

X

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 2468-2002

NEW DELHI THIS 08/7/2003

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Shri R S Verma, Executive Engineer,
Irrigation & Flood Control Department,
Delhi Administration,
New Delhi

.....Applicant

(By Sh. K P Dohare, Advocate)

VERSUS

1. Union of India through
Secretary Min. of Water Resources,
Govt of India,
Shram Shakti Bhawan, New Delhi
2. Chief Secretary, Govt of NCT
Delhi Sachivalaya Indra Prastha Estate
New Delhi
3. Secretary, Irrigation & Flood Control
Govt of NCT, Under Hill Road,
New Delhi.
4. Chief Engineer,
Govt of NCT of Delhi
4th Floor, ISBT Kashmiri Gate,
Delhi.

....Respondents

(By Sh. Ajesh Luthra, Advocate)

O R D E R (ORAL)

BY HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Imposition of punishment in disciplinary
proceedings as well as denial of promotion is under
challenge in this OA.

2. S/Shri K P Dohare and Ajesh Luthra represented
the applicant and the respondents respectively.

[Handwritten signature]

3. The applicant initially recruited as a Junior Engineer (Civil) on 4.5.68 became an Asstt. Engineer on 10.5.79 and thereafter Executive Engineer in Flood Control Department. He had an unblemished record. In the DPC held in July 95 for regular promotion to the grade of Executive Engineer, his case was recommended, but before the said promotion, the respondent issued a charge-sheet to him under rule 169 CCS(CCA) Rules, 1965, in connection with preparation of an Estimate during 82-83. He had denied the Charge-sheet and expressed his surprise that the matter was being raised after 13 years. According to him the impugned estimate was prepared by his Jr. Engineer and approved by him, being correct. It was also approved by the Executive Engineer, though subsequently it was altered and he had no knowledge of the same and thus he was dealt with on wrong premises, though his action had been approved by the seniors. However, without examining the issues, the penalty of withholding of one increment without cumulative effect was imposed on the applicant on 31.7.98/5.8.98. In the meanwhile DPC once again had approved his case for regularisation which was however, kept in sealed cover. This was against the directions of the Hon'ble Supreme Court in the case of UOI Vs K.V. Janakiraman (AIR1991 SC 2010). Following the above they also recovered the increment granted to him w.e.f. 1.8.98, which was wrong as the increment had fallen due before the imposition of punishment. The appeal filed by the applicant was rejected on 12.2.02/28.2.02, without any application of mind. According to the applicant, the charge-sheet issued to him after 13 years should have been quashed as laid down by

(3)

the Hon'ble Supreme Court in the case of Bani Singh, relied upon by the Bombay Bench of the Tribunal in R C Parate Vs UOI (CAT Bombay 1995 (3) SLR). Respondents did not do so. Hence this OA.

4. Grounds raised in this OA are that:

- i) issue of the charge-sheet without furnishing details was illegal;
- ii) the applicant always had an unblemished record of service;
- iii) the applicant had not prepared the estimate which led to the charge-sheet;
- iv) charge sheet was issued after 13 years and that too without any details;
- v) the whole charge-sheet was aimed at denying him regular promotion as regular Executive Engineer;
- vi) keeping the recommendations of the DPC in sealed cover was illegal;
- vii) Charge-sheet has been malafide and irregular;
- viii) imposition of penalty and rejection of the appeal against it were illegal and;
- ix) the recovery of the increment which had fallen due earlier was improper.

5. All the above points were forcefully reiterated by Sh. K P Dohare, learned counsel for the applicant, who also referred to a few.

6. In the reply filed on behalf of the respondents and reiterated during the oral submissions by Sh. Ajesh Luthra, it is agreed that in the meeting of the DPC held on 19.7.95, the applicant has been recommended for regular promotion as Executive Engineer. However, a matter was under investigation against the applicant in respect of the preparation of an Estimate at cost higher then the

10

(4)

prevailing rates, wherein the applicant who was the Assistant Engineer and his superior, Executive Engineer, were alleged to have acted without due care and caution. A charge-sheet for minor penalty got issued against him in August 95 before the issue of the promotion order. It was neither malafide nor irregular nor was there any violation of the principles of natural justice. The applicant had been given full opportunity to explain the case and all his averments in support of the rates approved by him are wrong. As in the applicant's case a charge-sheet stood issued after the approval of his name by the DPC but before the issue of the actual promotion order, his case had to be kept in the sealed cover, in terms of instructions in para 17.9 dealing with "Departmental Promotion Committee". This was the correct action to take. Charge-sheet had been issued to the applicant after the Department was convinced of the result of fact finding enquiry into the incident. The charge stood proved and hence the penalty. Hence keeping in view the fact that 13 years had lapsed in between the Disciplinary Authority had issued only a lenient penalty. Since the action taken by the respondents was correct and all the procedure had been gone through correctly, and only a very minor penalty had been issued, there was no case at all for interference by the Tribunal, urges Sh. Luthra.

7. I have considered this matter. The applicant challenges the imposition of a minor penalty on him as well as the placing his case in the sealed cover. According to the applicant, he had been charge-sheeted in 95, on the allegation that in 82-83 he had wrongly approved an Estimate, which had been done correctly.

12

(5)

Besides , the charge-sheet has been issued in 95, after the DPC met for regularising his case for promotion as Executive Engineer, just to frustrate him promotion. Both the contentions have been stoutly rebutted by the respondents. On examination of the issue I find that the applicant has no case. It is seen from the fact finding enquiry report that the estimate prepared by the Jr. Engineer and approved by the applicant in his capacity as Asstt. Engineer, had rates higher than those prevailing all the time. As such in the proceedings initiated against him he had been found guilty but keeping in view the fact that already 13 years have gone by. Since the event of 82-83 the Disciplinary Authority had imposed on him the penalty of withholding of one increment. This is upheld in appeal. From the facts brought on record, there is no ground to assail either the disciplinary order or the appellate order either on ground of illegality or that of harshness of penalty. The orders therefore have to stand. Regarding the second prayer, it is not denied that the applicant's case was considered by the DPC held in July 95, for granting him regular promotion as Executive Engineer. His case was also recommended accordingly. However, before the order was issued the charge sheet was to be issued in August 95. His case was therefore placed in the sealed cover, which was the proper action to have been taken. DoPT's instruction No.22011/4/91-Estt. dated 14.9.92 specifying in para 7 that if an individual gets suspended or charge-sheet is issued against him in the department proceedings or criminal court , after his case has been approved by the DPC for promotion but before the promotion order was actually issued, his case would have to be deemed as having been placed in the sealed cover.

12

(6)

Applicant's case was squarely covered by the above and hence the placement of his name in the sealed over. This was correct. All the pleas by the applicant against the above action are without any merit. And none of the judgements cited by him would come to his assistance on the circumstances are different.

8. In the above view of the matter OA having no merit fails and is accordingly dismissed. No cost.

9. Pronounced in the open court at the end of the oral submissions.

Patwall/

(Govindan S. Tampi)
Member (A)