



Phone : Off. 23353245, 23316656, 23315677 Resl : 25706166
Fax : 011-23351877

E-mail : csingh465@gmail.com
Website : www.nftehq.co.in

NATIONAL FEDERATION OF TELECOM EMPLOYEES

BSNL

(Regn. No. 4906 dated 17/9/2001)
MS-II, Q. No. 21 & 17, Atul Grove Road, New Delhi-110001

TF - 05

Dated - 07.05.2019

To,

**The Chief General Manager
Bihar Telecom Circle, Patna**

Sub.:- Non-settlement of long pending appeal at the GMTD Chhapra. A case of Shri Rajesh Kumar Chaubey, TT Motihari.

Ref. :- General Manager (Admin/HR) of this office letter No. -Vig/Appeal-R.K. Chaubey/2018 Date at Patna 09.04.2018 & GM (A) BR/PS/CON/RKC/2015-16/06 date 05.03.2016

Respected Sir,

Kindly refer our earlier vide No.-NFTE/BR/2016-17/51 dated 07.10.2016, 31.01.2017 and the subsequent reply from the management vide letter No. - SCT/Strike/JAC/2011-12/Part-i dated 19.10.2016. Minutes of the meeting between representative and management vide No-SCT/2/-26 circle council / 2013 Minutes issue /68 dated 15.01.2016, on the same subject may also please be referred.

This is just the height of victimization of an employee who also happens to be the District Secretary of a recognized union (NFTE, BSNL) Shri Rajesh Kumar Chaubey, TT was charge-sheeted on false, filthy and flimsy ground in 1st May 2015 for a case which took place almost 10 years back and the victim was not all responsible for that. This charge sheet was issued to him to victimize him as he works for NFTE union and he was involved in unearthing sins of local administration. He replied show cause notice on 23.09.2014.

Before charge sheet approved by then TDM Motihari on 20.06.2008, no any memo served by the concerned SDEP, DE and HPC report regarding consumption of diesel pr hour by so call authority served memo to employee after 25.06.2006 joining before date till 15.03.2008 later this date.

Submission of charge sheet reply date 23.06.2015 to the D.E. but receiving date overwriting 30.06.2015 by estt. O.S. with then TDM (Vidya Nand) victimize and same day 23.06.2015 ex party punishment awarded order dated 23.06.2015, the order delivered on 27.06.2015.

Ex. party order was delivered and he was punished on absolutely bogus ground. Then he applied for a review to appellate authority. Then TDM never wanted to send review petition to appellate authority. Review is still pending during the agitation at Bihar circle in Jan 2016, it was assured in written to us that matter will be disposed off soon.

Contd. Page-2

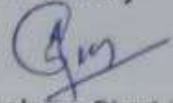
Before issue charge sheet date 01.05.2015 the TDM Motihari (Vidya Nand) victimize against to district secretary and logged a FIR in Motihari Police station No. 166/2015 date 18.04.2015 about lost file but File was available in the office till date. All report sent by TDM (Vidya Nand and Md. Sahkar Bari) was false. The Md. Sahkar Bari was called to Patna. He assured that appeal will be sent to Patna in three days but it was deliberately sent to Chhapra, Vide letter No-E-35/Disc/Appeal/2016/37 date 21.01.2016. Again after much deliberations, it was sent to GM (HR), Bihar.

Again on 19.10.2016, vide minute no vide no SCT/2-26 circle council/2013 minutes issue/6/ dated 15.10.2016, it was promised that the case will be dealt in Nov. 2016. Now the case has again been sent to GM, Chhapra for the reason best known to the authority.

Under the circumstances, we request you to kindly get the case settled as earlier as possible by recalling all the relevant papers sent by TDM Motihari to GMTD Chhapra, is supposed to be the appellate authority.

Best regards,

Yours faithfully



(Chandeshwar Singh)

General Secretary

Telephone Project, Patna
Ground Floor, CTTC Building
Santhia, Patna, Bihar, India, Patna-220001
Phone - 91-912-2226200
Fax - 91-912-2230695
E-mail - tpgmtpatna@gmail.com

भारत संचार निगम लिमिटेड
Bharat Sanchar Nigam Limited
Bharat Sanchar Nigam Limited
A Division of BSNL

- To
1. The Executive Engineer (Civil)
R Block Patna
 2. The Executive Engineer (Electrical)
R Block Patna

No:-GMTP/PT/BSNL/NFTE/UNION/2019-20/36

Dated 16.05.2019

Sub:-Repair, maintenance and Electrification of Quarter no 6, Road no. 8, Gardanibagh Patna allotted to Union NFTE (BSNL) by Department- Reg.

Enclosed please find the letter received from Sri Rajesh Kumar Chaubey Circle Secretary, NFTE Bihar Circle, Patna regarding Repair, maintenance and Electrification of Quarter no 6, Road no. 8 Gardanibagh Patna allotted to Union NFTE (BSNL) by ETP, Bihar for further necessary action at your end please.

16.05.19
DE HQ
O/o PGM TP Patna

No. - E-1/Appeal- R.K. Chaubey/ 2017/

Dated 29.05.2019

MEMORANDUM

Subject:- Disciplinary case of Shri R.K. Chaubey, TM under Rule-35 of BSNL CDA Rules 2006 -- Appeal case rog.

WHEREAS Shri R.K. Chaubey while working as TM under SDE(Phones), Motihari was served with imputation of charges by DE (Admin), O/o the TDM BSNL, Motihari under Rule-35 of BSNL CDA Rules 2006 vide letter No. E-35/Disc/RKC/08 dated 04.07.2008 letter signed on 01.05.2015. The memorandum of Charges contains three Articles of charge related to alleged damage of battery cells in mobile BTS during the period from 02.08.2006 to 15.03.2008, alleged excess consumption of fuel and alleged misuse of advance taken on 06.12.2007 for purchase of Moped as specified in the rules relating to the advance [Rule- 5(40) of BSNL CDA Rule 2006]. Accordingly, TDM, BSNL Motihari had imposed punishment of "Withholding one increment of pay for a period of three years with cumulative effect" ex-parte in exercise of powers conferred vide Rule 33 (A) (C) of BSNL CDA Rules 2006 vide order dated 23.06.2015.

AND WHEREAS Shri R.K. Chaubey has appealed to GM (HR & Admin) vide appeal letter dated 22.09.2015, and subsequent reminders as mentioned in his letter. The said appeal case along with letter dated 30.11.2017 of Sh. Chaubey was forwarded by GM (HR & Admin), O/o the CGMT Bihar Circle, Patna to the GMTD BSNL, Chapra as being the proper appellate authority. Further, the TDM, Motihari had forwarded reminder appeal letter dated 15.01.2019 of Shri. R.K. Chaubey to the GMTD, Chapra.

AND WHEREAS the case has been examined under relevant rules and following are observed:

- (b) It is seen that the issues on which the delinquent employee had been charged were of the period from 2006-2008. The memorandum of charges appears to have been prepared on 04.07.2008 as revealed from the letter itself, but was signed and delivered on 01.05.2015, i.e., after passage of around 7 years.
- (c) The memorandum of charges was delivered to the delinquent employee on 01.05.2015 at 16:30 Hrs with 15 days time period, further extended by 7 days, thus there was time till 23.05.2015 to the delinquent employee to submit his reply/ representation on the charges made against him.
- (d) From the face of records and also as per submissions made by TDM, Motihari it appears that, the reply was delivered in the office of TDM, Motihari on 23.06.2015, but the same was shown to be received on 30.06.2015, and punishment order was also issued on 23.06.2015.
- (e) Before submitting his reply dated 23.06.2015, the delinquent employee had requested for supply of documents considering the case being very old one to the Disciplinary authority, but the same was denied.
- (f) It is observed that, there are no findings on the imputation of misconduct/ charges made on the delinquent employee and Punishment order is devoid of reason or evidence on record. Also punishment order was issued by the TDM, though the Charge memo was issued by DE[Admin], O/o the TDM, BSNL Motihari.
- (g) Most importantly, the punishment of Withholding one increment of pay for a period of three years with cumulative effect was awarded. Withholding of increments of pay comes within the meaning of Minor punishment, but, when penalty was imposed withholding increment with cumulative effect, it would indisputably mean that the increment earned by the employee was cut off as a measure of penalty forever for his upward march in earning higher scale of pay. In other words, the clock is put back to a lower stage in the time-scale of pay and on expiry of respective years where the increment was cut, the clock starts working from that stage afresh. The insidious effect of such orders of punishment by necessary implication is that, the employee is reduced in his time-scale by

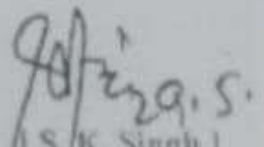
...withholding pay and it is in perpetuity during the rest of the tenure of his service, therefore it is tantamount to a Major punishment. In *Kulwant Singh Gill vs State of Punjab*, The Hon'ble Apex Court vide its order dated 13.09.1990 has clearly made it as a case of law that- the Rule does not empower the disciplinary authority to impose penalty of withholding increments of pay with cumulative effect without holding an inquiry and following the prescribed procedure. And so, if, enquiry is not done, then the order would be without jurisdiction or authority of law, and it would be *per se void*. Also, a good reading of Rule - 33 of BSNL CDA Rules 2006 envisages so.

AND WHEREAS after a careful examination of the case including submissions received from the TDM office Motihari, it is found that the punishment order was issued without following proper procedure, and so, is not only violative of law and without jurisdiction, but also justice has not been delivered in fair, just and reasonable manner.

NOW THEREFORE, under the powers conferred upon the undersigned vide BSNL CDA Rules 2006, the following orders are passed on the appeal made by Sh. B. K. Chaubey, the then TM Motihari :

[a] The Charge Memo and Punishment Order are Set Aside.

[b] The Disciplinary Authority may consider taking up the proceedings *de-novo*, if the circumstances of the case so warrant.


S. K. Singh
General Manager

Telecom District, BSNL Chapra SSA

Copy To :

[1] The CGMT, Bihar Telecom Circle, Sanchar Sadan, Patna - 800001.

[2] The DGM(Vigilance), Bihar Telecom Circle, Sanchar Sadan, Patna - 800001.

[3] The TDM, BSNL Motihari, Bihar, Pin- 845401.

[4] Sh. B. K. Chaubey, IT, CSC O/o TDM BSNL Motihari