

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS**

**W.P.C.T 38 of 2022
B.S.N.L & Ors.
Vs.
Tapan Kumar Das &Anr.**

Appearance:

For the Petitioners : **Mr. Animesh Majumder, Adv.**

For the Respondent : **Mr. Neil Basu, Adv.
Mr. Asis Ghosh, Adv.
Mr. Rahul Kumar Singh, Adv.
Mr. Sankha Biswas, Adv.**

Judgment On : **01.02.2023**

PRASENJIT BISWAS, J.

The instant petition is filed by the petitioner against the order dated 27.11.2019 passed by the Central Administrative Tribunal, whereby and whereunder the Tribunal quashed the charge sheet

issued by the BSNL dated 15.05.2010 under the BSNL CDA Rules against the Respondent No.1 for his alleged misconduct.

The facts relevant for the purpose of consideration and disposal of the petition may be noticed as under: -

The Respondent No.1 joined the service of the Post and Telegraph Department on 02.07.1973. Thereafter the Government took a policy decision and setup Bharat Sanchar Nigam Limited (BSNL) vide Memo being No. OM No 2-29/2000- dated 30.09.2000. The Presidential order for permanent absorption of respondent no.1 in the BSNL was conveyed vide order dated 29th November 2000 and consequent to that permanent absorption of this respondent was made in BSNL from his parent organisation DOT. A charge memorandum under the signature of the Chief General Manager, Calcutta Telephones containing charges under Article I and article II was served upon the respondent to hold an enquiry under Rule 36 of the BSNL Conduct, Discipline and Appeal Rules 2006 wherein it is alleged that the Respondent No.1 while functioning as Accounts Officer during the year from 1999-2001 committed grave misconduct by deliberately signing number of bills and giving orders resulting wrongful loss to the Calcutta Telephones.

The inquiring authority vide daily order sheet dated 6th January, 2011 directed this respondent to inspect the authenticity of the documents and confirm the acceptance/ non acceptance of the said documents in writing with reasons as well as directed him to submit a list of additional documents if any required by him to be examined, its custodian and relevance of the same in each case, defence witnesses

and controlling officers of the defence witnesses. This respondent after receipt of the order dated 6th January 2011 filed a representation before the enquiry authority regarding the acceptance of authenticity of documents except for those documents which were incomplete and made a request before the enquiry authority to supply the correct and complete documents and also requested for the original documents to be put up for inspection on the ground that the photo copies of several bills were not legible. The respondent made another representation on 17th January 2011 requesting for list of additional documents which he required in support of his defence. The representation dated 17th January 2011 was also followed by two more representations dated 17th February 2011 and 2nd may 2011. The Inquiring Authority accepted that the documents requested for by the respondent are relevant and hence such documents were necessary for the defence of the respondent. The said Inquiring Authority directed the custodians of these documents and the presenting officer to make these documents available to the respondent. However, no such document was handed over by the custodians to the respondent and Inquiring Authority was again requested to make those documents available to the respondent. Thereafter, the Inquiring Authority initiated the enquiry proceedings on day-to-day basis with effect from 8th November 2012 till 6th March 2013 and submitted his findings on 26th March 2013 which was forwarded by the Disciplinary Authority vide a letter dated 16th April 2013.

The disciplinary authority passed its final order by which he imposed a major penalty on the respondent. Being aggrieved by and

dissatisfied with the final order dated 18th May 2013 passed by the Disciplinary Authority the respondent preferred appeal before the Appellate Authority dated 18th June 2013. Appellate Authority was sitting tight over the appeal of the respondent and only after the intervention of the Tribunal he was allowed personal hearing. The Respondent was finally communicated the appellate order dated 6th October 2015 on 3rd November 2015 by which the appellate authority affirmed the final order dated 18th May 2013 of the Disciplinary Authority. Thereafter, the respondent again knocked the door of the Central Administrative Tribunal with a prayer for direction upon the BSNL to grant all consequential benefits and/ for retirement benefits with the restoration of seniority to this respondent. The Tribunal by passing impugned order dated 27th November 2019 quashed the charge memorandum dated 15th May 2010. The order dated 27th November 2019 is impugned in the instant writ petition.

Learned Counsel appearing for the appellants asserted before us *inter alia* that the charge memorandum was issued regarding grave misconduct allegedly committed by the respondent for the period of 1999-2001 while he was functioning as Accounts Officer, Central Calcutta Telephones, containing charge under Article I, Article II and Article III under the BSNL Conduct Discipline and Appeal Rules 2006. The substance of the imputation of misconduct/ misbehaviour upon the charged official is that while functioning as Accounts Officer in Central Calcutta Telephones during 1999 to 2001 he deliberately signed on a number of bills and issued pay orders in most irresponsible manner resulting in loss to Calcutta Telephones and

consequential wrongful gain to the firms failing to maintain absolute integrity, devolution to duty and also acted in a manner which was unbecoming of a public servant contravening Rule (4)(1)(a), (4)(1)(b) and (4)(1)(c) of the BSNL CDA Rules, 2006. This Respondent duly participated in departmental enquiry proceedings with defence assistance to defend himself against charges brought against him giving reasonable opportunity. Thereafter the appellate authority after considering all the materials disposed of the said appeal on 06.10.2015 in accordance with law.

It is further submitted by the learned counsel that enquiry into misconduct having nexus with the past services under the department of Telecommunication giving rise for good and sufficient reasons to impose any penalty contemplated in Rule 33 of the BSNL CDA Rules, 2006 in a departmental proceeding under charge memorandum dated 15.05.2010 issued under Rule 36 of the BSNL CDA Rules, 2006.

It is further submitted by the learned counsel on behalf of the appellants that the respondent was duly absorbed in the BSNL w.e.f 01.01.2000 following the order dated 29.11.2004 in accordance with law and as such any action on misconduct initiated after 2000 would be dealt with in accordance with the BSNL Rule. Learned counsel draws our attention about Rule 58 of BSNL CDA Rules 2006 which provides any misconduct committed prior to issue of this Rules being the misconduct under the superseded rules shall be deemed to be misconduct under the BSNL CDDA Rules, 2006. The Respondent No.1 had been absorbed w.e.f. 01.10.2000 in BSNL and as such any action

on misconduct committed after 2000 shall be in accordance with BSNL Rules prevailing on the date of action.

Learned counsel further submitted that penalty was duly imposed on the respondent upon the establishment of his misconduct based on evidences on record after holding departmental enquiry under Rule 36 of the BSNL CDA Rules 2006 upon extending reasonable opportunity to this respondent in commensurate with the misconduct committed by him. So, the final order dated 18.05.2013 was/ is not in violation of rule 33(B)(f) of the BSNL CDA Rules 2006 and the misconduct committed by the respondent in the instant case during the period of 1999-2001 was/ is appropriately dealt with in terms of the rule 58 of CDA Rules 2006 and also keeping in view of the rule 59 of the BSNL CDA Rules 2006. As per his submission the terms of rules 58 BSNL CDA Rules 2006 are clear and unambiguous and applicable in the instant case.

Learned counsel submitted that the Tribunal failed to appreciate the legal aspect while deciding the case in as much as the past employment having connection with misconduct while serving Calcutta telephones/ BSNL giving rise for good and sufficient reasons to impose any penalty as contemplated in rule 33 of the said Rule 2006 and the order sheet dated-15.05.2010 was duly signed by the Chief General Manager Calcutta Telephones and as such there is no jurisdictional error or infraction for contravention of rule (4)(1)(c) of the BSNL CDA Rules, 2006.

Per contra learned counsel appearing for the respondent no.1 submitted that rule 58 of the BSNL CDA rules 2006 are applicable

for the employees who are recruited directly in the BSNL. This respondent is an absorbed employee in BSNL and not a direct recruit employee of the BSNL company. The BSNL CDA Rules 2006 is applicable for direct recruit employees only and not for the absorbed employees like this respondent who is originally an employee of the department of Telecommunication.

He further submitted that rule 58 of the BSNL CDA Rules which is the repeal and savings rule is in contravention to the mandate of article 20(1) of the Constitution of India which *inter alia* states that no person shall be convicted of any offence except for violation of law in force at the time of commission of the Act charged as an offence.

Reliance is placed by the learned Counsel upon paragraphs 12 and 13 of the judgement of case of Shri M.L. Sharma v. Bharat Sanchar Nigam Limited reported in 2013 SCC Online CAT 2033 and upon paragraph 18 of the decision in case of State Bank of India v. T.J. Paul reported in (1999) 4 SCC page 759,

It is submitted by the Learned Counsel that before 10th October 2006 the service of the respondent was governed by the CCS (CDA) Rules, 1965 and not under the BSNL CDA rules 2006. The charge memorandum dated 15th May 2010 issued under the BSNL CDA Rules 2006 is in violation of principles laid down in article 20(1) of the Constitution of India and was liable to be set aside and was rightly set aside by the Tribunal by passing the impugned order. So, there is nothing to interfere with the observation made by the tribunal in the impugned order.

It is submitted by the learned counsel for the respondent that the alleged period of misconduct was around 1999 and the charge memorandum was issued upon the respondent on 15th May 2010 i.e., almost after 11 years and the said charge sheet was based on stale allegations. The said Memorandum of charge caused serious prejudice upon the respondent on account of delay as the several relevant documents which were sought by him were not made available.

It is undisputed that the respondent was an employee under DOT who subsequently absorbed in BSNL. Before final absorption this respondent was belonged to the P & T Accounts and Finance services, Telecom Wing and member (F) and DOT was his appointing authority.

The alleged time of misconduct was for the period 1999-2001 and the charge memorandum was issued under rule (4)(1)(a), (4)(1)(b) and (4)(1)(c) of the BSNL CDA Rules, 2006 vide order dated 15.05.2010 and more particularly the alleged misconduct was committed when he was working under the Government of India and his service condition was regulated by the CCS (CCA) Rules, 2006. The BSNL CDA Rules came into force with effect from 10.10.2006.

So, it appears to us that the time of alleged misconduct was for the period of 1999-2001 and the charge memorandum dated 15th May 2010 was issued under (4)(1)(a), (4)(1)(b) and (4)(1)(c) of the BSNL CDA Rules, 2006. Alleged misconduct relates to a period when service conditions of the respondent were governed and regulated by the CCS (CCA) Rules, 1965. The BSNL CDA Rules 2006 came into force only with effect from 1st October 2006 but this Respondent was absorbed in

the BSNL with effect from 1st October 2000 as per the Presidential Order of adsorption dated 29th November 2004. So, the charge memorandum dated 15th May 2010 for alleged misconduct for the period 1999-2001 was prior to the absorption period and the BSNL CDA Rules 2006 was not in force at the time of alleged misconduct.

As rightly argued by the learned counsel for the respondent no.1 that the respondent became an employee of the BSNL with effect from 01.10.2000 and the BSNL CDA Rules were admittedly promulgated in the year 2006. Till such time as submitted by the respondent that he was to be governed under the CCS (CCA) Rules, 1965. Therefore, the disciplinary proceedings initiated against this respondent by the BSNL for the alleged misconduct committed is of without jurisdiction.

It appears from the submission advanced by the learned counsel appearing for the respondent no.1 that he took the plea that non supplying of the relevant documents is violation of principles of natural justice. This respondent requested the Inquiring Authority to furnish certain additional documents which is required in support of his defence and he explained the relevance of all those documents in his representation. The Inquiry Authority vide memorandum dated 02.06.2011 accepted that the documents prayed for are relevant and hence such documents were necessary for defence of the respondent. Those documents required by the respondent was refused to supply by the authority on the ground that the documents sought by the respondent were not available in the office. Although the Inquiry Authority acknowledged the relevance of the documents sought by the respondent as is evident from the various communications but those

were not provided to the respondent. No plausible explanation for non-supplying of the documents to the respondent is found from the submission on behalf of the appellants and only communication to the respondent is that the documents sought by the respondent were not available in the office. The respondent raised the issue of non-supply of essential documents during trial but the inquiring authority did not pay any mindfulness to the pleas of respondent and ultimately submitted his findings on 26th March, 2013.

Learned Counsel placed reliance upon paragraphs 29 to 39 of the judgement of ***State of U.P vs, Saroj Kumar Sinha*** reported in ***(2010) 2 SCC 772***.

In the above referred case Hon'ble Apex Court observed in paragraph 39 *inter alia* that-

"The proposition of law that a government employee facing a department enquiry is entitled to all the relevant statement, documents and other materials to enable him to have a reasonable opportunity to defend himself in the department enquiry against the charges is too well established to need any further reiteration. Nevertheless, given the facts of this case we may re-emphasise the law as stated by this Court in the case of State of Punjab vs. Bhagat Ram (1975) 1 SCC 155:

"The State contended that the respondent was not entitled to get copies of statements. The reasoning of the State was that the respondent was given the opportunity to cross-examine the witnesses and during the cross-examination the respondent would have the opportunity of confronting the witnesses with the

statements. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence.

The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against the charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government servant, he will not be able to have an effective and useful cross-examination.

It is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the government servant. A synopsis does not satisfy the requirements of giving the government servant a reasonable opportunity of showing cause against the action proposed to be taken."

In our opinion, the appellants have miserably failed to give any reasonable explanation as to why the documents have not been supplied to the respondent. Therefore, in view of observation of the Hon'ble Apex Court we find that without supplying the relevant

documents departmental proceedings initiated against the respondent was carried out in violation of the principles of natural justice and the aforesaid defect vitiated the departmental proceedings.

The Respondent No.1 became an employee of the Appellant Company with effect from 01.10.2000 and the BSNL CDA Rules came into force in the year 2006 and till such time he was to be governed under the CCS (CCA) Rules, 1965. Admittedly the Respondent was proceeded under the Rule 36 of the BSNL CDA Rules, 2006 vide charge memorandum no. VIG/2006/A/7 dated 15.05.2010 alleging his misconduct during the period of 1999-2001 while he was functioning as Senior Accounts Officer under the department of Telecommunications. We are of the view that before 10th October, 2006 the service of the Respondent No.1 was governed by the CCS (CDA) Rules, 1965 and not under the BSNL CDA Rules, 2006. We are not convinced by the submission made by the learned Advocate for the petitioners. We also discern the submission as advanced by the learned counsel of the appellant authority that as BSNL took over the employment of the respondent and the respondent having opted for employment with the BSNL it is the BSNL (Conduct, Discipline and Appeal) Rules, 2006 would prevail over the Central Civil Services (Classification, Control and Appeal) Rules.

So, the disciplinary proceedings initiated against the respondent for his alleged misconduct by the appellant authority under the BSNL CDA Rules is without jurisdiction.

In the above facts and circumstances of the case, we agree with the Counsel for the respondent no.1 that the disciplinary proceeding initiated against respondent is not only badly delayed but they were also without jurisdiction.

The Tribunal has in our opinion committed no error in allowing the application filed by the respondent.

The petition is dismissed.

No order of costs.

Urgent photostat certified copy of the order if applied for be supplied to the parties as early as possible.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)