



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

Judgment reserved on: 21.09.2022

% **Judgment delivered on: 06.10.2022**

+ **W.P.(C) 5101/2014**

SAHEB LAL

..... Petitioner

Through: **Dr. L.S. Chaudhary, Advocate.**

versus

MAHANAGAR TELEPHONE NIGAM LIMITED..... Respondent

Through: **Mr. Arun Sanwal, Advocate.**

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present petition is arising out of order dated 27.07.2012, passed by the Central Administrative Tribunal (CAT), Principal Bench, New Delhi in O.A No. 1439/2011, dismissing the Original Application preferred by the Petitioner.

2. The facts of the case reveal that the Petitioner was initially an employee of the Department of Telecommunication and later on, on establishment of Mahanagar Telephone Nigam Limited (MTNL), a company incorporated under the Companies Act, he became the employee of MTNL.



3. The Petitioner was absorbed in the services of MTNL. The Central Bureau of Investigation (CBI), in the year 1987, registered a case against the Petitioner and two others, namely Govind Singh and Hans Raj and, at the same time, the Department also initiated disciplinary proceedings.

4. A charge sheet was issued under Rule 14 of the CCS (CCA) Rules, 1965 to the Petitioner as well as to Govind Singh and Hans Raj. In the departmental enquiry, the charge was not proved against the Petitioner and the Enquiry Officer submitted a report on 30.04.1990. Finally, the disciplinary authority, vide order dated 04/07.03.1991, based upon the enquiry report, passed an order exonerating the Petitioner of the alleged misconduct. However, the other two persons were held guilty and punishment was inflicted upon them.

5. The CBI in the criminal case filed a Charge-sheet and finally the Trial Court vide judgment of conviction dated 15.10.2007, convicted all the three persons, including the Petitioner and the Petitioner was sentenced to undergo Rigorous Imprisonment and fine of Rs.10,000/- for an offence under Section 409 IPC. He was also convicted for an offence under Section 5(2) read with Section 5(1)(c) of Prevention of Corruption Act, 1947 and was sentenced to two years rigorous imprisonment and fine of Rs. 25,000/-.

6. The records of the case further reveal that in the Departmental Enquiry proceedings, the identically placed employees i.e. Govind Singh and Hans Raj were inflicted with a punishment of stoppage of two increments and in respect of Shri Hans Raj, the charge sheet was quashed.



7. The Petitioner, after his conviction, was placed under suspension by an order dated 05.01.2010 and, thereafter, a show cause notice was issued on 07.01.2010 directing the Petitioner to show cause as to why his services should not be put to an end on account of conviction in a criminal case. The Petitioner did submit his reply on 25.01.2010 and finally an order was passed on 22.06.2010 removing the Petitioner from service and the Petitioner did submit an appeal dated 14.07.2010 against the order dated 22.06.2010 and, at the same time, filed an Original Application i.e. O.A. No. 2853/2010 before the CAT challenging his suspension as well as removal.

8. The appeal was dismissed on 29.12.2010 during the pendency of the Original Application and he withdrew the Original Application with the liberty to file a fresh Original Application. The Petitioner, thereafter, preferred another Original Application i.e. O.A. No. 1439/2011 being aggrieved by the order of suspension and order of removal and the CAT by impugned order dated 27.07.2012 has set aside the suspension, however, the order of removal has been affirmed.

9. Learned Counsel for the Petitioner has vehemently argued before this Court that the incident on the basis of which the Petitioner has been subjected to criminal trial is of the year 1987. At the relevant point of time when the misconduct took place, he was an employee of Department of Telecommunication, Ministry of Communication and his service conditions were governed under the statutory provisions as contained under the CCS (CCA) Rules, 1965. He submits that the Petitioner was permanently absorbed in MTNL w.e.f 01.11.1998 and consequent upon his absorption, he



stood retired from the services of the Central Government and, therefore, the rules and regulations applicable to MTNL employees are applicable to him.

10. Learned counsel for the Petitioner has vehemently argued before this Court that for the period he has served the Department of Telecommunication, he is entitled for salary. He has also argued that no action has been initiated under Rule 9 of the CCS Pension Rules, 1972 against the Petitioner and, therefore, by no stretch of imagination, the order of removal could have been passed, forfeiting his claim to the pensionary dues.

11. Learned Counsel for the Petitioner has also argued before this Court that charge sheet in the Departmental Enquiry and the charges leveled against him in the criminal case were based upon the same incident and, therefore, he has been given a clean chit in the departmental enquiry, the question of inflicting him with a punishment based upon his conviction does not arise.

12. The learned Counsel for the Petitioner has taken a ground of discrimination also and his contention is that the Departmental Enquiry took place against him as well as against Govind Singh and Hans Raj for the same alleged misconduct and only in the criminal case, all the three employees were convicted. It has been stated that Govind Singh has not been removed from service and he was permitted to continue in service and no action was taken against Hans Raj also as he stood retired prior to conviction. His contention is that it is only the Petitioner who has been removed from service even though all the three of them were convicted and,



therefore, the respondents have violated the rights guaranteed to the Petitioner under Articles 14 and 16 of the Constitution of India.

13. Learned counsel has also argued before this Court that the Petitioner has rendered about 20 years of service before his absorption in MTNL and, therefore, keeping in view Rule 37A(24)(c) of CCS (Pension) Rules, 1972, the services rendered by the Petitioner with the Central Government cannot be forfeited and the Petitioner is entitled for all service benefits for his past service rendered with the Department of Telecommunication. It has also been argued that the punishment inflicted upon the Petitioner is very harsh and the Petitioner is entitled for reinstatement in service.

14. The Petitioner has prayed for the following reliefs:

“i. quash the impugned judgment/order dated 27.07.2012 passed by the C.A.T., New Delhi in OA No. 1439/2011. Consequently, removal order dated 22.06.2010 and Appellate order dated 29.12.2010 be also quashed, by way of an appropriate writ, order or direction in the nature of Certiorari.

ii. direct the respondent to release all the legitimate dues of the petitioner on his retirement with interest on delayed payment, by way of an appropriate writ, order or direction in the nature of Mandamus.

iii. allow the costs of the proceedings.

iv. pass any other order(s) as deemed fit and proper to secure the ends of justice. ”

15. Learned Counsel for the Petitioner has placed reliance upon: ***Radheshyam Kejriwal v. State of West Bengal and Another***, (2011) 3 SCC 581; ***Union of India and Others v. Sunil Kumar Sarkar***, (2001) 3 SCC 414;



and *Rajendra Yadav v. State of Madhya Pradesh and Others*, (2013) 3 SCC 73.

16. Heard Learned Counsel for the parties at length and perused the records. The undisputed facts of the case make it very clear that the Petitioner was initially appointed in the Department of Telecommunication and later on he was transferred and absorbed in MTNL. The Employee in question was earlier a Government Servant, and, therefore the condition of his services was governed under the CCS CCA Rules, 1965.

17. Later on, on absorption he became an employee of MTNL and certified standing orders of MTNL i.e. CSO 37(E) and (F) provides for the procedure for imposing major and minor penalties.

18. The undisputed facts also make it very clear that a Charge-sheet was issued to the Petitioner, and finally the Disciplinary Authority vide order dated 4-7/03/1991 passed an order exonerating the Petitioner. It is true that based upon the same incident the CBI also registered a case against the Petitioner, and finally vide judgment of conviction dated 15.10.2007, the Petitioner was sentenced to undergo rigorous imprisonment for a period of two years and fine of Rs. 10,000/- for Offence under Section 409 of the I.P.C, and was also convicted for offence under Section 5(2) read with Section 5(1)(c) of the Prevention of Corruption Act, 1947, and was sentenced to undergo two years of rigorous imprisonment along with fine of Rs. 25,000/-.

19. Based upon his conviction, a show-cause notice was issued, and after receiving the reply, the petitioner had been removed from service.



20. The order of removal was subjected to judicial scrutiny, and Tribunal in Paragraphs 11 to 13, has passed the following order dismissing the Original Application preferred by the Petitioner.

“11. On a careful consideration of the facts and circumstances as well as the issues involved in this case and the respective submissions on both the sides, we do not find the claims in the OA impugning the order of removal as tenable. The main reasons for arriving at this view are indicated briefly below:

11.1 The applicant, who has been permanently absorbed in the MTNL in the year 1998, is governed by its Rules and Regulations. The impugned orders have been passed in terms of certain certified Standing Orders of MTNL (Annex A/9). The CSO 37 (E) and (F) respectively lay down regular procedures for imposing major and minor penalties. However, a special procedure has been prescribed in certain cases for imposition of the penalties vide the provisions of 37 (1). The relevant provisions in the present context in sub-clause (i) thereof are extracted below:

“The workman has been convicted on a criminal charge, or on the strength of fact or conclusions arrived at by a judicial trial.”

Sub-clause (iv) specifies that the workers of MTNL are covered by the provision of the Industrial Disputes Act, 1947. The major penalty of removal has been imposed in the present case by evoking these special powers in the wake of the criminal conviction of the applicant for an offence under the IPC and the Prevention of Corruption Act. In view of the specific enabling provisions under the MTNL, the order of removal is ex-fade justified. The fact of such an order having been passed after observing the principles of natural justice, by way of giving an opportunity to the concerned employee for representation and after considering the same, further reinforces that view. The exercise of this caution by the



respondents, despite there being no such specific provision under 37(1), is noted. The contention raised in Ground 5.2 to the effect that in accordance with the provisions of rule 9 of the CCS (Pension) Rules, 1972, even the Central Government could not take any action against the applicant; is not really relevant in the facts of the case.

11.2 The major planks to challenge the penalty of removal are two fold: (i) The exoneration of the applicant on similar charges In an earlier DE; (ii) The imposition of the penalty during the pendency of the appeal against the criminal conviction.

As regards the former, the respondents have been able to successfully rebut this ground with their submissions about the criminal conviction and the departmental proceedings operating In two different fields; and no case for a 'double jeopardy' in violation of Article 20 of the Constitution being made out.

*The other argument about the decision of removal having been taken during the pendency of the criminal appeal also cannot be accepted. Admittedly, in this case no stay orders had been passed by the appellate court. The respondents' contention about the applicant not producing any orders passed by the appellate court has not been rebutted. Even the judgment by the Ld. Coordinate Bench in **S.P.S. Rathore's** case would not help the applicant's contention. This was a case dealing with rule 69 of the Central Services (Pension) Rules particularly rule 69 (i) (b). Dealing with the provisions regarding authorization of provisional pension, this rule has prescribed the same to be "from the date of retirement upto and including the date of which, after the conclusion of departmental or Judicial proceedings, final orders are passed by the competent authority". It was only in this specific context that the view had been taken by the Ld. Coordinate Bench, relying upon certain judicial pronouncements of the High Courts, that during the pendency of a criminal appeal, an order of conviction by the trial court could not be construed to be the conclusion of the judicial proceeding.*



On the other hand, the judgment of the Apex Court in S. Nagoor Meera's case (supra), relied upon by the respondents' counsel, lays down the clear law on this subject applicable in the present case. Dealing with a case of criminal conviction on charges of corruption, the Hon'ble Apex Court had held as follows:-

“9. The Tribunal seems to be of the opinion that until the appeal against the conviction is disposed of, action under clause (a) of the second proviso to Article 311 (2) is not permissible. We see no basis justification for the said view. The more appropriate course in all such cases is to take action under clause [a] of the second proviso to Article 311(2) once a government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be. If, however, the government servant-accused is acquitted on appeal or other proceedings, the order can always be revised and if the government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service. The other course suggested, viz., to wait till the appeal, revision and other \ remedies are over, would not be advisable since it would mean continuing in service a person who ' has been convicted of a serious offence by a criminal court ”

Of course, in the same judgment the requirement of exercise of such power in a fair, just and reasonable way had been stipulated. Para 10 of the judgment had clearly propounded the view that in a case where an employee is found guilty of corruption by a criminal court, retaining such a person in service till the said conviction is set aside by the appellate or higher court may not be advisable. On the other hand, in case of the employee succeeding in appeal the matter could always be reviewed to ensure that no prejudice was suffered by the employee.



Thus, these two grounds also do not go in favour of the applicant.

*11.3 Our observations in the foregoing paragraphs negate the contention about the evocation of the special powers being without justification in the present case. The plea of hostile discrimination does not merit any legal consideration in view of the settled proposition of law about a claim for negative equality not being within the purview of Article 14 of the Constitution. In any case, as per the respondents' submissions the concerned employees had retired prior to the order of criminal conviction and even in their cases the retiral dues had not been finally settled. As regards the averment of the extreme harshness of the penalty, considering the factum of the applicant having been involved in the corruption case and the same having been proved before a trial court and ending in conviction against him, this argument also would not hold any water. The view taken by the Hon'ble Apex Court in **Krishnan Bihari's** case (supra), and cited by the respondents, that in a case involving corruption - irrespective of the amount of misappropriation being small or large - there cannot any other punishment than dismissal, reinforces this stand. The other allied strands of arguments impugning the order of removal are really not found to carry any weight and substance.*

Considering the relevant orders, the plea of the orders of the DA and AA being non-speaking also does not find favour with us.

12. Along with the order of removal, the OA has also challenged the order dated 5.1.2010 placing the applicant under 'deemed suspension' from the date of conviction i.e. 6.10.2007. This was done in terms of CSO 37(A) of MTNL.

CSO 37 (A) deals with the various provisions relating to suspension. The relevant para (l)(c) pertains to a case in respect of any criminal offence being under investigation or trial. Specific provisions for deemed suspension have been prescribed in paras 2, 3 and 4. Para 2 relevant in the present context runs as here under:



"A workman who is detained in custody, whether on a criminal charge or otherwise, for a period exceeding 48 hours shall be deemed to have been suspended with effect from the date of detention by an order of the appointing authority and shall remain under suspension until further orders."

We find merit in the contention of the applicant's counsel that since the present case was not of the 'criminal offence being under investigation or trial', the suspension order was not in accordance with the provisions of 37 (l)(c). Further, as per this CSO, 'deemed suspension' could only be in a situation envisaged under para-2 of this order and extracted above. There is an averment in the OA vide the Ground 5.9 about the applicant never having been detained in custody. There is no clear rebuttal to it in the counter reply, which merely responds to the said averment by a cryptic 'the contents of para are matter of record'. Even the statement of written submissions submitted by the respondents' learned counsel before the oral argument took place, also does not throw any light on this aspect. Under the circumstances, we do find the impugned order dated 5.1.2010 as in consonance with the provisions of CSO 37(A).

13. To conclude, for the reasons stated in paras 11 and 12, we do not find any infirmity in the order of removal. However, the order of suspension is not found to be in accordance with the provisions of CSO 37(A). Allowing the OA partly, the following directions are issued:-

i) The impugned order dated 5.1.2010 is quashed and set aside.

ii) The period of 'deemed suspension' from 6.10.2007 to 4.1.2010 is to be treated as on duty. The applicant would be entitled to all the service benefits as per law for this period. As regards the entitlements for the intervening period from 5.1.2010 till the order of removal of 22.6.2010, the respondents would consider the matter and pass a



speaking order as per law. This is to be done within a period of three months from the date of receipt of a copy of this order. No costs.”

21. The first ground raised by the Petitioner that three persons were Charge-sheeted along with him, and all three of them have been convicted vide judgment of conviction dated 15.10.2007. However, it is only the Petitioner who has been removed from service.

22. The facts of the case reveal that the Petitioner was Charge-sheeted along with Govind Singh and Hans Raj. Hans Raj retired in the year 2003 i.e. much prior to his conviction, and, therefore, the Petitioner cannot compare his case with Hans Raj. The other employee i.e. Sh. Govind Singh was inflicted with the punishment of stoppage of two increments for a period of three years in the Department Enquiry. After his conviction, the Department has not passed any order of termination in his case holding that he has already been punished in respect of the same conduct.

23. There is a letter on record issued by Director (VP) addressed to Chief Vigilance Officer, MTNL and the same reveals that the Department has not taken action against Sh. Govind Singh pursuant to his conviction in the criminal case. Letter dated 23.08.2013 is reproduced hereunder:

*“No. 9-1/2010-Vig-III
Government of India
Ministry of Communication & Information Technology
Department of Telecommunications
Sanchar Bhawan, 20 Ashok Road, New Delhi
Dated: August 23, 2013*

*To
Chief Vigilance Officer
MTNL 9 CGO, Complex*



Lodhi Road New Delhi – 110003

Sub:- Case no. RC76 (A)/88-DLI against Sh Govind Singh, Lineman, Okhla MTNL, New Delhi and others - Disciplinary Proceedings under Rule 9 of CCS (Pension) Rules 1972-reg.

Ref: Your office letter No. MTNL/Disc/PC/3officials/30 dated 26.04.2013.

Sir,

I am directed to refer to letter cited under reference on the captioned subject, vide which the case records have been sent to this department for initiation of disciplinary proceedings under Rule 9 of CCS (Pension) Rules, 1972 against Shri Govind Singh, Lineman (Retd.), Okhla and others.

2. The case has been examined and it is observed that Shri Govind Singh, was proceeded against under Rule 14 of CCS (CCA) Rules, 1965 vide Memorandum No. OK/SDOP-I/Disc/89-90 dated 19.02.1990 for the charge of misappropriation of 66,600 meters length of drop wire during the period 1987-88, causing a loss of about Rs. 1,19,900/- to MTNL Co and after completion of inquiry proceedings. Director (Staff) DOT, the Disciplinary Authority, imposed upon him the penalty of reduction to pay by three stage for a period of two years with cumulative effect vide order No. 31-32/2005-TFS/SNG dated 29.12.2005.

3. Sh. Govind Singh and others have been convicted on the criminal charge of misappropriation of telephone drop wire measuring 272 Kms, vide Judgment dated 06.10.2007, passed by the Hon'ble Court of Special Judge, CBI, New Delhi. As per the judgment dated 06.10.2007, the case of prosecution is that Shri Govind Singh in conspiracy with other accused person had collected 65 Kms of drop wire and misappropriated. Shri Govind Singh and others were held guilty for the offences punishable U/s. 409 IPC and Section 5(2) read with Section 5(1) (C) of Prevention of Corruption Act. The persecution has



failed to adduce any evidence that there was any criminal conspiracy amongst the accused persons to criminally misappropriate the drop wire, therefore the substantive charge U/s 120-B IPG and the charge of criminal conspiracy read with Section 409 IPC is not established against the accused persons. It is clear that criminal conspiracy amongst accused is not established but criminal misconduct by dishonesty misappropriating 65 Kms of drop wire is established/proved against Shri Govind Singh.

4. *As per the GOI's instructions No. (9) under Rule 11 of CCS (CCA) Rules, 1965, there should not be two statutory penalties for one lapse/offence. In similar case, the UPSC has rendered advice that imposition of second penalty is not possible, observing that 'where after departmental enquiry penalty was imposed upon the employee, no penalty could be imposed on same charges on basis of his conviction by Criminal Court'.*

5. *It is, therefore, requested to take suitable action after verification of the facts for disposal of OA filed by Shri Govind Singh in the Hon'ble CAT, New Delhi.*

*Yours faithfully,
Sd/-
(Sanjay Kumar)
Director (VP) ”*

24. Sh. Govind Singh finally retired from service and he has been paid retiral dues.

25. The case of the Petitioner is distinguishable on facts, as the Petitioner was never punished in the Departmental Enquiry, and in Departmental Enquiry he was exonerated by a Disciplinary Authority by an order dated 04-07/03/1991.



26. The Petitioner services had been put to an end on account of his conviction after following due process of law. A show-cause notice was issued pursuant to his conviction on 07.01.2010. The show-cause notice dated 07.01.2010 is reproduced as under:

*“MAHANAGAR TELEPHONE NIGAM LTD.,
Office of the General Manager (JKP) 6, Local Shopping
Complex,
Mayapuri, New Delhi – 110064*

*No: GM(JKP)/MTNL/Disc./Saheb Lal/ PM-03395/2009-10/4
Dated the ND the 07th January, 2010*

MEMORANDUM

WHEREAS Shri Saheb Lal, Store Lineman (LS-09985) now Telecom Mechanic (PM-03395) MTNL, New Delhi was deemed to have been placed under suspension w.e.f. 06.10.2007 for criminal offence under Section 409/5(2) read with Section 5(1)(c) of PC Act, 1947.

AND WHEREAS the said Shri Saheb Lal, Store Lineman (LS-09985) now telecom Mechanic (PM-03395) was convicted and sentenced by Special Judge of Hon'ble Court of Shri G.P. Mittal, judgment dated 15.10.2007 against case No.RC-76(a)/88-DLI for RI of 2 years and to pay Rs.10,000/- u/s 409 IPC and further sentenced to undergo rigorous imprisonment for a period of 2 years and to pay a fine of Rs.25,000/- u/s 5(2) read with section 5(1)(c) of PC Act, 1947 along with co-accused. But Shri Saheb Lal, - Telecom Mechanic (PM-03395) concealed the fact of his conviction from competent authority and thus has committed another misconduct.

AND WHEREAS the undersigned proposes to award an appropriate penalty under Rule 37(1) of Certified Standing Order for MTNL C&D Group Employees (Non-Executives),



taking into account the gravity of the offence which had led to his conviction;

AND WHEREAS the undersigned has provisionally come to the conclusion that Shri Saheb Lai Telecom Mechanic (PM-03395) is not a fit person to be retained in service and accordingly propose to impose on him the penalty of removal/dismissal from service.

NOW THEREFORE Shri Saheb Lal, Telecom Mechanic (PM-03395) is hereby given an opportunity of making his representation as he may wish, against the proposed penalty. The same will be considered by the undersigned before issuance of final order. Such representation, if any should be made in writing and submitted so as to reach the undersigned not later than 15 days from the date of receipt of this Memorandum by Shri Saheb Lal, Telecom Mechanic (PM-03395) failing which further action will be taken as per Rules.

The receipt of this memorandum shall be acknowledged by Shri Saheb Lai, Telecom Mechanic (PM-03395)

Sd/-

07.01.2010

(S.K. Arora)

General Manager (JKP)”

27. The Petitioner did submit a detailed reply to the show-cause notice on 25.01.2010, and finally an order was passed on 22.06.2010 removing Petitioner from service. The order dated 22.06.2010 is reproduced as under:

“MAHANAGAR TELEPHONE NIGAM LTD.
Office of the General Manager (West) 6, LSC Mayapuri,
New Delhi – 110064

No: GM(JKP)/MTNL/Disc./convct./SL/PM-03395/2009-10/17

Dated the ND the 22nd June, 2010

MEMORANDUM



“Whereas the said Shri Saheb Lai, Store Lineman (LS-09985)-now Telecom Mechanic (PM-03395) was convicted and sentenced by Special Judge of Hon'ble Court of Shri G.P. Mittal, judgment dated 15.10.2007 against CBI case No.RC-76(a)/88-DLI for rigorous imprisonment of 2 years and to pay a fine of Rs.10,000/- U/s 409 IPC. In default of payment of fine, he shall undergo simple imprisonment for a period of 6 months and further sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.25,000/- U/s 5(2) read with section 5(1)(c) of the Prevention of Corruption Act, 1947 along with co-accused. In default of payment of fine, they shall undergo simple imprisonment for a period of 6 months. But Shri Saheb Lai, Store Lineman (LS-09985) now Telecom Mechanic (PM-03395) concealed the fact of his conviction from competent authority and thus has committed another misconduct.

And Whereas in pursuance of above said court judgment, Shri Saheb Lai, Store Lineman (LS-09985) now Telecom Mechanic (PM-03395) MTNL, New Delhi was deemed to have been placed under suspension w.e.f. the date of court judgment 06.10.2007, pronounced on 15.10.2007 for criminal offence under Section 409/5(2) read with Section 5(1)(c) of PC Act, 1947.

And whereas it is considered that the conduct of the said Shri Saheb Lai, Store Lineman (LS-09985) now Telecom Mechanic (PM-03395), which led to his conviction, is such as to render him undesirable for further retention in the department. The gravity of the charge is such as to warrant the imposition of major Penalty under Rule 37(1) of Certified Standing Orders (CSO) of MTNL.

And whereas Shri Saheb Lai, Store Lineman (LS-09985) now Telecom Mechanic (PM-03395) was given an opportunity to offer his written representation against the proposed penalty of removal from service though show cause notice dated 07.01.2010.



And whereas Shri Saheb Lal, Store Lineman (LS-09985) now Telecom Mechanic (PM-0,3395) submitted his written representation on dated 25.01.2010 which is carefully examined by the undersigned & found unsatisfactory and reached to a conclusion that, he is not fit for further public service in the department.

Now, therefore, I .S.K. Arora, G.M. (West), after obtaining consent from competent authority, vide DOT letter No.1-126/06-Vig.III dated 25.05.2010, in exercise of the powers conferred by Clause-41 of the CSO Rules - applicable upon Group C&D Employees of MTNL, hereby order to remove the said Shri Saheb Lai, Store Lineman (LS-09985) now Telecom Mechanic (PM-03395) from MTNL service with immediate effect, vide Certified Standing Orders (CSO) Rule-36(b)(iv) on the ground of his misconduct which led to his conviction on account of criminal offence.

*Sd/-
22.06.2020
(S. K. Arora)
GM (West)''*

28. The Petitioner in the present case has been removed from service keeping in view the Certified Standing Order 35(E) and (F), which empowers the employer to pass an order of removal/ dismissal consequent to conviction in a criminal case.

29. Learned Counsel for the Petitioner has placed reliance upon a judgment delivered in the case of **Rajendra Yadav Vs. State of Madhya Pradesh and Others**, (2013) 3 SCC 73. His contention is that he is entitled for parity as the other two persons have not been inflicted with any punishment based upon the criminal case, the order in this case also deserved to be set-aside. In the considered opinion of this Court, the Petitioner cannot claim any relief on the ground of negative equality.



Otherwise also, the other two persons who have been named by the Petitioner were not identically placed persons.

30. Sh. Hans Raj stood retired prior to his conviction, and Sh. Govind Singh was punished in the Departmental Enquiry, whereas, the Petitioner was exonerated in the Disciplinary Enquiry. Otherwise also, merely because Sh. Govind Singh has not been subjected to any punishment after his retirement, the Petitioner is not entitled to any relief on the ground of negative equality.

31. Learned Counsel for the Petitioner has also placed reliance upon the judgment delivered in the case of ***Radheshyam Kejriwal Vs. State of West Bengal and Another***, (2011) 3 SSC 581. The aforesaid judgment is distinguishable in facts, as in the aforesaid judgment, there was no such issue of Departmental Enquiry and criminal proceedings on same set of facts as argued before this Court.

32. Learned Counsel for the Petitioner has also placed reliance upon a judgment delivered in the case of ***Union of India and Others Vs. Sunil Kumar Sarkar***, (2001) 3 SSC 414, on the ground of proportionality of punishment subsequent to conviction. The aforesaid judgment also does not help the Petitioner, as the Petitioner has been found guilty under the Prevention of Corruption Act, 1947 and by no stretch of imagination, a person who has been convicted under the Prevention of Corruption Act, 1947, is entitled for leniency.

33. In the present case, the Disciplinary Authority has followed the prescribed procedure. A proper show-cause notice was issued to the



Petitioner, and keeping in view the gravity of the offence in which the Petitioner was held guilty, the order of removal was passed.

34. This Court does not find any reason to interfere with the order of removal nor with the order passed by the CAT. The CAT was also justified in the quashing the suspension of the Petitioner as his suspension was passed with retrospective effect by treating the period from 06.10.2007 to 04.01.2010 as period under deemed suspension, and, therefore, as the employee did work during the aforesaid period, the period has been treated as on duty by the Tribunal.

35. This Court does not find any reason to interfere with the order passed by the CAT in the peculiar facts and circumstances of the case, and, therefore, the Writ Petition stands dismissed.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

OCTOBER 06, 2022

N. Khanna/ aks