

CONFIDENTIAL

BOARD OF DISCIPLINE

Constituted under Section 21A of the Chartered Accountants Act 1949

Findings under Rule 14(9) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

File No. : [PR/133/15/DD/148/2015/BOD/425/2018]

CORAM:

CA. Prasanna Kumar D., Presiding Officer (in Person)

Ms. Dolly Chakrabarty (IAAS, Retd.), Government (through video conferencing)

CA. (Dr.) Raj Chawla, Member (through video conferencing)

In the matter of:

**Shri G.S. Bisht, DGM,
M/s. Bharat Sanchar Nigam Ltd.,
C/o. CGM, NTP Circle,
Eastern Court Complex, Janpath
New Delhi-110001.**

.....Complainant

Versus

**CA. L.C. Gupta (M. No. 005122)
M/s. L.C. Kailash & Associates (FRN. 001811N)
Chartered Accountants,
C-124, N B R House,
Preet Vihar,
New Delhi-110092.**

.....Respondent

DATE OF FINAL HEARING : 25th April, 2022
PLACE OF FINAL HEARING : New Delhi / through video conferencing

PARTIES PRESENT (in person):

**Respondent : CA. L. C. Gupta along with his son
CA. Kailash Gupta**

Counsel for the Respondent : Shri L. G. Das, Advocate

FINDINGS:



CHARGE ALLEGED:

1. The Complainant Department alleged that the Respondent Firm was appointed as branch auditors to conduct the audit of NTP circle BSNL for the Financial Year 2010-11. However, at the stage of the completion of the audit in the units, Respondent started demanding inflated TA/DA which was not permissible as per the Company rules. However, he was paid Audit fees and TA/DA as per Company rules. The Respondent also threatened not to clear the accounts if the inflated TA/DA bills were not passed. The Complainant further alleged that the Respondent did not provide NOC to the incoming auditors for the Financial Year 2011-12. Due to which the whole work of Complainant Department was paralyzed for no genuine reason. Due to non-submission of audited accounts of one circle, the whole auditing work of Complainant Department was likely to be held up.

BRIEF OF PROCEEDINGS HELD:

- 2.1 At the time of hearing held in the case on 25th April, 2022 wherein the Respondent along with his son and Counsel were present in person, the Board noted that neither any authorised representative of the Complainant Department was present nor was there any intimation as regard their non-appearance. Thereafter, the Respondent was put on oath. The charges alleged against the Respondent were taken as read with the consent of the party present. On being asked by the Board as to whether the Respondent pleaded guilty in respect of the charges alleged against him, he replied in negative and his counsel made detailed submissions on behalf of the Respondent before the Board. The Respondent was examined by the Board.
- 2.2. On consideration of the documents and submissions on record, the Board directed the Respondent to provide the following with a copy to the other party to the case to provide his comments thereon, if any:

The Respondent:

1. To provide the copy of TA/DA bills raised in respect of the assignment under question.
2. Statutory audit report for the Financial Year 2010-11 issued by them with respect to audit of M/s BSNL.
- 2.3. The Board also decided that a decision as to whether further hearing is required in the case shall be taken on the basis of response so received from the Respondent. Thereafter, the Respondent vide letter dated 28th April, 2022 submitted his reply, a copy of which was also shared with the other party to the case. However, no response was received from the Complainant Department.

- 2.4. Thereafter, at its meeting held on 23rd August 2022, on consideration of the submissions and documents, thus, on record, the Board decided that no further hearing is required in the case and accordingly, concluded the hearing in the case.

BRIEF SUBMISSIONS OF THE PARTIES TO THE CASE:

A. COMPLAINANT:

3. The Complainant vide his letter dated 26th October 2020 stated that documents already submitted are conclusive and final and they have no further documents to submit before the Board. All legitimate claims of the Respondent i.e., M/s. L. C. Kailash & Associates, the then Branch auditor of NTP, BSNL have been settled by the Complainant as per BSNL policy.

B. RESPONDENT:

The Respondent in his written submissions, inter-alia, stated as under:

- 4.1. The C&AG sent the copy of the allotment letter dated 15/03/2011, addressed to Managing Director BSNL. The said letter did not contain any terms and conditions as to audit fees, TA/DA etc to be paid to the auditor. The Respondent on 21/03/2011 conveyed his acceptance to C&AG with a copy to Mr. Rajendra Singh GM (Corporate Accounts) BSNL. There had been no formal appointment letter from Complainant Department containing terms and condition as to Audit fees & TA/DA etc. The audit fees and the TA/DA was to be fixed by BSNL as per C&AG, looking to the volume of work, the time involved and the place (s) to be visited for conducting audit. It means that what Respondent conveyed to C & AG was acceptance of audit subject to fixation of fees and TA/DA to be paid to the Respondent.
- 4.2 The Respondent did not start the audit on acceptance of the allotment letter vide letter dt. 21/03/2011 written to C & AG and was waiting for a formal appointment letter from BSNL. It was Mr. Mukesh Mathur GM (F) NTP Delhi circle, who called the Respondent for a meeting in his office on 03/05/2011 to discuss about commencement and finalization of audit program. The Respondent as explained by Mr. Mathur told that, since the audit involves checking of large number of branches located in different cities spread over 7 states, as explained by him, unless he receives a formal appointment letter from BSNL indicating the amount of audit fees and the TA/DA to be paid by BSNL for visiting the branches, the Respondent cannot take up the audit. Mr. Mathur told that the formality of issuance of appointment letter would normally take some time. As regards audit fees, TA/DA etc. Mr. Mathur informed that BSNL paid to the auditor for 2009-2010 audit fee of RS. 1.94 lacs and the TA/DA as per circular dt. 22/10/2002 and the copy of the same was provided to the Respondent.

- 4.3 On knowing the amount of audit fees and looking at circular for TA/DA the Respondent reacted that the audit fees was too low and do not commensurate with the work involved. Regarding TA/DA when Mr. Mathur said that earlier Auditor was paid TA/DA as per circular dt. 22/10/2002 the Respondent pointed out that the said circular applies to officers and employees of BSNL, as indicated on the caption of the circular and not to auditors. To this, Mr. Mathur agreed to the Respondent's demand for audit fees of Rs. 3 lacs and revision of TA/DA Rules as per the present scenario and the Cost-of-living index. Mr. Mathur GM(F) agreed and accepted that the same needs to be revised since as per present TA/DA Rules of 2002 it is difficult to meet the expenses by auditors and asked Respondent to submit representation to him (Mr. Mathur). As advised, the Respondent submitted representation to Mr. Mathur vide his letter dt 03/05/2011. The Respondent at no stage agreed to Rs. 1.94 lacs as audit fees nor to TA/DA circular dt. 22/10/2002.
- 4.4 On 10/05/2011, Mr. Mathur GM(F) again called Respondent and informed that he has forwarded Respondent's representation along with his recommendation through CGM to Corporate Office for revision in the audit fees as well as TA/DA Rules and assured the Respondent that the revision will be done as per Respondent's representation vide letter dt. 03/05/2011 and requested them to commence the audit at the earliest. The Respondent respected and believed on his (Mr. Mathur) words, being responsible and senior officer of the level of GM (F) of public enterprise Government of India, and sent his team and visited NCR-satellite office at Jhandewalan to commence the audit.
- 4.5 On 25/05/2011 Ms. Sudha Ranjan, Director Post and Telecommunication audit office called a meeting in her office which was originally fixed for 19/05/2011, of all the branch auditors, representatives of BSNL management and of Government audit with an Agenda to take stock of work already done and to chalk out the programme for finalization of accounts for 2010-11. In the said meeting the Corporate Office of BSNL assured that the draft accounts of branches / circle will be ready by 21/07/2011. To this Respondent did not agree, for the reason that Respondent will not be able to send its team on outstation units unless the TA/DA Rules dt 22/10/2002 are revised, as per current scenario and also handed over copy of the letter dt 17/05/2011 to Mr. D. Chaudhary AGM (Corporate Accounts) who was representing the management in the said meeting. To this Mr. D. Chaudhary AGM (Corporate Accounts) agreed that BSNL will reimburse all actual travelling expense of Respondent staff incurred at outstation as well as agreed to travel advance.
- 4.6. Taking an overall view of the facts and circumstances, that the Respondent firm has caused distress in the working of the Complainants Department by submitting higher amount of TA/DA bill and stall the process of audit being done by incoming

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auditors is wrong and is not borne out of the facts as explained by the Respondent in his reply. Had the Respondent been guilty of Professional or Other Misconduct, as presented by the Complainant, at any stage during audit of 2010-11 of BSNL, NTP, DELHI: (a) The C&AG would not have appointed the Respondent again as branch statutory auditors for the Uttarakhand circle in f/y 2014-15 which is much larger and bigger in size and volume; (b) The Board of BSNL would have not accepted Respondent to be appointed as branch statutory auditor of Uttarakhand circle for f/y 2014-15 on much higher audit fees of over Rs. 6.5 lacs which is 3 times more than the audit fees of NTP, Delhi.

- 4.7 The Board of BSNL was happy with Respondent's appointment made in November 2014 and welcomed Respondent with repeated assignment of statutory branch audit of greater size and volume. Even C&AG never considered the irrelevant and frivolous complaint made in the letter dt 18/05/2012 against the Respondents and gave repeated audit to the Respondent firm of bigger circle of BSNL.

OBSERVATIONS OF THE BOARD:

- 5.1 On consideration the submissions and documents on record, the Board noted that the appointment of the Respondent firm as auditor of NTP of BSNL for the F.Y. 2010-11 was made by the office of C & AG, New Delhi which was communicated to the Complainant Department with a copy to the Respondent vide letter dated 15.03.2011. In the said appointment letter it was mentioned that other conditions are stipulated in Annexure-I. Amongst other conditions In the Annexure-I, the C & AG provided the following conditions also:

I. Condition for the company:

*"4. (i). The remuneration payable to the Auditions fixed by the Company in accordance with the amended provisions of Section 224 (8) of the Companies Act, 1956 may be intimated immediately to this office and to the auditors.
(ii) While fixing the auditor's remuneration, due consideration might be given to the volume of work involved, amount of time normally spent by the audit firm's partners/chartered accountant employees and the audit clerks.
(iii) While fixing audit fee due consideration might also be given to the notification No. 1-CA (7)/93/2006 dated 18 September 2006 Issued by the Institute of Chartered Accountants of India prescribing minimum audit fee. It has been clarified that city/town referred to in the Notification refers to city/town of the Head office or Branch office of the auditor to which the audit is actually allotted.
(iv) In cases where audits are allotted to the Branch office of the CA Firm no TA/DA should be paid by the company for the audit of the Company/Units located at the same station of the branch."*

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"6(a) The Company should confirm past audit details including audit fees. The changes in details including the fees in the future may be intimated to this office from time to time. Any other remuneration like TA/DA, Certification fees, etc. (Tax/Management consultancy fee) paid to the Statutory/Branch Auditors in addition to the audit fees in the last three years and in future may also be intimated. The remuneration for other work like review of quarterly accounts as per SEBI guidelines, fees for tax audit, other statutory certificates etc., should be restricted to a reasonable the percentage of the total audit fee payable to the auditors and which in total should not exceed the fee payable for carrying out the statutory audit as provided in the notification dated 8th March, 2002 issued by ICAI. The details of such remuneration may also be intimated to this office for record."

II. Condition for the auditors:

"3. (iv) That no unreasonable TA/DA, out of pocket expenses will be claimed from the company. In cases where audits are allotted to the Branch office of the CA Firm no TA/DA should be claimed by the CA firm from the company for the audit of the Company/Units located at the same station of the branch."

The said appointment was accepted and conveyed to C& AG by the Respondent Firm vide letter dated 21.03.2011.

5.2 Subsequently, the Respondent vide its letter dated 03/05/2011 addressed to the GM(Finance), BSNL while clarifying its scope of work also informed that the audit fees is not commensurate with the work involved. He requested for revision in Audit Fees, TA/DA, boarding and lodging and local conveyance schedule. Thereafter, a meeting was held on 25.05.2011 in Post and Telecommunication Audit office with the Statutory/branch auditors and Management of BSNL and the basic discussion in the meeting was relating to strict adherence of time schedule for completion of audit. The Respondent further sent a letter dated 25th May 2011 to the Complainant company stating that on the assurance of Mr. D. Chaudhary AGM (Corporate Accounts) that BSNL will reimburse all actual travelling expense of Respondent's staff incurred at outstation as well as agreed to pay the travel advance, they shall now take up the outstation audit.

5.3 Thereafter, the Complainant Department vide letter dated 17th June 2011 informed the Respondent about the details of BSNL Circle the accounts of which are to be audited, audit fees to be paid and further assignment of the job of auditing the AGR and license fees, USOF Levy and Spectrum Charges payable the said Circle to the Department of Telecommunication, GOI for the F.Y. 2010-11. In response thereto, the Respondent vide letter dated 5th July 2011 again requested for the revision in Audit Fees, TA/DA, boarding and lodging and local conveyance schedule and confirmed that the audit has already been started on 11th May 2011. Subsequent thereto, a letter dated 27th December 2011 followed by several other

reminder letters had been written by the Respondent to the Complainant for payment of their outstanding dues.

- 5.4 The Board further noted that the Respondent issued his audit report in respect of NTPC, BSNL for the F.Y. 2010-11 on 28th July 2011.
- 5.5 The Board also noted that the Respondent submitted their TA/DA Bills for a total amount of Rs.5,47,323/- of 12 units for Audit of NTP (units) for the FY 2010-2011. He also brought on record the copy of actual Hotel Bills, Railways/Bus/Air Tickets, Local and outstation Conveyance expenses, certificate confirming stay of audit person at respective units of NTP to support that the total amount claimed by him as TA/DA was legitimate.
- 5.6 In view of the above, the Board was of the view that the revision in the amount of TA/DA had been requested by the Respondent since the time of acceptance of audit. He was in continuous touch with the Complainant company as evident from the copy of communications brought on record by him and continued to audit. Whereas, the Complainant company has not been able to bring on record any evidence to show that at the stage of the completion of the audit in the units, the Respondent started demanding inflated TA/DA which was not permissible or threatened them not to clear the accounts if the inflated TA/DA bills were not passed. Subsequent to the issue of his audit report in respect of NTPC, BSNL for the F.Y. 2010-11 on 28th July 2011 also, he sent letters to the Complainant for payment of unpaid travelling bills.
- 5.7 The Board also noted that the Respondent raised a claim for TA/DA which was duly supported by the bills etc. and no defect/irregularity in the same has been brought on record by the Complainant. The Board was of the view that even if the Respondent claimed a higher amount for TA/DA it was the prerogative of the Complainant to pay or not to pay as per its extant Rules and any dispute as regard amount of reimbursement of expenditure incurred during the course of Audit between the Auditor and Auditee cannot be stretched upon so as to amount to 'Other Misconduct' unless any malafide on the part of the Respondent is proved.
- 5.8 Further, as regard the charge that the Respondent did not provide NOC to the incoming auditors for the Financial Year 2011-12 due to which the whole work of Complainant was paralyzed, the Board noted that the incoming auditor vide letter dated 5th March 2012 sought no-objection from the Respondent in respect of his appointment as auditor of NTP of BSNL for the F.Y. 2011-12 which was replied to by the Respondent vide letter dated 7th March 2012 strongly objecting professionally and otherwise in accepting the assignment till the receipt of balance payment from BSNL. There was further exchange of communication between the two in the said context.

