

APHC010058392023



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3573]

THURSDAY, THE 30th DAY OF JULY 2026

PRESENT

THE HONOURABLE SRI JUSTICE BALAJI MEDAMALLI

WRIT PETITION NO: 2869/2023

Between:

Yanda Dharma Rao

...PETITIONER

AND

The General Manager and Others

...RESPONDENT(S)

WRIT PETITION NO: 25895/2023

Between:

Yanda Dharma Rao

...PETITIONER

AND

The Chairman And Managing Director and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.S SRINIVASA RAO

Counsel for the Respondent(S):

1.HARINATH N (DEPUTY SOLICITOR GENERAL OF INDIA))

2.B SATYANARAYANA

3.BOKKA SATYANARAYANA KAMLA

The Court made the following:

THE HONOURABLE SRI JUSTICE BALAJI MEDAMALLI**WRIT PETITION NOS. 2869 & 25895 OF 2023****COMMON ORDER:**

1. The **Writ Petition No.2869 of 2023** is filed challenging the action of the respondent No.2 in not releasing the petitioner's retirement benefits under the Voluntary Retirement Scheme, 2019, despite the undertaking given in proceedings VRS2019/7000/7019/A/0000000032, dated 07.01.2020 and in issuing the show cause notice vide Lr.No.X/Disc Case/YDR/Rtd TT/2023-24/2, dated 20.01.2023. The said actions are illegal arbitrary, irrational, unjust and unconstitutional and violative of Articles 14, 16 and 21 of Constitution of India. The petitioner therefore seek a direction to the respondents to forthwith process and release his retirement benefits in terms of the VRS order dated 07.01.2020 and to set aside the above impugned show-cause dated 20.01.2023.

2. The case of the petitioner is that he was initially appointed as Casual Mazdoor on a temporary basis in the 2nd respondent-Department vide proceedings dated 12.03.1990, and his services were subsequently regularized on 25.09.1993, based on his service as a temporary Mazdoor in the respondent department. In the year 2019, BSNL introduced the Voluntary Retirement Scheme, pursuant to which petitioner opted for voluntary retirement. His application was accepted and he was permitted to retire under the scheme vide proceedings VRS2019/7000/7019/A/0000000032, dated

07.01.2020. While allowing the petitioner to retire under VRS, it was mentioned that there was no vigilance and Departmental proceedings pending against the petitioner. After his retirement, the petitioner made representations seeking release of his retirement benefits. Though the respondents assured him that the benefits would be released shortly, the same were kept pending for nearly three years. The petitioner thereafter submitted a representation dated 14.11.2022. In response, he was informed that a complaint had been received regarding his date of birth. Consequently, a show-cause notice dated 20.01.2023 was issued calling upon him to explain the alleged submission of a bogus date-of-birth certificate at the time of his appointment. Aggrieved by the said action and the non-release of his retirement benefits, the petitioner filed the present Writ Petition. During its pendency, the respondents issued a charge memo dated 16.09.2023 alleging certain charges against the petitioner. Aggrieved thereby, the petitioner filed **W.P.No.25895 of 2023**.

3. It is relevant to note that **W.P.No.2869 of 2023** was filed challenging the non-release of the petitioner's retirement benefits and the show-cause notice dated 20.01.2023, as referred to above. During its pendency, the respondents issued a charge memo dated 16.09.2023, which was challenged by the petitioner in **W.P.No.25895 of 2023**. Since both Writ Petitions arise from the same subject matter and involve common issues, they are being disposed of by this common order to avoid conflicting findings and multiplicity of proceedings.

4. The contention of the petitioner is that he was permitted to retire from service under the Voluntary Retirement Scheme vide proceedings dated 07.01.2020, wherein it was recorded that no departmental proceedings were pending against him, as reflected in Ex.P2 in W.P.No.25895 of 2023. Though Sl.No.4 of Ex.P2 states that as necessary final order of retirement / release order along with status of vigilance clearance in respect of the executives / non-executives shall accordingly be issued by respective Heads of Officer after ascertaining vigilance clearance status as on 31.01.2020, no proceedings have been communicated to the petitioner. The petitioner therefore contends that, the respondents, without assigning any valid reason or following due process, withheld his retirement benefits.

5. The respondents, in their counter-affidavit, state that, while the petitioner was working as a Telecom Technician (Group-C) in BSNL, Srikakulam Business Area, a complaint dated 01.06.2018 was received against 31 employees alleging that their appointments were secured on the basis of fake and forged certificates. The petitioner was named at Sl.No.26. Pursuant thereto, proceedings were initiated for verification of his certificate and determination of his age. While the said proceedings were pending, the petitioner opted for voluntary retirement. His request was accepted and he was permitted to retire with effect from 31.01.2020. However, the retirement proceedings recorded that a complaint was pending against him and that his retirement benefits would be regulated in accordance with the outcome of the said complaint. Thus, though the petitioner was permitted to retire, the release

of his retirement benefits was made subject to the outcome of the pending complaint. No further proceedings were initiated or communicated to the petitioner thereafter. Admittedly, the charge memo was issued only subsequently, during the pendency of W.P.No.2869 of 2023. The respondents rely upon Rule 61 of the BSNL Conduct, Discipline and Appeal Rules, 2006 (for short, 'the BSNL Rules'), which deals with Disciplinary Provisions For Retiring Employees is concerned. Rule 61(4)(2)(a) and (b) reads as follows:

Rule 61. DISCIPLINARY PROVISIONS FOR RETIRING EMPLOYEES:

.....

(4)(2)(a) The disciplinary proceedings referred to in sub-rule 4(1), if instituted while the absorbed employee was in service whether before his retirement or during his re-employment, shall, after the final retirement of the absorbed employee, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the absorbed employee had continued in service:

Provided that where the disciplinary proceedings are instituted by an authority subordinate to the Chairman/Managing Director, that authority shall submit a report recording of its findings to the Chairman/Managing Director.

(4)(2)(b) The disciplinary proceedings, if not instituted while the absorbed employee was in service, whether before his retirement, or during his re-employment,-

(i) Shall not be instituted save with sanction of the Chairman/Managing Director,

(ii) Shall not be in respect of any event which took place more than four years before such institution, and

(iii) Shall be conducted by such authority and in such place as the Chairman/Managing Director may direct and in accordance with the procedure applicable to disciplinary proceedings in which an order of dismissal from service could be made in relation to the absorbed employee during his service.

6. A perusal of the above rules makes it clear that disciplinary proceedings against an absorbed employee may be instituted only with the sanction of the Chairman/Managing Director and only in respect of an event that occurred within four years preceding the institution of such proceedings, provided the employee was in service or during re-employment, as applicable.

7. In the instant case, the charge memo was issued on 16.09.2023. The learned counsel for the petitioner placed reliance on the following judgments:

(i) In ***Suchismita Misra V. High Court of Orissa and Others***¹, the Hon'ble Apex Court held that:

14. Admittedly, in the instant case, the petitioner stood retired from service on 31.07.2021 and chargesheet was served on 11/16.10.2021 and this is for the period when the petitioner served as a Registrar from 28.06.2012 to 03.10.2015, and that it is indisputedly beyond the period of four years of such institution.

(ii) In ***C. Mallem Kondaiah V. State of Andhra Pradesh***², the Division Bench of the composite High Court of Andhra Pradesh held that:

10. It may be noted that the Tribunal for Disciplinary Proceedings, Hyderabad, traces its origin to Section 3 of the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Act, 1960 (for brevity, 'the Act of 1960'). Section 4 of this enactment empowers the Government to refer cases to the Tribunal for Disciplinary Proceedings for enquiry and report. Sections 5 and 6 deal with the procedure to be followed while making such enquiry. The procedure prescribed finds greater elaboration in Rule 6 of the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Rules, 1989, framed in exercise of power under Section 10(1) of the Act of 1960. Rule 6(1) provides that notwithstanding anything contained in the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (for brevity,

¹ 2023 SCC OnLine SC 1478

² 2018 SCC OnLine Hyd 452

'the Rules of 1991'), the Tribunal for Disciplinary Proceedings shall follow the procedure set out therein for conducting enquiries into cases of misconduct referred to it under Section 4 of the Act of 1960. Rule 6(1)(a) states to the effect that as soon as the records relating to the allegations of misconduct are received, the Tribunal for Disciplinary Proceedings shall frame appropriate charges and communicate them to the Government servant along with the list of witnesses proposed to be examined. It is therefore clear that unlike the procedure prescribed in the Rules of 1991, the drawing up of charges is not undertaken by the Disciplinary Authority and the Tribunal for Disciplinary Proceedings is itself empowered to undertake this exercise upon reference of the case to it under Section 4 of the Act of 1960.

12. *Further, the interpretation placed by the Tribunal upon Rule 9(2)(b)(ii) of the Rules of 1980 practically renders the said Rule redundant in every case referred to the Tribunal for Disciplinary Proceedings under Section 4 of the Act of 1960. According to the Tribunal, in all such cases, the institution of disciplinary proceedings happens upon reference of the case by the Government under Section 4 of the Act of 1960. While concluding so, the Tribunal completely lost sight of Rule 9(6) of the Rules of 1980, which states in categorical terms as to when departmental proceedings are deemed to have been instituted for the purpose of Rule 9. Conveniently, the Tribunal summed up that Rule 9(6) of the Rules of 1980 would not cover cases referred by the Government to the Tribunal for Disciplinary Proceedings. However, the Tribunal did not cite any basis for this conclusion. We find that there is no such caveat or rider either in the Act of 1960, the Rules of 1989 or the Rules of 1980 which supports such a conclusion. It was therefore not for the Tribunal to legislate and introduce something new into the law.*

13. *In this regard, reference may be made to STATE OF U.P. v. SHRI KRISHNA PANDEY¹, wherein the Supreme Court was dealing with initiation of a departmental enquiry against the respondent therein after his retirement from service. As in Rule 9(2)(b)(ii) of the Rules of 1980, Regulation 351-A of the Civil Services Regulations, which was under consideration, provided that departmental proceedings, if not instituted before retirement, shall not be instituted in respect of an event which took place more than four years before such institution. As in Rule 9(6) of the Rules of 1980, the Explanation to Regulation 351-A provided that departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner were issued to him or from the date of his being placed under suspension, if applicable. Ultimately, the Supreme Court held that departmental proceedings must be instituted before lapse of four years from the date on which the event of misconduct had taken place.*

22. The writ petitions are accordingly allowed quashing the Charge Memos dated 27.11.2017, 21.06.2017 and 15.09.2017. The common order dated 18.06.2018 passed by the Tribunal in O.A. Nos. 3483, 2912 and 3046 of 2017 shall stand set aside. The finding of the Tribunal therein to the effect that Rule 9(2)(b)(ii) and 9(6) of the Rules of 1980 have no application to a case referred to the Tribunal for Disciplinary Proceedings under Section 4 of the Act of 1960 is held to be without legal basis. The petitioner is held entitled to his full pension and other retirement benefits. Respondents 1 and 2 shall endeavour to release the same expeditiously and, in any event, not later than eight weeks from the date of receipt of a copy of this order.

8. Having regard to the aforesaid judgments and the applicable rules, it is undisputed that the petitioner was permitted to retire under the BSNL Voluntary Retirement Scheme with effect from 31.01.2020, pursuant to the VRS order dated 07.01.2020. It is also an admitted fact that the department had knowledge of the alleged fake certificates pertaining to 31 members as early as 17.04.2018. Under the applicable rules, where disciplinary proceedings are instituted after retirement, such proceedings cannot be instituted in respect of an event which took place more than four years prior to the date of such institution. In the present case, the charge memo was issued only on 16.09.2023. Thus, even though the department had knowledge of the alleged misconduct by 17.04.2018, the charge memo came to be issued more than four years thereafter. The disciplinary proceedings, having been instituted beyond the period prescribed under the applicable rules, are therefore unsustainable. Accordingly, the charge memo dated 16.09.2023 is liable to be set aside. Consequently, the respondents are directed to process and release the petitioner's retirement benefits in accordance with the VRS order dated 07.01.2020, as per the applicable rules. The show-cause notice

dated 20.01.2023, being consequential to the impugned disciplinary proceedings, is also liable to be set aside.

9. Accordingly, the W.P.Nos.2869 and 25895 of 2023 are **allowed**. Respondents are directed to release all the retirement and other consequential benefits due to the petitioners, in accordance with the applicable rules, within a period of four (04) months from the date of receipt of a copy of this order. No order as to costs.

Interim orders, if any, granted earlier shall stand vacated, and all pending miscellaneous petitions, if any, shall stand closed.

JUSTICE BALAJI MEDAMALLI

Date: 30.07.2026
SAK

THE HONOURABLE SRI JUSTICE BALAJI MEDAMALLI

WRIT PETITION NOS. 2869 & 25895 OF 2023

Date: 30.07.2026

SAK