IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16718 of 2015

WEB COPY NOT OFFICIAL

==

Shyam Sunder Prasad, Son of Shri Jagmohari Prasad, Resident of Mohalla- North Mandiri, Flat No.401, Pushpanjali Enclave, District- Patna (Bihar).

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Communication & Information Technology, Department of Telecommunication, Sanchar Bhawan, Ashoka Road, New Delhi- 110001.
2. The CMD, BSNL, Stateman House, Barakhambha Road, New Delhi- 110001.
3. The Director (Finance), Corporate Office, Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi.
4. The Chief General Manager, Bihar Telecom Circle, Patna.
5. The Chief General Manager, U.P. (East), Lucknow.

.... Respondent/s

with

==

Civil Writ Jurisdiction Case No. 17669 of 2015

==

Shyam Sunder Prasad, Son of Shri Jagmohan Prasad, Resident of Mohalla-North Mandiri, Flat, No. 401, Pushpanjanli Enclave, District Patna (Bihar)

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Department of Telecommunication, Ministry of Communication & Information Technology, Sanchar Bhawan, Ashoka Raod, New Delhi-110001
2. The Chief Managing Managing Director , Bharat Sanchar Nigam Limited , Stateman House, Barakhambha Road New Delhi.-110001
3. The Director (Finance) Corporate Office, Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath New Delhi.
4. The Chief General Manager, Bihar Telecom Circle, Patna.
5. The Chief General Manager, U.P (East) Lucknow.

.... Respondent/s

==

WEB COPY
NOT OFFICIAL

Appearance :

For the Petitioner/s : Mr. M.P. Dixit, Advocate.
Mr. S.K. Dixit, Advocate.
Mr. Sanjay Kumar Choubey, Advocate.
Mr. Shailendra Kumar, Advocate.
Mr. Sunil Kumar, Advocate.

For the Respondent/s : Mr. Harendra Prasad Singh, Advocate.
Mr. Santosh Kuma, Advocate.

==

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)
Date: 26-07-2016

Heard learned counsel for the parties.

2. The challenge in the present writ applications is to an order passed by the Central Administrative Tribunal, Patna Bench, Patna (for short “the Tribunal”) on 28th of July, 2015 in O.A. Nos. 378 of 2011 and 376 of 2011, whereby Original Applications filed by the petitioner challenging the imposition of punishment of reduction of one stage in the time scale of pay till the date of his retirement with cumulative effect was not set aside in two charge-sheets on similar allegations but in respect of different amounts.

3. The petitioner attained the age of superannuation on 31st of October, 2010 while holding the post of Senior Accounts Officer. The petitioner was charge-sheeted vide Memo dated 25th of June, 2008 under Rule 36 of BSNL Conduct, Discipline and Appeal

Rules, 2006 (for short “the Rules”). The allegation against the petitioner was omission and commission in procurement of stores.

4. The petitioner was served with three different charge memos in respect of three different separate amounts of irregular payments on the basis of reports by the C.B.I., Ranchi. One charge sheet was dropped whereas, in two punishments, as stated above was imposed.

5. The Inquiry Officer submitted his report on 23rd of June, 2009. The Disciplinary Authority submitted a Disagreement Note on 3rd of August, 2010 and after considering the reply, an order of punishment dated 1st of October, 2010 was served upon the petitioner. The relevant extract from the order reads as under:-

> “NOW THEREFORE in exercise of the power conferred by BSNL CDA Rules, 2006, I, Om Vir Singh, Chief General Manager Telecom UP(E) Telecom Circle hereby order for imposition of penalty of reduction by one stage in the time scale of pay till the date of retirement with cumulative effect on Shri S.S. Prasad, the Charged Officer.”

6. The challenge to such similar order in two different Original Applications remained unsuccessful before the Tribunal.

7. Before this Court learned counsel for the petitioner has raised the following arguments:-

(i). That the punishment imposed upon the petitioner is not a punishment enumerated in Rule 33 of the Rules. Therefore, such punishment, which is not contemplated by the Rules, cannot be imposed and consequently sustained.

(ii). That as per Rule 37(5) of the Rules, if the Disciplinary Authority is to impose any major penalty, it has to seek prior approval of the Appointing Authority. It is contended that the Disciplinary Authority is Chief General Manager, and the Director is the Appointing Authority. The Director in terms of the Rules means Functional Director dealing with the HR of the Company. Since there is no prior approval, therefore, the penalty imposed is not sustainable.

(iii). That the punishment imposed affects the retiral benefits of the petitioner as the imposition of penalty of reduction by one stage in the time scale is before the retirement of the petitioner and has a consequence on the quantification of the pension after the retirement. Therefore, the order of punishment is illegal and unwarranted.

8. On the other hand, learned counsel for the

respondents pointed out that the major punishment has been imposed as provided under Clause (f) of Rule 33(B) of the Rules. Since the petitioner was to attain the age of superannuation in a period of one month, the punishment imposed is only of reduction of pay for one month. Therefore, the punishment falls under Clause (f) of Rule 33 (B) of the Rules. It is also contended that there was prior approval of the Director, HR, B.S.N.L. which was communicated to Deputy General Manager on 27th of September, 2010. A communication in this connection has been produced by the respondents, which is taken on record. It is contended that no such plea was raised either in pleadings or at the stage of arguments; therefore, such document could not be produced before the learned Tribunal. Thus, to rebut an argument raised before this Court, such document may be taken into consideration.

9. We have heard learned counsel for the parties and find no merit in the writ applications.

10. Rule 33 of the Rules deals with the minor and major penalties. Part A of Rule 33 deals with minor penalties, whereas Part-B of the Rules deals with major penalties. The relevant penalty clause (f) reads as under:-

> “(f) Save as provided for in clause (e) above, reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the

employee will earn increments of pay during the period of such reduction and whether on expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay,"

11. The order of punishment was passed on 1st of October, 2010 and the petitioner was to attain the age of superannuation on 31st of October, 2010. Therefore, the order of punishment of reduction by one stage in the time scale of pay till the date of retirement with cumulative effect substantially means reduction by one stage in the time scale of pay by one month. Such penalty falls within clause (f) of the Major Penalties, which contemplates reduction of lower stage in the time scale of pay for specified period. Such period is one month. The further direction of period of punishment was not necessary as the petitioner was attaining the age of retirement after one month. Further direction as to whether the employee will earn increments or pay during the period of such reduction or the reduction will or will not have effect of postponing future increments of his pay was redundant in the case of the petitioner as he was due to retire in the very next month. Therefore, we find that the punishment imposed is under clause (f) of Rule 33(B) of the Rules.

12. From perusal of the communication dated 27th of September, 2010 produced by the learned counsel for the respondents,

shows that there is prior approval of the Director, HR, B.S.N.L. before the punishment was imposed by the Disciplinary Authority on 1st of October, 2010. Therefore, the argument raised by the petitioner is factually not sustainable.

13. In respect of an argument that such punishment will affect his pensionary benefits does not merit acceptance as even if such order affects the pensionary benefits then also, the punishment cannot be said to be unwarranted. The punishment imposed in terms of the Rules and whatever the consequences of such punishment, that have to be borne by the petitioner alone.

14. In view thereof, we do not find any merit in the writ applications. The same are dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

P.K.P.
N.A.F.R.

U			