

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6915 of 2021

Smt. Kanchan Devi Wife of Late Awadh Kishore Prasad Singh Ex Senior Telecom office Assistant (G) Office of the Chief General Manager Telecom, Bharat Sanchar Nigam Limited, Bihar Circle, Parna, Resident of At - 70 Feet, Hullupur Road, Near Ujjawal ITI Vishunpur Pakri P.O. - Anisabad, P.S. - Beur District- Patna, Pin Code - 800002 (Bihar).

... .. Petitioner/s

Versus

1. The Chairman and Managing Director, Bharat Sanchar Nigam Limited Corporate Office, Bharat Sanchar Bhawan, Janpath, New Delhi - 110001.
2. The Chief General Manager, Telecomm, Bharat Sanchar Nigam Limited, Bihar Circle, Patna - 800001 (Bihar).
3. The Principal General Manager, Telecomm, Bharat Sanchar Nigam Limited, Office of the Chief General Manager, Telecomm, Bharat Sanchar Nigam Limited, Bihar Circle, Patna- 800001 (Bihar).
4. The General Manager (Hr/Admn.), Bharat Sanchar Nigam Limited Office of the Chief General Manager, Telecomm, Bharat Sanchar Nigam Limited, Bihar Circle, Patna- 800001 (Bihar).
5. The Deputy General Manager (Admn.), Bharat Sanchar Nigam Limited Office of the Chief General Manager, Telecomm, Bharat Sanchar Nigam Limited, Bihar Circle, Patna - 800001 (Bihar).
6. The Additional General Manager (Admn.), Bharat Sanchar Nigam Limited, Telecom District, Patna, Patna- 800001 (Bihar).

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Munna Pd Dixit (M.P. Dixit) Advocate Mr. S.K. Dixit Advocate Mr. S.K. Chaubey Advocate Ms. Swastika Advocate
For the Respondent/s	:	Mr.Harendra Prasad Singh Advocate Mr. Santosh Kumar Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 18-01-2023

In the instant writ petition, petitioner has assailed the order of Central Administrative Tribunal dated 25.10.2019 passed in OA/050/00499/16.



2. The petitioner was appointed on compassionate ground against class IV post on 11.07.1991 as a Casual Labourer, thereafter, her services were regularized on 16.08.1994. With reference to the service record read with the fact that she was alleged to have passed Matriculation, she was appointed to the post of Group III on 31.03.1995. Thereafter, official respondents after more than a decade proceeded to initiate departmental inquiry in framing charges on 25.02.2006 to the extent that Matriculation certificate which stood in her name was not genuine. The petitioner had demanded certain documents and it was not supplied to her, however, the inquiring officer proceeded to hold that the charges leveled against the petitioner were proved. In the result, disciplinary authority proceeded to issue a show cause notice along with the Inquiring Officer's report on 03.09.2013. The petitioner had submitted her explanation on 15.09.2013, thereafter, disciplinary authority proceeded to impose the penalty of removal from service on 25.07.2015. The petitioner had submitted appeal against the order of removal and it was rejected on 20.01.2017.

3. Still aggrieved by the order of the disciplinary and appellate authority, petitioner invoked remedy under Section 19



of Administrative Tribunal Act in filing OA/050/00499/16 before Central Administrative Tribunal. Central Administrative Tribunal rejected the Original Application filed by the petitioner on 20.01.2017 hence, the present writ petition.

4. The matter was heard on number of occasions.

5. On 14.12.2022 the following order was passed.

“Learned counsel for the respondent is hereby directed to secure original records relating to notings of the office Memo No. Estt/Relax-1/91/Minutes dated 08.10.1991 vide Annexure R/1 in order to ascertain whether petitioner has misled the authorities in furnishing that she had passed matriculation and she is entitled to claim Group-C post, in this regard how the department have examined the particulars of the petitioner including education qualification at the time of her appointment.

Re-list this matter on 11.01.2023.”

6. Today learned counsel for the respondent on instruction submitted that records relating to the petitioner are not available in the office so as to apprise this Court as to whether petitioner had misled the official respondents in obtaining the appointment to the post of Group C on compassionate ground.

7. Perusal of the records shows there are lapses on the part of the official respondents in not noticing error while



scrutinizing petitioner's record and in not taking timely action to revert her from the post of Group C or issuance of fresh order of appointment against Class IV post. On the other hand, *suo motu* respondents have take a decision in the year 1995 to appoint petitioner to the post of Group C when she was appointed against a Class IV employee on *ad-hoc* basis. There is enormous delay from the year 1995 to 2006 in not taking timely action against the petitioner, whereby the petitioner was discharging the duties of the post of Group C. In a departmental inquiry, the charges were stated to have been proved, however, due to error committed by the department and in not taking timely action to impose penalty of removal from service and it would be too harsh with reference to number of years of service rendered by her from the year 1991 till passing of removal order on 25.07.2015. At the best, the official respondents would have reverted the petitioner from the post of Group C to that of Group D for which post she was inititally appointed. Therefore, imposition of penalty of removal from service is shocking to our conscience. Hence, it is a case for remand to the disciplinary authority to revisit to the factual aspects and lapses on the part of the department in not taking timely action and proceed to impose the penalty other than removal like reverting her to the



post of Group D for want of qualification for the post of Group C. The respondent-department shall not order for recovery of any difference of pay from the post of Group C, in the light of Apex Court's decision in the case of *State of Panjab and Others vs. Rafiq Masih (White Washer) and Others* reported in *2015 (1) PLJR (SC) 261*.

8. Accordingly, the petitioner has made out a *prima facie* case so as to interfere with the order of Central Administrative Tribunal dated 25.10.2019 passed in OA/050/00499/16 and order of removal dated 25.07.2015 and the order of the appellate authority dated 20.01.2017 which are set aside and matter is remanded to the disciplinary authority to pass a fresh order within a period of three months from the date of receipt of this order. A fresh order to be passed, shall be communicated to the petitioner at the earliest.

9. Accordingly, writ petition allowed in part.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

shoaib/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.01.2023.
Transmission Date	NA

