



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CWP No.20133 of 2018 (O&M)

Reserved on : 21.04.2025

Date of Decision: 28.05.2025

Bharat Sanchar Nigam Limited and others

...Petitioners

Versus

Mohan Lal and others

...Respondents

**CORAM: *HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA*
*HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA***

Argued by:- Mr. Puneet Jindal, Senior Advocate with
Ms. Vibha Dhiman, Advocate
for the petitioners.

Mr. Brajesh Mittal, Advocate
for respondent No.1.

MEENAKSHI I. MEHTA, J.

By filing the instant Civil Writ Petition, the petitioners herein (arrayed as respondents No.3 to 5 in Original Application No.060/00479/2016) have sought the indulgence of this Court for the issuance of a writ in the nature of certiorari, quashing the order Annexure P-4 handed down by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short 'the CAT') on 27.02.2018, whereby the above-referred OA has been disposed of, by way of remanding the matter back with a direction to the Competent Authority to initiate and conclude the regular departmental inquiry to inquire into the indicated charges levelled against the applicant (arrayed as respondent No.1 in this petition and here-in-after to be referred as 'respondent No.1'), as per the statutory Rules and in accordance with law.



2. Bereft of unnecessary details, the facts, culminating in the filing of the present petition, are that respondent No.1 filed the afore-mentioned OA against the petitioners and respondents No.2 & 3 to assail the orders passed on 03.11.2015, 16.05.2014, 01.05.2014 and the Charge Memo dated 20.08.2013, while averring that he had been working as SDE with the petitioners (BSNL). He was alleged to have raised the loans from different Banks without seeking proper permission and intimating the employer-Department and to have failed to repay the loan amounts to the concerned Banks, resulting in the filing of recovery suits against him which were decreed. The warrants of arrest had also been issued against him in several cases and ultimately, he was declared proclaimed offender therein and he had remained behind the bars during the period from 24.09.2009 to 13.10.2009 and had concealed this fact from the petitioner-Department. He was issued the Charge-Sheet, i.e Annexure A-6, on the above-said counts and he submitted his Reply (Annexure A-7) thereto. However, his Reply was found to be unsatisfactory. Consequently, vide the order dated 16.05.2014 (Annexure A-1/1), he was imposed the major penalty of removal from service in view of Rule 40(b) of the Bharat Sanchar Nigam Limited Conduct, Discipline and Appeal Rules, 2006 (for short 'the Rules of 2006'), without following the statutory procedure of conducting the regular departmental inquiry and this penalty had been ratified by the Department of Telecommunication vide the letter dated 01.05.2014 (Annexure A-2). The appeal, preferred by him, had also been dismissed by the Appellate Authority vide the order dated 03.11.2015 (Annexure A-1).

3. The petitioners filed their written-statement controverting the claim of respondent No.1 therein, *inter-alia*, on the grounds that the regular departmental inquiry could not be conducted against him (respondent No.1) as



the witnesses, who were required to be examined in such inquiry, were the public authorities and thus, they were not within the approach of the petitioner -Department and the order qua the removal of respondent No.1 from service was passed after taking his representation as well as the gravity of misconduct on his part, into consideration and the Appellate Authority had also followed the principles of natural justice while rejecting his appeal. After hearing learned counsel for both the parties, the CAT has decided the afore-referred OA vide the impugned order Annexure P-4, as already discussed in the opening para of this judgment.

4. We have heard learned Senior counsel for the petitioners as well as learned counsel for respondent No.1 in the instant Civil Writ Petition and have also perused the file carefully.

5. Learned Senior counsel for the petitioners has contended that the provisions of Rule 40(b) of the Rules of 2006 had been invoked because the process of conducting the regular departmental inquiry against respondent No.1 would have necessitated the summoning of the witnesses, along-with the relevant record, from the concerned banks, judicial courts and the jail as well and those witnesses were not within the control of the petitioner-Department and keeping in view all these facts, the Competent Authority had taken a conscious decision to issue Charge-Sheet Annexure A-6 to respondent No.1 under the above-mentioned Rule which is perfectly justified and the order Annexure A-1/1 qua the removal of respondent No.1 from service and the order Annexure A-1 regarding the rejection/dismissal of the appeal filed by him (respondent No.1) have also been passed after considering the Reply and the grounds of appeal as submitted by him and in these circumstances, there was no occasion for the CAT to order for conducting the regular departmental



inquiry against respondent No.1 and hence, the impugned order is not legally sustainable and is, therefore, liable to be set-aside.

6. Per-contra, learned counsel for respondent No.1 has argued that respondent No.1 could not have been imposed the major penalty of removal from service without conducting the regular departmental inquiry against him and the Competent Authority had failed to record any reasons in writing as envisaged under Rule 40(b) of the Rules of 2006 and this fact, in itself, does vitiate the Charge-Sheet and the orders as impugned by respondent No.1 in the afore-said OA.

7. Before advertng to the discussion on the merits in this petition, we deem it appropriate to reproduce the contents of Rule 40 of the Rules of 2006 and the same read as under:-

“Rule 40. SPECIAL PROCEDURE IN CERTAIN CASES

Notwithstanding anything contained in Rule 35 or 36 or 37, the Disciplinary Authority may impose any of the penalties specified in Rule 33 in any of the following circumstances:

- (a) the employee has been convicted on a criminal charge or on the strength of facts or conclusions arrived by a judicial trial ; or*
- (b) where the Disciplinary Authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or*
- (c) where the disciplinary authority is satisfied that in the interest of the security of State or of the Company it is not expedient to hold an inquiry in the manner provided in these Rules.”*

8. A perusal of Annexure A-6, i.e the Charge-Sheet/Memo, reveals that it had been issued under Rule 40(b) of the Rules of 2006 and Annexure



II (described to be consisting of 04 pages along-with 90 more pages) had been enclosed therewith. The above-referred 04 pages, annexed with this petition, contain the list of the documents, as intended to be relied upon by the petitioner-Department to substantiate the alleged misconduct on the part of respondent No.1 and several bank documents, judgments passed and the arrest warrants issued by the Competent Courts, also find mention in the afore-described list. Further, it has also categorically been mentioned in Para No.3 of the preliminary submissions in the written-statement filed by the present petitioners as respondents No.3 to 5 in the above-said OA that respondent No.5 had agreed to for the imposition of major penalty under Rule 40(b) of the Rules of 2006 by recording the reasons dated 18.07.2013 as under:-

“ Having gone through the case, investigation report (at 13/C) submitted by the CVO, BSNL and the Recommendation of Disciplinary action for major penalty by the CVO’s office (at 16/C), it is observed that the disciplinary action under rule 36 of BSNL, CDA Rule 2006 is not practicable because the officer took loans from different Banks at different time. Since loan were not refunded the banks approached to the Hon’ble Courts and send him to judicial custody. To authenticate these relevant documents obviously, authorities likewise Banks, Judiciary and Police are not practicable to be produced as witness in the case because these are public authorities and are not within the approach of the Company’s administration. In case major penalty proceedings, under rule 36 of BSNL, CDA Rule, is ordered the documents which are related to the Public Authorities, may not be practically and legally produced before the Inquiring Authority during the course of inquiry proceedings.

In view of the above compelling circumstance, but to



provide an opportunity to the officer, it is more than reasonably justified if disciplinary action under rule 40(b) of the BSNL, CDA Rule, 2006 is initiated against the officer Shri Mohan Lal SDE. Therefore, ordered to issue charge sheet to Shri Mohan Lal under rule 40(b) of BSNL, CDA Rule, 2006.”

9. The afore-cited reasons also find mention in the Office-Notes dated 18.07.2013, as appended at Page No.187 in the paper-book. Charge-Sheet/Memo Annexure A-6 bears the date 20.08.2013. Thus, it is quite explicit that the Competent Authority had recorded the reasons in writing, as required under Rule 40(b) of the Rules of 2006, on 18.07.2013, i.e much prior to the issuance of the said Charge-Sheet and had, thereby, complied with the pre-requisite as laid down/envisaged therein.

10. Then, the Schedule for Appointing, Disciplinary, Appellate and Reviewing Authorities in BSNL, for Executives (for absorbed Group ‘B’ Officers and equivalent directly recruited Executives) is annexed at Page No.88 in the paper-book. Respondent No.1 was SDE and as mentioned in the above-said Schedule, the Disciplinary Authority for the post held by him, was the CGM/equivalent officer dealing with HR and the Appellate Authority was the Director. The order for removal of respondent No.1 from service (Annexure A-1/1) has been passed by the Disciplinary Authority, i.e CGM, NTR, BSNL and as mentioned in Annexure A-2, the copy of the letter dated 01.05.2014, the afore-mentioned proposed penalty had duly been ratified by the Department of Telecommunication. Similarly, the Director, HR, i.e the Appellate Authority BSNL, New Delhi, had decided the appeal moved by respondent No.1 vide order Annexure A-1. Thus, it becomes crystal clear that the above-referred orders had been passed by the Competent Authorities and the Charge-Sheet



had also been issued, while complying with the provisions as contained in Rule 40(b) of the Rules of 2006.

11. In the light of the fore-going discussion, we are of the considered opinion that the impugned order Annexure P-4, as passed by the CAT, is not legally sustainable. Resultantly, the same is, hereby, set-aside and the Civil Writ Petition in hand stands allowed accordingly.

12. Pending miscellaneous application(s), if any, also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

28.05.2025

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Whether speaking/reasoned: Yes
Whether Reportable: Yes