

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 209 OF 2015

Mr. Rajendrakumar Rajaram Gawde,
Age : 56 years, Occ : Nil
Ex-planner Grade I, of Telecom Factory,
Bharat Sanchar Nigam Ltd., Deonar
Mumbai-400 088.

R/o. D-63, Sarita, Vishwakarma Nagar,
Mulund (West), Mumbai-400 080.

.....Petitioner
Orig. Applicant

: V E R S U S :

1. Union of India
Through, the Chief General Manager,
Telecom Factory, Bharat Sanchar Nigam
Ltd., Deonar, Mumbai-88.

2. The Deputy General Manager (MM)
Telecom Factory, Bharat Sanchar
Nigam Ltd., Deonar, Mumbai-400 088.

3. Sr. Engineer (IS), Disciplinary Authority,
Telecom Factory, Bharat Sanchar Nigam,
Ltd., Deonar, Mumbai-088.

....Respondents

Mr. J.S. Kini, i/by. Mr. Suresh Dubey, Advocate for the
petitioner.

Mr. A.S. Rao, Advocate for respondents.

CORAM :- **SMT. V.K. TAHILRAMANI, &**
SANDEEP K. SHINDE, JJ.

DATE :- **6th JULY, 2017.**

JUDGMENT (PER :- SANDEEP K. SHINDE, J) :-

1. This petition is preferred against the order dated 3rd September, 2014 passed by the Central Administrative Tribunal, (CAT) Bombay Bench in O.A. No. 431 of 2010 whereby the Learned Member refused to interfere with the order of the Disciplinary Authority imposing penalty of compulsory retirement and order dated 22nd March, 2010 passed by the Appellate Authority and the order dated 4th May, 2010 passed by the Revisional Authority confirming the order passed by both the lower authorities.

2. The petitioner joined the services in December, 1982 as a Planner, Grade-II. Three chargesheets were issued, first on 30th April, 1997, second 13th August, 1997 and third on, 13th October, 1998. Pursuant to the first

chargesheet, enquiry was held and his services were terminated by imposing punishment of removal from service on 22nd July, 1999. In Appeal, the Appellate Authority converted the termination into “compulsory retirement”. Petitioner raised industrial dispute against the punishment of “compulsory retirement” under the provisions of the Industrial Disputes Act, 1947, the petitioner being a “Workman” under Section 2(s) of the Industrial Disputes Act, 1947. That after the conciliation proceedings and the failure report of conciliation, the Government of India referred the dispute to Central Government Industrial Tribunal at Mumbai (“CGIT” for short). The Tribunal by Award dated 6th July, 2007 allowed the Reference and directed the respondents to take the applicant back in service as a fresh hand in different department.

3. The respondents being aggrieved by the Award dated 6th July, 2017 filed Writ Petition No. 7584 of 2009 before this High Court, which is yet pending.

4. That in pursuance to the Award passed by the CGIT, the petitioner was allowed to resume at Mumbai.

5. It is the petitioner's case, that after his resumption, the third chargesheet dated 13th October, 1998 was reopened and after holding enquiry, punishment of compulsory retirement was inflicted on him vide order dated 28th December, 2009. The appeal against the order dated 28th December, 2009 met with the same fate. He preferred revision but the said Authority confirmed the orders passed by the two Authorities below it.

6. The petitioner, thus approached the CAT against the order dated 28th December, 2009 imposing punishment of compulsory retirement, as well as, the order passed by the authority in revision.

7. The CAT dismissed the said O.A. vide order dated 9th September, 2014 against which this petition under Articles 226 and 227 of the Constitution of India is preferred.

8. Heard Mr. Kini, the Learned Advocate appearing for the petitioner and Mr. Rao, Learned Advocate for respondents no.1 to 3.

9. Mr. Kini, would urge that,

(i) since the chargesheet was issued on 13th October, 1998, the respondents were legally precluded to reopen the said chargesheet after the lapse of 11 years period, as it became stale and incapable of being enquired into,

(ii) the enquiry report was without any reasoning, on issue of 11 years delay and more so, the reasons supplied for justifying the delay of 11 years were devoid of any merits,

(iii) that in the year 1998 when chargesheet was issued to the petitioner, Certified Standing Orders were applicable as were in force,

however, in the year 2000 Bharat Sanchar Nigam took over the factory, namely Telecom Factory and the Certified Standing Orders of the Telecom Factory automatically ceased to apply to Bharat Sanchar Nigam Limited and there could not be an automatic continuation of Certified Standing Orders of Telecom Factory to BSNL. As such, the Tribunal has erred in recording the finding that, the services of the petitioner were governed by the Certified Standing Orders,

(iv) that there are material contradictions in the evidence of the respondent's witnesses, Mr. B. Sahu and Mr. F. Ram and in view of it, the Enquiry Officer ought to have discarded the evidence of these witnesses, but the Tribunal has overlooked this fact.

10. Mr. Rao, has supported the findings recorded by the Tribunal.

11. That in October, 1998 the petitioner was the employee of Post and Telegraph Department and his services were governed by the provisions of the Certified Standing Orders. It appears from the record that, the petitioner filed a reply to the chargesheet on 17th October, 1998. It is obvious from the record that the disciplinary proceedings did not proceed further for the reason that in the previous disciplinary proceedings, (pursuant to first chargesheet), the applicant was found guilty and on the charge of misconduct, he was removed from service vide order dated 22nd July, 1999. He was reinstated by order of CGIT from 24th March, 2008. It is therefore obvious that, when enquiry was initiated in 1998, it remained in abeyance on account of removal of applicant from service until 2007/2008 till he was reinstated by the order of CGIT. However, by this time, the establishment of Post and Telegraph was merged with BSNL in the year 2000. As such, when the enquiry again commenced in 2008-09, it was not a de-novo enquiry and/or fresh enquiry but an enquiry which had commenced in 1998.

However, it stood suspended as the petitioner was terminated and not in service from July, 1999 till July, 2007. It appears from the record, that petitioner was chargesheeted for violation of Rule 21 of the Central Civil Services (Conduct) Rules, 1964. In statement of imputation, it is stated that the applicant committed an act of serious misconduct contrary to Rule 31(j) and 31(a) of the Certified Standing Orders read with Rule 3(1)(II) of the Central Civil Services (Conduct) Rules, 1964. In the given set of facts, we do not find any error is committed by the Tribunal in holding that the services of the petitioner were subject to the provisions of Central Civil Services (Conduct) Rules, 1964. We therefore hold that, the enquiry held by the disciplinary authority and the punishment imposed by the Appellate and the Revisional Authority suffers no infirmity in law.

12. The next contention, is about the delay in holding the enquiry and therefore the charges levelled against him were incapable of being enquired into. Admittedly, the petitioner was not in service since July, 1999 till he was

reinstated by the order of CGIT. It appears that the authorities had taken prompt steps to complete the enquiry (in respect of chargesheet dated 13th October, 1998) which culminated, into enquiry report dated 12th October, 2009. This being so, it cannot be said that the disciplinary authorities were wrong in proceeding with the enquiry after 11 years from the laying of the chargesheet. Thus, we find no merit in the contention of the petitioner that the delay itself would vitiate the enquiry. On this issue, the finding recorded by the Tribunal cannot be faulted with.

13. Mr. Kini has taken us through the evidence of the two witnesses and pointed out some discrepancies and submitted that the evidence of these two witnesses was not dependable. We do not find any merit in this contention, in as much as, the disciplinary authorities are required to appreciate the evidence on the preponderance of the probabilities before coming to the conclusion that the charge levelled is proved against the delinquent.

14. That even otherwise, the scope of a judicial review of the orders passed in disciplinary proceedings is extremely narrow. No exceptional circumstances were pointed out warranting our interference. In the result, the petition deserves no consideration and the same is dismissed. No order as to costs.

(SANDEEP K. SHINDE, J)

(SMT. V.K. TAHILRAMANI, J)