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

Reserved on - 09.08.2018
Date of Decision- 17.08.2018

+ W.P.(C) 3612/2017 & CM No.15859/2017 (stay)

B.S.N.L & ORS. Petitioners
Through Mr. R.V.Sinha with
Mr.A.S.Singh, Advs.

versus

RAM PRATAP & ANR. Respondents
Through Mr.Lalit Kumar Jha, Adv for R-1.
Mr.Kavindra Gill, Adv for R-2.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE REKHA PALLI

JUDGMENT

REKHA PALLI, J

1. The present writ petition under Article 226/227 of the Constitution of India, impugns the order dated 07.10.2016, passed by the Principal Bench, Central Administrative Tribunal, New Delhi in OA No.4352/2014, whereunder the Original Application filed by the respondent No.1, has been allowed by quashing the Disagreement Note dated 18.10.2012, the Penalty Order dated 23.04.2013 passed by

the Disciplinary Authority as also the order dated 04.08.2013 passed by Appellate Authority, rejecting the respondent no.1's appeal.

2. The brief facts as noted by the Tribunal are that the respondent no.1 herein (applicant before the Tribunal) was posted as a Chief Accounts Officer (IF) in the office of CGMT, UP (West) Circle, when he was served with a letter dated 22.07.2003 by Shri Dhara Singh, ADT (Vig.), GMTD, Ghaziabad, regarding the disconnection of telephone No.757541 in the year 1994. In the said letter, the respondent no. 1 was asked to explain as to why the aforementioned telephone no. was not disconnected despite heavy calls made from that number in early 1994, as well as why the bill for the said user was not raised on 01.06.1994, or at least on 01.08.1994 when the OB advice had been received by him on 19.04.1994. Upon receipt of the aforesaid letter, the respondent no.1 made a request in the TRA Unit for the original bills and a copy of the receipt of handing over OB advice to him. In response to the respondent no.1's request, the ADT (Vig.) replied saying that while the original bill was not available, a copy of the advice note of the telephone purportedly sent to the TRA Unit on 03.05.1994, was being provided to him. However, as per the respondent no.1, a copy of the forwarding letter dated 03.05.1994 (which date according to the respondent no.1 was 03.08.1994), was sent by the ADT (Vig) without any enclosures.

3. While the respondent no.1 was corresponding with the ADT (Vig.), with a request for the documents, as the information sought from him related to a very old incident, a charge-memo dated

30.03.2007 was issued to him by the Chief General Manager Telecom, Bharat Sanchar Nigam Ltd., Uttar Pradesh Circle (Petitioner no.3 herein) containing the following charges:-

“Article-I

The said Shri Ram Pratap while posted and functioning as AO (TR) in Telecom District Ghaziabad during the year 94-95 failed to issue the bills in time of the telephone no.757541 in the name of Shri Sunil Kumar Garg, R-83 Rajkunj, Ghaziabad which resulted in heavy accumulation in outstanding amount against the telephone. By the negligence of the said Shri Ram Pratap, Company suffered a loss amounting to Rs.321234/-.

Thus by the above act, Shri Ram Pratap exhibited lack of devotion to duty and acted in a manner of unbecoming of Company Employee and thereby contravened the provisions of Rules 4(I)(b) & 4(I)(c) of BSNL CDA Rules, 2006. [Earlier Rules 3(I)(ii) & 3(I) (iii) of CCS (Conduct) Rules, 1964].

Article-II

The said Shri Ram Pratap while posted and functioning in aforesaid capacity during the aforesaid period failed to get the telephone no.757541 in the name of Shri Sunil Kumar Garg, R-38 Rajkunj Ghaziabad disconnected in time under non payment. The telephone was disconnected after a long period from the scheduled date. It resulted a total loss to the Company by this outstanding dues on this connection amounting to Rs.321234/-.

Thus by the above act, Shri Ram Pratap exhibited lack of devotion to duty and acted in a manner of unbecoming of Company Employee and thereby contravened the provisions of Rules 4(I)(b) & 4(I)(c) of BSNL CDA Rules, 2006. [Earlier Rules 3(I)(ii) & 3(I) (iii) of CCS (Conduct) Rules, 1964].

Article-III

The said Ram Pratap while posted and functioning as CAO in CGMT UP(W) circle during the period 2003-2004 did not cooperate the District Vigilance Cell in the investigation of the case mentioned above in article-I and article-II.

Thus by the above act, Shri Ram Pratap acted in a manner of unbecoming of Company Employee and thereby contravened the provisions of Rule 4(I) (c) of BSNL CDA Rules, 2006. [Earlier Rules 3(I)(iii) of CCS (Conduct) Rules, 1964].”

4. Along with the aforesaid charge-memo, while the respondent no. 1 was given a list of ten documents, the list of witnesses accompanying the same said "NIL". Consequently, no witness was examined in the enquiry proceedings conducted against the respondent no.1. As would be evident from the list of documents provided to the respondent no.1, alongwith the charge-memo, it did not contain a copy of the OB advice, which was the main basis of the charges against him and which he had specifically denied having ever received. For the sake of ready reference, the said list of documents is being reproduced hereinbelow:-

“1. Supplementary bill register containing entries of bills dated 25.10.94 (for Rs.93933/-), bill dated 29.12.94 (for Rs.109440/-), and bill dated 30.12.1994 (for Rs.57045/-) of telephone No.757541.

2. Letter No.VID/GBD/2003/31 dated 22.07.03 issued by Shri Dhara Singh ADT (Vig.) Ghaziabad.

3. Letter No.VID/GBD/2003/31 dated 22.08.03 issued by Shri Dhara Singh ADT (Vig.) Ghaziabad.

4. Letter No.VID/GBD/2003/31 dated 22.10.03 issued by Shri Dhara Singh ADT (Vig.) Ghaziabad.
5. Letter No.VID/GBD/2003/31 dated 02.12.03 issued by Shri Dhara Singh ADT (Vig.) Ghaziabad.
6. Letter No.VID/GBD/2003/31 dated 05.01.04 issued by Shri Dhara Singh ADT (Vig.) Ghaziabad.
7. Letter No.VID/GBD/2003/31 dated 10.10.04 issued by Shri Dhara Singh ADT (Vig.) Ghaziabad.
8. Letter No.UPT (W)/CAO(IF)/Gen.3 dated 01.09.03 issued by Shri Ram Pratap CAO O/o CGMT UP (W) Circle Meerut.
9. Letter No.UPT (W)/CAO(IF)/Gen.6 dated 15.01.04 issued by Shri Ram Pratap CAO O/o CGMT UP (W) Circle Meerut.
10. Letter No.UPT (W)/CAO(IF)/Gen.8 dated 19.02.04 issued by Shri Ram Pratap CAO O/o CGMT UP (W) Circle Meerut.”

5. The enquiry officer, after examining the aforesaid documents and the stand taken by the respondents, found that none of the three charges against the respondent No.1 were proved and, therefore, submitted his enquiry report holding him not guilty. The said report was however, not accepted by the Disciplinary Authority who issued a disagreement note dated 18.10.2012, disagreeing with the findings of the Enquiry Officer qua Charges I & II and an opportunity was given to the respondent No.1 to submit his representation thereto. Respondent No.1 submitted a detailed representation which was not accepted and vide order dated 23.04.2013, the Disciplinary Authority imposed the penalty of reduction by four stages in the time scale of pay for six

months, with a further direction that the respondent No.1 will earn increment of pay during the period of such reduction and on expiry of such period, the reduction will not have the effect of postponing the future increment of his pay. The appeal of the respondent no. 1 against this order was rejected by the Appellate Authority, vide its order dated 04.08.2014.

6. Aggrieved by the rejection of his appeal, the respondent no. 1 filed an OA challenging the penalty order dated 23.04.2013 as also the appellate order dated 04.08.2014, which was allowed by the Tribunal vide the impugned order dated 07.10.2016, observing as under:-

“14. In the present case the respondents gave SCN after more than 9 years, served chargesheet after 13 years, concluded enquiry after 18 years and issued a Disagreement Note after 19 years on 23.04.2013 without dealing with the ground of delay. With this background there can not be a more fit case than this to conclude that the defence of the applicant has been prejudiced by the delay.

15. With regard to the main charge that the applicant failed to issue bills in respect of huge outstanding amounts against the phone No.757541, during the argument, it transpired that the procedure for issuing the bill was that the concerned officer of the Telephone Exchange raised an advice of OB number indicating the consumption against that phone and then it was sent to AOs office which in turn raised the bill. The prosecution in this case has not been able to prove that such intimation was indeed delivered by the exchange to the applicant in 1994. The documents that have been placed on record are not the advice note, but the photocopies of OA No.4352/2014 certain registers which do not

throw much light on the issue, besides being in suspected category because of overwriting. In the absence of a clear evidence that such an advice was actually received by the applicant, it cannot be conclusively said that the applicant received the intimation and did not act on it. EO has rightly concluded that charges were not proved. The Disciplinary Authority also, both in the disagreement note and the final order, has not admitted any financial loss. What has been stated is that there was huge amount of outstanding bills accumulated under non-payment category due to negligence of the applicant.

16. Further, it can not be ignored that the responsibility of the alleged lapses in issuing the bill or procedure of disconnection has been squarely fixed on the applicant who was the Accounts Officer at that time while the other two persons, namely the Dealing Assistant and the Section Supervisor have been left out completely.

17. Thus, it can be concluded that firstly the Show Cause Notice was issued to the applicant nearly after 10 years of incident like a bolt from the blue and he was expected to defend himself even in the absence of all the relevant documents. In our view the delay in this case is sufficient to render the DE as vitiated. Secondly, the respondents have not been able to prove that the OB advice was actually sent to the applicant well in time. Though the Disagreement Note reiterates the charges while over ruling the OA No.4352/2014 finding of the EO, it ignores the fact that there was no documentary or oral evidence to prove those allegations during the DE.

18. Taking into account the entire conspectus of the case and for the reasons stated above, we are of considered view that the Disagreement Note and the orders passed by the Disciplinary Authority and the

Appellate Authority can not be legally sustained. Accordingly the Disagreement Note dated 18.10.2012, orders of DA dated 23.04.2013 and AA dated 04.08.2014 are quashed and set aside. The applicant shall be entitled to all the consequential benefits in terms of fixation of pay and grant of pension including arrears, if any. The respondents shall pay an interest on the arrears that becomes payable to the applicant, at the rate applicable to the GPF deposits.”

7. Aggrieved by the Tribunal's order quashing the penalty imposed on the respondent No.1, the petitioners have preferred the present writ petition. The record reveals that when the writ petition was listed before this Court on 28.04.2017, before issuing notice, the Court had directed the petitioners to file an affidavit disclosing as to whether the respondent No.1 had been granted any promotion after the issuance of the initial show cause notice to him on 22.07.2003. Pursuant to the aforesaid order, the petitioners have filed an affidavit stating therein that the respondent No.1 was indeed promoted to the STS Grade from the post of Senior Accounts Officer, on temporary and adhoc basis w.e.f 19.08.2004. This makes it evident that despite issuance of a show cause notice dated 22.07.2003 to the respondent No.1, the petitioners had subsequently promoted him to the post of Senior AO. The record also shows that the respondent No.1 was subsequently promoted to the post of Chief Accounts Officer, from which post he had superannuated on 31.01.2014.

8. Before us, besides reiterating the same pleas as urged by him before the Tribunal, Mr. R.V. Sinha, learned counsel for the

petitioners contends that even if the Tribunal was of the view that any prejudice had been caused to the respondent No.1 due to non furnishing of any documents, the proper course for the Tribunal to have adopted was to remand the matter back to the disciplinary authority instead of straight away quashing the disagreement note and the consequential penalty order. He further contends that merely because the Tribunal was of the view that there was an inordinate delay in initiating the disciplinary proceedings against the respondent No.1, it could not have re-appreciated the evidence. He submits that the Tribunal has failed to appreciate the reasons for the delay and has ignored the decisions of the Supreme Court on this aspect which clearly state that a mere delay in initiating disciplinary proceedings cannot be a ground to quash such proceedings. Mr.Sinha has also produced the original records before us and drawing our attention to prosecution Exhibit P-4 in the enquiry proceedings, he submits that even though there is nothing available with the petitioners to show that the OB advice dated 03.08.1994 was actually communicated to the respondent No.1, a presumption ought to be drawn that a letter which was addressed to the Accounts Officer (TR), had been duly received by the respondent No.1. He thus contends that the Disciplinary Authority was justified in arriving at the conclusion that the respondent No.1 had failed to take appropriate action to disconnect the telephone in question under non-payment, clearly evidencing gross negligence on his part, leading to a loss of Rs.3,21,234/- to the Department.

9. On the other hand, Mr.Lalit Kumar Jha, learned counsel for the respondent No. 1 while supporting the impugned judgment, contends that the Tribunal was fully justified in quashing the order passed by the Disciplinary Authority. He submits that grave prejudice was caused to the respondent No.1 on account of the petitioners' failure to supply him with a copy of the document dated 03.08.1994, which formed the fulcrum of the case set up against him. He submits that there was nothing to demonstrate that the OB Advice had ever been received in the TRA Section and in the absence of the same being produced during the enquiry, the inquiry officer had rightly concluded that the respondent No.1 could not be held guilty of the charges levelled against him for want of evidence. He contends that there was no reason for the Disciplinary Authority to ignore the well-reasoned inquiry report and hold the respondent No.1 guilty on basis of surmises and conjectures. He further submits that even otherwise, the impugned penalty order having been issued on the verge of the respondent No.1's retirement and that too when the incident related to the year 1994, the Tribunal was justified in quashing the penalty order that was passed nineteen years after the date of the alleged incident.

10. We have carefully considered the submissions of the learned counsel for the parties and have also perused the records. Before us also, it is an admitted position that the OB advice dated 03.08.1994, which was the fulcrum of the charges levelled against the respondent no.1, was neither provided to him that too despite his repeated requests, nor was the same produced in the enquiry. In light of the

settled legal principle that the departmental inquiry is a quasi-judicial proceeding and even though the provisions of the Evidence Act are not applicable in the said proceedings, the enquiry officer has a duty to arrive at its findings upon consideration of the evidence before it, the Enquiry Officer as also the Tribunal were justified in holding that there was no evidence whatsoever of any kind to substantiate the charges levelled against the respondent. We see no reason to differ with the said conclusion.

11. We also see no reason to differ with the opinion expressed by the Tribunal that due to a delay of almost nineteen years, a grave prejudice has been caused to the respondent no.1. The petitioners have failed to give any justification whatsoever for the inordinate delay in initiating the departmental proceedings against the respondent no.1 after more than thirteen years. In fact, it is interesting to note that even in the writ petition, no attempt whatsoever has been made to explain the inordinate delay from the years 1994 to 2007, despite the Tribunal having specifically held that the delay in the case was sufficient to vitiate the departmental inquiry.

12. Another relevant factor which emerges from the record is that, even after the show cause notice dated 22.07.2003 had been issued to the respondent no.1, the petitioners had themselves promoted him, first from the post of Accounts Officer to the post of Senior Account Officer and thereafter, to the post of Chief Accounts Officer, from which post he had superannuated on 31.01.2014. Thus, it is evident

that the petitioners were themselves convinced that the respondent no.1 was not guilty of any misconduct.

13. For the aforesaid reasons, we see absolutely no reason to differ with the well-reasoned conclusion of the Tribunal. The writ petition being meritless, is accordingly dismissed along with the pending application, with no orders as to costs.

(REKHA PALLI)
JUDGE

(HIMA KOHLI)
JUDGE

AUGUST 17, 2018/mb/aa