

(2007) 10 DEL CK 0064
In the Delhi High Court
Case No : LPA No. 1771 of 2006

Navendra Kumar and Another	Vs	APPELLANT
Mahanagar Telephone Nigam Ltd.		RESPONDENT

Date of Decision : 01-10-2007

Acts Referred:

Mahanagar Telephone Nigam Limited (Conduct, Discipline and Appeal) Rules, 1998 —
Rule 5(43)
Pension Rules — Rule 5(36)

Citation : (2007) 10 DEL CK 0064

Hon'ble Judges : Dr. M.K. Sharma, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : D.S. Chaudhary, for the Appellant; Ravi Sikri, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, C.J.—The appellant herein was initially an employee of the Indian Posts and Telegraph Department in the year

1967. He was promoted as Assistant Engineer (Group-B). In the meantime, the said Department was bifurcated and service of the appellant was

placed with the Department of Telecommunications. While he was serving in the said Department, he was promoted to the post of Divisional

Engineer in 1996 and was posted at Guwahati.

2. In 1998, when MTNL came into existence, appellant's service was placed on deputation with MTNL and he was transferred to New Delhi.

While he was working in MTNL, pursuant to a policy decision taken in the year 2000 deciding to absorb all the employees who have come on

deputation to MTNL from the Department of Telecommunications, he exercised the option to be absorbed in MTNL and was absorbed

accordingly with effect from 1st October, 2000 in terms of the Presidential order issued on 22nd March, 2004 From that date onwards the

appellant became an employee of MTNL for all practical purposes.

3. The respondent MTNL issued five charge sheets dated 30th October, 2004, 31st October, 2004, 8th February, 2006 and 13th February,

2006, whereby departmental proceedings were sought to be initiated against the appellant under the provisions of the MTNL (Conduct, Discipline

and Appeal) Rules, 1998(for short the Rules).

4. The appellant challenged legality of the said charge sheets by filing writ petitions in this Court which were taken up for consideration by the

learned Single Judge." However, on hearing arguments and upon going through the records, the learned Single Judge did not find any merit in the

said petitions and accordingly dismissed the same by a common judgment and order dated 18th April, 2006. By the said order the learned Single

Judge permitted the respondent MTNL to continue the departmental proceedings initiated against the appellant.

5. Being aggrieved by the aforesaid judgment and order, the present appeal is filed on which we have heard the learned Counsel appearing for the

parties. We have also perused the records placed before us and in the light of the same we would discuss the pleas taken before us.

6. The MTNL (Conduct, Discipline and Appeal) Rules, 1998 were framed by the respondent in the year 1998." The said Rules envisaged the

procedure as to how a departmental inquiry is to be initiated and conducted for any misconduct committed by an employee of the MTNL." The

aforesaid Rules came to be amended under order dated 4th August, 2004 whereby a provision was added to the Rules as Rule 5(43) which reads

as follows:

Rule 5(43) Any misconduct committed by an employee in previous organization and if the organization refer the case to MTNL, it will be taken

cognizance of and disciplinary action will be taken in spite of the clearance given by that organization at the time of his/her resignation or relieving. It

may also be ensured that the previous organization where the misconduct has been committed by an employee, lends all cooperation to MTNL in

this regard.

7. A bare reading of the aforesaid Rule would make it crystal clear that the said

Rule empowers the authority to take cognizance and initiate disciplinary action, if any misconduct is committed by an employee in the previous organization.

8. By exercising the aforesaid power vested under Rule 5(43) charge sheets were issued to the appellant on 30th October, 2004, 31st October, 2004 and 8th February, 2006 and 13th February, 2006 alleging misconduct committed by the appellant which resulted in pecuniary loss to the organisation.

9. Time and again the Supreme Court has held in various judgments that at the stage when charges are framed in a disciplinary inquiry, the Tribunal or Court has no jurisdiction to go into the correctness or truth of the charges. In this connection we may refer to the decision of the Supreme Court in Union of India (UOI) and Others Vs. Upendra Singh, wherein the Supreme Court held thus:

In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be....

10. It was submitted before us by the learned Counsel appearing for the appellant that the aforesaid amendment in the Rules came into force effective from 12th July, 2004 and, Therefore, the same cannot have a retrospective effect so as to enable the MTNL to apply the said provision to an offence committed in 1998. One aspect of the matter that is required to be clarified at this stage is that the appellant did not challenge the virus and legality of the provision of Rule 5(43) anywhere and not in the writ petitions. In our considered opinion the aforesaid submission of the learned Counsel for the appellant is misconceived as power and jurisdiction to

draw up proceedings would be considered with reference to the date on which such proceedings are drawn up and not when the incident had taken place. Although the incident might have taken place in 1998, but the charge sheets initiating departmental proceedings were drawn up against the appellant on 30th October, 2004, 31st October, 2004, 8th February, 2006 and 13th February, 2006. It is explicit there from that all the aforesaid charge sheets were issued when Rule 5(43) was already amended and was in place. The fact that an alleged misconduct was noticed subsequently by MTNL is indicative of some inter se correspondent or communication between MTNL and DOT. The said submission Therefore is without any merit.

11. The next submission of the counsel appearing for the appellant is that MTNL has power and jurisdiction to exercise disciplinary control only in respect of the acts and omission and commission committed by the appellant after his absorption i.e. with effect from 1st October, 2000. In other words, the submission was that the alleged misconducts being prior to 1st October, 2000, the power and jurisdiction to draw up proceedings is not with the MTNL. The aforesaid submission was also negated by the learned Single Judge holding that the entire contract of service in relation to the appellant were taken over by the respondent MTNL as on the date of absorption and, Therefore, in absence of any rule empowering the Central government to exercise control over the service of the appellant in relation to matters of employment for the period he served with it, the only authority which would continue to have jurisdiction to initiate departmental proceedings would be MTNL. We do not find any infirmity in the aforesaid findings and conclusions recorded by the learned Single Judge on the issue raised. Besides, the matter can be looked into from another angle i.e. from standpoint of Rule 5(43). The said Rule empowers MTNL to initiate disciplinary action in relation to any misconduct committed by an employee in the previous organization .Therefore, the aforesaid submission of the learned Counsel for the appellant is also found to be without any merit.

12. Another submission was that the four year period having expired from the date of retirement of the appellant, no departmental proceeding could be continued against the appellant as provided for under Rule 5(36) of the

Pension Rules. The aforesaid submission in our considered opinion is also without any merit for it cannot be said that the appellant stood retired from the government service effective from 1st October, 2000. In fact effective from that date he was absorbed in the service of MTNL. As a matter of fact the appellant retired from service of MTNL much after charge sheets were issued and Therefore disciplinary proceeding could be continued as against the appellant for the purpose of pension. Consequently the plea of limitation raised by the appellant in the present appeal is not applicable.

13. Another contention that was raised by the appellant was that the MTNL has no jurisdiction to issue charge sheets for an alleged misconduct committed in Guwahati as it does not have territorial jurisdiction. The said contention was also raised before the learned Single Judge which was negatived, recording that no prejudice had been indicated to the Court. It was also held that the fact that an alleged misconduct was noticed subsequently by MTNL itself is indicative of some inter se correspondence between MTNL and DOT. We agree with the conclusion arrived at by the learned Single Judge on this contention also.

14. Therefore from whatever angle the impugned order is looked into the same is not found to be illegal or defective in any manner. We find no ground to interfere with the judgment and order passed by the learned Single Judge. There is no merit in this appeal which is dismissed.