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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3598 OF 2013

Sat Prakash Ramniwas Tyagi

.. Petitioner

Versus

1. Union of India and ors.

.. Respondents

Mr. Ramesh Ramamurthy i/by Mr. Sai Kumar Ramamurthy for petitioner.
Mrs. Neeta Masurkar a/w Upendra Lokegaonkar i/by Vinay Masurkar a/w
D. A. Dube for respondent no.1 – UOI.

Mr. Ramakant Patil a/w Mr. Vishal Shirke i/by Mr. Sandeep Marne for
respondent nos.2 and 3 – MTNL.

CORAM: NARESH H. PATIL &
PRAKASH D. NAIK, JJ.

RESERVED ON : SEPTEMBER 20, 2016

PRONOUNCED ON : SEPTEMBER 29, 2016

ORDER [Per Naresh H. Patil, J.] :

1. The petitioner challenges an order dated 9/8/2012 (Exhibit
“A” to the petition) passed by the Central Administrative Tribunal, Mumbai
in Original Application No. 600 of 2000.

2. The petitioner joined services as Junior Telecom Officer in the erstwhile Mumbai Telephone in 1979. By an order dated 4/2/1988, he was placed under suspension, as a departmental enquiry was contemplated. A charge-sheet dated 16/11/1989 was issued to the petitioner under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short "CCS (CCA) Rules, 1965"). Six charges were levelled against the petitioner. The petitioner's contention is that out of six charges, four charges were already levelled in the earlier charge-sheet, which was issued on 9/9/1988. The second charge-sheet was issued without communicating to the petitioner the withdrawal of earlier charge-sheet. The charges in the charge-sheet related to loss of telephone cable and other related matters. An FIR came to be lodged with Juhu Police Station on or about 9/2/1988 in connection with the same incident. The department alleged that the petitioner while working as Junior Telecom Officer (JTO) had not laid cables of about 600 mtrs., but created record showing that he had laid 600 mtrs. cable. The un-utilized stock of cable remained unaccounted for, according to the department.

3. The petitioner denied the charges levelled against him. An Enquiry Officer was appointed. The report dated 7/1/1991 was submitted

by the Enquiry Officer, holding the petitioner guilty of article of charge Nos.1 to 4 and exonerating him from article of charge Nos.5 and 6. The petitioner was supplied with copy of enquiry report. Reply was submitted to the Enquiry Officer's report. Petitioner's contention is that the Enquiry Officer has not given any reason as to why he had recorded finding of guilt in respect of article of charge Nos.1 to 4. Thereafter the Disciplinary Authority proceeded to pass order on 17/8/1995 by imposing penalty of compulsory retirement on the petitioner.

4. The petitioner thereafter filed appeal on 18/10/1995 before the Appellate Authority against the penalty of compulsory retirement imposed on him.

5. It is the petitioner's contention that he was acquitted by the Metropolitan Magistrate, 44th Court, Andheri, Bombay by his judgment and order dated 15//3/1996 in Case No. 311/P-1988 after a full trial.

6. The departmental appeal filed by the petitioner against the penalty of compulsory retirement was rejected by the Appellate Authority by order dated 4/8/1997. The petitioner preferred a Review Petition on

12/8/1996, addressed to the President of India. The Review Petition was rejected by the Competent Authority vide order dated 10/12/1998. Against the said rejection order, the petitioner preferred a Writ Petition No. 6089 of 2004 before this court, which was admitted. After the jurisdiction was conferred on the Central Administrative Tribunal to hear the matters pertaining to MTNL / BSNL, by judgment and order dated 3/7/2009, this court allowed the writ petition and remanded the matter to the Tribunal for taking decision afresh, according to the petitioner's contentions in the said writ petition.

7. By impugned judgment and order, the Central Administrative Tribunal upheld the orders passed by the departmental authorities. Learned counsel appearing for the petitioner submitted that opportunity of hearing was not provided to the petitioner. Whatever was the finding of the Enquiry Officer was relied upon by the Central Administrative Tribunal. The Appellate Authority and the Tribunal failed to independently assess the material placed on record and consider the stand of the petitioner. The acquittal of the petitioner in the criminal case ought to have weighed with the authority. Article of charge Nos.1 to 4 were repeated in the second enquiry without intimating withdrawal of the first charge-sheet and that has

caused prejudice to the petitioner. The petitioner is an employee of the Union and on deputation he was working with the MTNL. Therefore, the proceedings initiated against the petitioner by MTNL authority was null and void. Learned counsel referred to the provisions of Rule 14 of CCS (CCA) Rules, 1965. It was further submitted that in case the suspension period is considered to be part of service for the purpose of pension, petitioner would at least get pensionary benefits. Even that plea was also not considered. The learned counsel submitted that the huge cable could not have been carried away at the behest of the petitioner. The authorities ought to have considered the nature of work being discharged by the petitioner at the relevant time. There was no documentary proof or any convincing material to fasten liability on the petitioner.

8. Learned counsel appearing for respondent no.1 submitted that all the authorities have concurrently held against the petitioner. The charges were proved against the petitioner. Acquittal from the criminal case in no way would affect the merits of the departmental enquiry. The object and purpose of holding the departmental enquiry and the appreciation relating to the evidence placed on record before the Disciplinary Authority is entirely different than the appreciation by the

criminal court. Learned counsel submitted that it is a serious misconduct on the part of the petitioner and taking into consideration all the facts, attending circumstances and the material on record, the authority had passed the order of compulsory retirement. Learned counsel submitted that no interference is warranted in exercise of writ jurisdiction of this court.

9. We have perused the record and impugned orders placed before us. We have considered the submissions advanced before us by the learned counsel for the parties. It is a matter of fact that all the authorities concurrently held that the charge levelled against the petitioner was proved. The Tribunal in detail scanned the material referred to in article of charges, pleadings of the parties, the stand taken by the petitioner and had upheld the findings of the Enquiry Officer. The Tribunal observed that acquittal in criminal case does not automatically lead to review of the punishment imposed on the applicant after holding departmental enquiry, as per Rule 14 of CCS (CCA) Rules, 1965. The Enquiry Officer had followed the prescribed procedure by giving reasonable opportunity to the petitioner during the enquiry proceeding. The petitioner had not raised any objection before the Enquiry Officer during the enquiry proceeding. The

Enquiry Officer not only relied on the admission of the petitioner/applicant recorded on 2/2/1988 during the preliminary enquiry but also relied on other documents, which were placed before him. The admission of the petitioner of his guilt, misconduct itself justifies the view adopted by the authorities and the Tribunal. The alternate plea made by the learned counsel appearing for the petitioner for consideration of the suspension period as part of service for the purpose of retiral benefits relating to pension, in the facts of the case, cannot be considered.

10. No case has been made out by the petitioner to cause interference by this court in exercise of its writ jurisdiction. Petition is dismissed.

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL,J.)