred in not attaching importance to this contention of the appellant."*

17. Similarly the Hon'ble Apex Court in the case of ***Roop Singh Negi v. Punjab National Bank and Others: (2009) 2 SCC 570*** held:

> *"17. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof."*

18. Rule 37(2)(a) of the Bharat Sanchar Nigam Limited (BSNL) Conduct, Discipline and Appeal Rules, 2006 stipulates that if the Disciplinary Authority disagrees with the findings of the Inquiry Officer, then only tentative reasons are to be provided by the Disciplinary Authority. The relevant part of Rule 37(2)(a) of the Bharat Sanchar Nigam Limited (BSNL) Conduct, Discipline and Appeal Rules, 2006 reads as under:-

> *"37(2) (a) The Disciplinary Authority shall forward or cause to be forwarded a copy of the*

*report of the inquiry, if any, held by the Disciplinary Authority or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the finding of the Inquiring Authority on any articles of charge to the employee who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within 15 days, irrespective of whether the report is favourable or not to the employee..."*

19. In ***Yoginath D. Begde v. State of Maharashtra: (1999) 7 SCC 739*** the Hon'ble Apex Court held:

*"But the requirement of "hearing" in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before Disciplinary Authority finally disagrees with the findings of the Inquiring Authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the Inquiring Authority do not suffer from any error and that there was no occasion to take a different view. The Disciplinary Authority, at the same time, has to communicate to the delinquent officer the "TENTATIVE" reasons for disagreeing with the findings of the Inquiring Authority so that the delinquent officer may further indicate that the reasons on the basis of which the Disciplinary Authority proposes to disagree with the findings recorded by the Inquiring Authority are not germane and the finding of "not guilty" already recorded by the Inquiring Authority was not liable to be interfered with."*

20. Similarly in ***M.S. Chauhan Vs. State Bank of India: 2003 4 SCT 577***, Punjab and Haryana High Court held:

> *"If the punishing authority is differing with the findings of Inquiry Officer, who has exonerated the delinquent on all or a few charges and the punishing authority proposes to punish the delinquent on those charges, it is obligatory upon the punishing authority to issue a show cause notice to him giving reasons of his disagreement and proposed action and afford him an adequate opportunity in his defence."*

21. On perusal of facts, submissions of the learned counsel for the parties and the law laid down by the Apex Court, we are in consonance with the view of the learned Tribunal that the Inquiry Officer after inspecting the list of documents and Vigilance Officer who conducted the preliminary enquiry gave its conclusion that the charges against the respondent were not proved. Without any other admissible evidence the decision of Disciplinary Authority cannot hold that the charges against the respondent are proved. Such finding of the Disciplinary Authority is arbitrary in nature and the same is against the principles of natural justice. It is clear from the order of the Disciplinary Authority and the Appellant Authority that both the authorities have not applied their mind while deciding the case of the respondent.

22. Hence, we find no infirmity in the order of the Central Administrative Tribunal which would require interference. The petition is without any merit and the same is accordingly dismissed.

**C.M. APPL. 14662/2014 (STAY)**

23. In view of the order passed in the writ petition, the application is also dismissed.

**G.S.SISTANI, J.**

**SANGITA DHINGRA SEHGAL, J.**

**OCTOBER 15, 2015**

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