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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1142/2002

New Delhi, this the 11th day of July, 2003

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.K. NAIK, MEMBER(A)

Shri H.R. Malhotra
R/o D-18, Mansarovar Garden
New Delhi-15.

.. Applicant

(Shri S.K. Das, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Urban Development &
Poverty Alleviation
Nirman Bhavan, New Delhi

2. Director General (Works)
Central Public Works Department
Nirman Bhavan, New Delhi.

.. Respondents

(Mrs. Meenu Mainee, Advocate)

ORDER

Justice V.S. Aggarwal

Applicant (H.R. Malhotra) superannuated as Superintending Engineer. Departmental proceedings were initiated against him under Rule 9 of the Central Civil Services (Pension) Rules, 1972 (for short, "the Pension Rules"). The disciplinary authority considered the report of the inquiry officer and the representation of the applicant and imposed a penalty of 25% cut in his pension for a period of 5 years. The applicant assails the said penalty imposed upon him.

2. Some of the other relevant facts are that the applicant had been served with the following articles of

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charge:-

" Shri H.R. Malhotra, approved the issue of sanction of 72 work orders in connivance with Shri RC Jain, EE, PWD, Division 16, Shri Jagan Singh, EE, PWD Division 18 and Shri DP Singhal, EE, PWD, Division 19 amounting to Rs.116.07 lakhs whereas the administrative approval and expenditure sanction were obtained for works covered only in 17 work orders amounting to Rs.26.53 lakhs.

Subsequently, on the directions of the then Chief Engineer, Shri HR Malhotra cancelled 14 work orders amounting to Rs.23.55 lakhs and reduced the scope of other work orders by Rs.21.50 lakhs. It clearly indicates that work order amounting to Rs.45.05 lakhs were issued for works which were not required to be executed at all.

Shri HR Malhotra got unwanted works executed against 41 work orders amounting to Rs.44.49 lakhs, 13 Nos. Work order amounting to Rs.19.544 lakhs were approved even without accord of technical sanction.

Article II

Shri HR Malhotra instead of insisting for inviting tenders with due press publicity encouraged collecting spot quotations and approved the issue of work orders for the works which were not of urgent/emergent nature.

Article III

Shri HR Malhotra exercised powers delegated to next higher authority by accepting work orders when the total amount of work orders as per reference was more than SE's power. Shri HR Malhotra also accepted work orders pertaining to EE-PWD Divn-16 for which negotiations were conducted by Shri RC Jain, EE-PWD-Divn.16."

An inquiry officer had been appointed, who as already referred to above, had returned the findings against the applicant.

3. Application as such is being contested. The assertions raised to be taken up hereinafter have been controverted. As per the respondents, Central Public

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Works Department Engineers' Association made a complaint which was received in the vigilance unit of Central Public Works Department. The matter was investigated and lapses as contained in the articles of charge were identified against the applicant. The investigation report of the vigilance unit was sent to the Ministry of Urban Development. The Central Vigilance Commission advised initiation of proceedings under Rule 9 of the Pension Rules against the applicant. The said advice was accepted and thereupon a notice was issued. Even the Union Public Service Commission had been consulted. The alleged lapses are said to have occurred during 6.4.1994 to 31.5.1994. The charge-sheet was issued on 31.3.1998 within four years. It is denied that any document that was available as such was not supplied.

4. At the outset, the learned counsel for the applicant contended that the proceedings have been initiated in violation of Pension Rules, namely after four years of the superannuation of the applicant. Reliance in this regard is being placed on Rule 9 (2)(b) of the Rules which reads as under:-

"9. Right of President to withhold or withdraw pension. (2). (b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment,-

- (i) shall not be instituted save with the sanction of the President,
- (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 President may direct and in accordance with the procedure applicable

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to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service."

Perusal of the aforesaid clearly shows that after the person had superannuated, proceedings can only be started with the sanction of the President and in any case, shall not be in respect of any event which took place more than four years before such institution.

5. The facts herein are that the applicant superannuated on 31.5.1994. The charge-sheet is dated 31.3.1998 i.e. to say within four years of his superannuation. The alleged lapses are said to have been committed between 6.4.1994 and 31.5.1994. Thus in any event, the proceedings had been initiated within four years and the argument so much thought of, therefore, must fail.

6. Confronted with that position, the learned counsel for the applicant asserted that it was a case of urgency. The concerned Chief Minister had been pressing hard for the work to be completed and, therefore, the applicant did not follow the required procedure. Our attention was drawn to the rules on the subject. We are not delving into the details because it is not in dispute that upto a particular limit in case of urgency, the Superintending Engineer need not follow the said rules on the subject, but perusal of the articles of charge clearly reveals that the amount in question was far exceeding the discretionary power that was vested in the Superintending Engineer. There were 13 Nos. work order amounting to Rs.15.544 lakhs regarding which the

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technical sanction had not been taken. Therefore, the discretionary power, in any event, could not have been so exercised.

7. Faced with this situation, yet another argument advanced was that the relevant documents had not been supplied. During the course of submissions, the controversy only was pertaining to certain documents which were said to be not available with the department. All other documents were supplied and some of the documents asked by the applicant were not given pointing out to him that the same were not available. The letter of the department in this regard reads:-

"Sir,

Kindly refer to your letter No.1/21/98-VSII dated 2.12.98 on the above noted subject.

In this connection the position of availability of required file/documents are as under:-

Sl.No.1: File No.21/13/94-A&C/ZII of 1993-94 and 94-95 is sent herewith

Sl.No.2: File No.4/13/94-A&C/DAII of 1993-94, 94-95 is not available as no such file was opened as per file Register

Sl.No.6: Budget file for the year 94-95 of the O/o G.E.(DAZII) bearing No.3/2/94-A&C/(B)/ZII/Main file No.3/2/94-A&C/(B)/ZII/Vol.I & Vol.II, file No.7/4/94 A&C/(B)/ZII/Main file & Vol.II are sent herewith

Sl.No.5,7

8 & 13 These files/documents relate to E.O. to G.E.II's Branch who have certified non-availability of these files.

This issues with the approval of Chief Engineer"

Perusal of the same shows that some of the documents were

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said to be not available on the file and, therefore, were not supplied.

8. The position in law is well-settled that the documents which are required for proper contest of the disciplinary proceedings must be supplied. If some documents are not supplied, in that event, it has to be seen whether any prejudice is caused to the concerned person or not.

9. When certain documents are not available, in that event, it was necessary for the applicant to establish that the same had been withheld. If the same were not withheld and in fact were not available, in that event, the question of prejudice or supply of documents will not arise. This is not so in the present case, therefore, the plea must fail.

10. Our attention was strongly drawn to the fact that the respondents had relied upon the advice of the Union Public Service Commission. The learned counsel relied upon a decision of the Supreme Court in the case of **State of U.P. v. Manbodhan Lal Srivastava**, [1958] S.C.R. 533. On scanning through the various provisions, the Supreme Court held that consultation of Union Public Service Commission is not mandatory. Once the consultation is not mandatory and in fact the Union Public Service Commission had been consulted, it is for the disciplinary authority to act on the advice of the Union Public Service Commission keeping in view the totality of the facts. If the advice is accepted, the

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delinquent cannot question the same particularly when in the facts of the present case, it is established that the disciplinary authority had applied its own mind.

11. No other argument was advanced.

12. In face of the reasons recorded above, we find the present application to be devoid of any merit. The same fails and is dismissed. No costs.

S.K. Naik
(S.K. Naik)
Member (A)

/sns/

V.S. Aggarwal
(V.S. Aggarwal)
Chairman