



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.5180/2019

Shri Mohammed Aatur Rahman Mohammed Yusuf

...Versus...

The Chief General Manager Telecom, Maharashtra Circle, (BSNL), Santacruz,
Mumbai 400054 and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. S.O. Ahmed, Advocate for petitioner
Mrs. S.W. Deshpande, Advocate for respondents

CORAM : AVINASH G. GHAROTE AND
M.W. CHANDWANI, JJ.

DATE : 08/08/2024

1. Heard Mr. S.O. Ahmed, learned counsel for the petitioner and Mrs. S.W. Deshpande, learned counsel for the respondents.

2. The petition questions the order dated 13/12/2018 (pg.72) by which the application dated 17/10/2018 by the petitioner, to set aside the punishment awarded in disciplinary proceedings on the plea that the petitioner was acquitted in the criminal prosecution initiated against him, has been rejected.

3. Mr. Ahmed, learned counsel for the petitioner submits that on similar set of allegations, criminal prosecution

was also initiated in addition to disciplinary proceedings, vide Criminal Case No.168/2003 before the Judicial Magistrate First Class, Court No.2, Chikhli initiated by the State, in which by the judgment dated 19/12/2016, the petitioner has been acquitted of the charges under Section 420 of IPC r/w Sections 20, 21, 25, 25A, 26 and 27 of the Indian Telegraph Act, 1885 and under Sections 3 and 4 of the Prevention of Damage to Public Property Act, 1984. He, therefore, submits that the punishment imposed upon the petitioner in the disciplinary proceedings by the order dated 28/06/2006 (pg.27-D), whereby the petitioner has been reverted to the post of card technician with permanent debarment of future increment and promotion needs to be quashed and set aside.

4. A perusal of the judgment of the learned JMFC, Chikhli indicates that out of six witnesses examined, four witnesses had turned hostile and the offence could not be held to have been proved on the testimony of PW 5 - Ramdas Baliram Ghai and PW No.2 - Ashok Shankar Kulkarni. Though the genesis of the criminal prosecution and the disciplinary proceedings are the same, it would however be material to note that the nature of charges framed against the petitioner in the disciplinary proceeding were as under :

“Article (I) : That Shri M.A. Rahman TTA o/o SDE (Gr) CHIKHALI while functioning as TTA under SDE (Gr) CHIKHALI during period 1-12-2002 to 18-2-2003 has

commuted gross misconduct by giving false information regarding faulty lock of Sawargaon Dukare exchange building to S.D.E. CHIKHALI, requested for new lock and not submitted faulty lock and spare key of newly purchased lock to SDE (Gr) CHIKHALI; that he has not maintained devotion to his duty and he has acted in a manner of unbecoming of a Government servant, relating the provision of rules 3 (1) (ii) and (iii) of CCS Conduct Rules, 1964.

Article (II) : That M.A. Rahman TTA while functioning as TTA under the SDE (Gr) CHIKHALI has created TGP 20 and 8 junctions line in Sawargaon Dukare Tele. Exchange and used TWT card unauthorized. This illegal creation of T.G.P is done by M.A. Rahman by misusing password and provided connectivity of four telephone lines, which are provided in the house of Mrs. Jadhav at Malgani village using 5 pair cable tapping the 20 Pr O/G cable. As such failed to maintain secrecy of password management and also this is misuse of official position and power by Shri M.A. Rahman TTA. That Shri M.A. Rahman fail to maintain devotion to duty and absolute integrity. This act amounts violating the provision of rules 3 (1) (i) and (ii) of CCS Conduct Rules, 1964.

Article (III): That Shri M.A. Rahman TTA while functioning as TTA under the SDE (Gr) CHIKHALI during period 1-12-2002 to 18-02-2003 has misused TWT card for providing illegal junction line, which were provided in house of Smt. Jadhao. This behaviour of Shri M.A. Rahman TTA amount to gross misconduct thereby committed misappropriation of Govt. assets and store and thus violated the provisions of rules 3 (1) (i) to (ii) of CCS Conduct Rules, 1964.

Article (IV) : That Shri M.A. Rahman TTA while functioning as TTA under SDE (Gr) CHIKHALI during

period 1-12-2002 to 18-02-2003 has created unauthorized TGP-20 at slot no.20 in main frame of CDOT 256G RAX of Telephone exchange Sawargaon Dukare, thereby he alleviated illegal access by taking the undue advantage of the password provided to him by his superiors, for putting through unauthorized ISD, STD and Local calls without being recorded in Sawargaon Dukare Exchange. This is the gross irregularity and negligence in the discharge of his duties with a dishonest motive. That Shri M.A. Rahman failed to maintain devotion to duty and absolute integrity and behaved in a manner of unbecoming of Government servant violating provisions of 3 (1) (i) (ii) and (iii) CCS of Conduct Rules 1964.

Article (V) : That Shri M.A. Rahman while functioning as TTA under SDE (Gr) CHIKHALI during period 1-12-2002 to 18-02-2003 performed all technical installation and maintenance works at Sawargaon Dukare exchange and each and every Apparatus and Telephone equipment was under observation of Shri M.A. Rahman for maintenance purposes. He was intentionally not noticed and avoided to report about existence of unauthorized creation of TGP wiring between main frame TWT card to MDF in the said exchange to his superior officers and thereby caused a peculiarly loss to the tune of 14 lakhs seventy two thousands to BSNL. This is gross negligence in discharge of official duties with dishonest motives for personal gain. That Shri M.A. Rahman failed to maintain devotion to his duty. Thus he behaved in a manner of unbecoming of Govt. servant. This act amounts violating the provision of rules 3 (i) (ii) and (iii) of CCS Conduct Rules 1964.

Article (VI): That Shri M.A. Rahman while functioning as TTA under SDE (Gr) CHIKHALI, during period 1-12-2002 to 18-02-2003 used TWT card and created TGP

junctions, made wiring between slot # 20 of main frame of CDOT 256 PRAX to MDF at E-3 on module-1 and extended it to the line side at L-1 of module 10 and provided connectivity through idle 20 pair o/G cable already terminated on L-1 at module-1 and thereby constructed an illegal infrastructure for putting through unauthorized STD/ISD calls consequently upon which the Govt. was put to huge peculiarly losses. Thus Shri M.A. Rahman TTA disappointed Govt. properly and stores. This act of Shri M.A. Rahman amounts to gross misconduct. Thus he behaved in a manner of unbecoming of Govt. servant to gross misconduct. Thus he behaved in a manner of unbecoming of Govt. servant violating the provisions of rules 3 (1) (iii) of CCS Conduct Rules, 1964.”

5. Based upon these articles of charges, enquiry was conducted and it was found, that the petitioner, who was an employee of BSNL, by misusing the password in respect of the TWT card, had provided connectivity of four telephone lines in the house of Mrs. Jadhav at Malgani village by using a five pair cable, on account of which unauthorized ISD, STD and local calls were made, by effectively bypassing the Sawargaon Dukare Telephone Exchange, as a result of which loss was caused to the BSNL Department to the tune of approximately Rs.14,72,000/-. The order dated 28/06/2006, by which the enquiry report dated 09/05/2006 was accepted, found the petitioner guilty of all the charges and therefore, directed reduction of his pay scale and reversion to the post of card technician till his retirement with permanent blockage of future increments and promotion.

6. This punishment, which has been imposed by the appropriate authority on 28/06/2006, has never been questioned by the petitioner at any point of time, by filing an inter department appeal or otherwise.

7. A comparison of the issues in consideration in Criminal Case No.168/2003, with the articles of charges as indicated above, would indicate that though the basic facts are same, the misconduct, which is claimed on the basis of articles of charges, is distinct and separate and has been independently established, which report or the punishment imposed consequent thereto has never been questioned by the petitioner and therefore has attained finality.

8. It is a settled position of law that mere acquittal by a Criminal Court will not confer on the employee a right to claim any benefit including reinstatement and it is permissible, for the Department to initiate and conclude disciplinary proceedings, even during the pendency of the criminal prosecution (*See : Deputy Inspector General of Police and another Vs. S. Samuthiram (2013) 1 SCC 598*). Though *Ramlal Vs. State of Rajasthan and others (2024) 1 SCC 175* has been relied upon by the learned counsel for the petitioner in support of his contention that acquittal in the criminal proceedings would necessarily vitiate the findings in the disciplinary proceedings, we find that in *Ramlal* (supra) what was under consideration was an allegation that the appellant

therein had altered his date of birth from 21/04/1974 to 21/04/1972 in his 8th standard mark-sheet so as to project himself as having attained majority at the time of recruitment, and is a judgment based on facts and also on the ground that there was a finding rendered in the criminal proceedings that the charges were disproved.

9. In the instant case, as indicated above, the articles of charges in the disciplinary proceedings, were clear and specific and have been held to be proved and the punishment imposed by the order dated 28/06/2006 has attained finality, as the same was never challenged by the petitioner by preferring a departmental appeal.

10. Considering the above position, we are not inclined to accept the contention of the learned counsel for the petitioner that on account of mere acquittal of the petitioner in Criminal Case No.168/2003 by the judgment dated 19/12/2016, the punishment imposed in the departmental proceedings should also go. The writ petition is, therefore, without any merits and is dismissed accordingly. No order as to costs.

(M.W. CHANDWANI, J.)

(AVINASH G. GHAROTE, J.)