

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH, GUWAHATI.

Original Application No.040/00400 of 2014

Date of Order: This the 2017.

HON'BLE MOHD HALEEM KHAN, ADMINISTRATIVE MEMBER
HON'BLE MR.S.N.TERDAL, JUDICIAL MEMBER

1. Shri Robin Deori
 Superintending Engineer,
 Resident of House No.1,
 Hengrabari Housing Complex,
 Colony Road, Dispur,
 Guwahati-781006. Applicant

By Advocate Mr.M.Chandra
 -AND-

1. The Union of India,
 Represented by the Secretary, to the
 Government of India,
 Ministry of Urban Development & Poverty Alleviation
 Nirman Bhawan, New Delhi-110011.
2. The Director General,
 Central Public Works Department, Á' Wing
 Nirman Bhawan, New Delhi-110011.
3. The Central Vigilance commissioner,
 Satarkata Sadan, INA,
 New Delhi-110023
4. The Chief Vigilance Officer,
 Central Public Works Department, Á' Wing
 Nirman Bhawan, New Delhi-110011.
5. The Chief Engineer (NEZ-1)
 CPWD, Cleve Colony,
 Dhankheti, Shillong-791003
6. The Union Public Service Commission,
 Represented by the Secretary, UPSC,
 Dholpur House, Shahjahan Road,
 New Delhi-110069. Respondents

By Advocate Ms.Gopa Sutradhar, Addl.C.G.S.C. .

ORDER

Per Mr.S.N.Terdal, Judicial Member:

This O.A. is filed seeking relief of setting aside of Memo No.9/1/DI/2014/VSII dated 08.09.2014 rejecting the request of the Applicant to review and modify a penalty order dated 27.2.2007 by giving retrospective effect to that penalty order w.e.f. 07.8.2003. The undisputed fact of the case are that during the year 1990-91, the Applicant was working as Executive Engineer (Civil), Assam Aviation Works Division, CPWD, Guwahati. It was alleged that during the said period, the Applicant committed some irregularities in awarding works to the Contractors. Regarding the said irregularities, explanation of the Applicant was called on 24.12.1996 and the Applicant submitted his explanation on 15.3.1997. The Director General of Works, CPWD recorded that the lapses committed by the Applicant were procedural nature and there is no financial loss to the Government and hence, he recommended initiation of minor penalty proceedings under Rule 16 of CCS (CCA) Rules, 1965. But when the case was referred to CVC for its 1st stage advice, it advised initiation of major penalty proceedings on

23.9.1998. Accordingly, charge sheet under Rule 14 of CCS (CCA) Rules, 1965 containing six Articles of Charge was issued to the Applicant on 16.3.1999. On denial of charges by the Applicant I.O. and C.O. were appointed and the I.O. submitted report on 13.3.2002 holding Article-V, as partially proved and other Articles of Charge were proved. In its 2nd stage advice, the CVC advised imposition of a suitable major penalty upon the Applicant on 7.1.2003 and the Applicant was given an opportunity to make representation. The Applicant submitted his representation on 7.2.2003. Before seeking the advice of UPSC, approval of the competent disciplinary authority i.e UDPAM was sought for taking a provisional decision to impose formal penalty vide note dated 14.01.2004. Vide note dated 10.02.2004, UDPAM minuted that the report of the Inquiry Officer should not be accepted and the matter may be referred to the Ministry of Law & Justice. Accordingly, the matter was referred to Department of Legal Affairs for seeking its opinion. Vide note dated 03.03.2004, Department of Legal Affairs after examining the matter found charges under articles, I, II, III, IV and VI as procedural lapse and had not found charge under Article V to be serious enough to attract major penalty. They invited reference to Sub-Rule (2-A) of Rule 15 of CCS (CCA) Rules wherein it was stated that the Disciplinary Authority shall consider the representation, if any

submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub rules (3) & (4). Department of legal Affairs opined that the Disciplinary Authority, in this case is now required to consider the representation of the Applicant and decide the case as to whether any penalty as contemplated by Sub rules (3) & (4) of Rule 15 may be imposed on him. They further stated that it is open to the Disciplinary Authority not to agree with the findings of the IO and absolve the Applicant of the charges established by the I.O. UDPAM after considering the representation dated 07.02.2003, findings of the Inquiry Officer and agreeing with the opinion of the Law Ministry decided to absolve the Applicant of the charges established by the I.O. vide his minutes dated 09.03.2004. Since the UDPAM had decided to disagree with the advice of CVC, as per instructions contained in Vigilance Manual, CVC was required to be consulted before taking a final view. Accordingly, approval of Secretary (Ministry of U.D) sought for making a reference to CVC vide note dated 18.03.2004.UDPAM minuted on 26.03.2004 that since as the Disciplinary Authority he had already taken the decision not to accept the findings of the I.O and exonerate the Applicant of the charges established by I.O. In view of above after consulting Ministry of Law & Justice, it is not appropriate to send the file anywhere including

CVC. He directed Secretary (Ministry of U.D) to issue necessary final order immediately. Then the UDM was requested to send the file to DoPT being the Nodal Department on disciplinary matter in accordance with instructions of DoPT. Accordingly, the case was referred to DoPT on 05.04.2004. DoPT returned the case with the advice that the case may be referred to CVC for reconsideration of its advice vide ID No.119/7/2003-AV DIII dated 20.5.2004. The case was referred to CVC for reconsideration of its 2nd stage advice vide note dated July 2004. CVC vide ID note dated 2.8.2004 reiterated its earlier advice dated 07.01.2003 for imposition of a suitable major penalty on the Applicant. After the CVC reiterated its earlier advice of imposition of major penalty upon the Applicant there were two options for the Disciplinary Authority i.e the President-i) to stick to the decision taken by the then UDPAM for exoneration and refer the case to DoPT; and (ii) in case decision is reviewed and the Disciplinary Authority decides to agree with the CVC's advice for imposition of major penalty, it needs to be referred to UPSC for the quantum of penalty that may be imposed on the Applicant. File was submitted to the UDM for taking a decision in the matter vide note dated 08.04.2005. UDM reiterated the decision taken by his predecessor to exonerate the Applicant, keeping in view the opinion of Law Ministry vide minutes dated 19.4.2005. The case was

referred to DOPT before disagreeing with the advice of CVC. DoPT vide its ID dated 12.10.2005 advised for imposition of a minor penalty on the Applicant. Thereafter a tentative decision was taken to impose a minor penalty and to refer the case to UPSC for suggesting the quantum of penalty that may be imposed upon the Applicant in January, 2006. UPSC vide letter dated 17.01.2007 tendered its advice and held articles I, II, III & VI as 'proved', article IV as 'not proved' by giving benefit of doubt and article V as 'partially proved'. UPSC recommended for major penalty of 'reduction of pay by one stage in the time scale of pay for a period of one year with cumulative effect' on the Applicant. Final order issued imposing the penalty as advised by UPSC vide order No.C-13011/9/98-AVI dated 27.02.2007. The Applicant filed O.A.383/2013 before this Bench to review and modify the impugned penalty order dated 27.02.2007 giving effect to the penalty .w.e.f. 07.08.2003 i.e after six months from the date of submission of inquiry report in the light of the order dated 27.08.2012 and 28.12.2012 passed in the case of similarly situated employees like Shri S.N. Kale and Shri A.K.Silekar. This Bench vide order dated 12.12.2013 disposed of the O.A with the direction to the Applicant to make a comprehensive representation before the Respondents within a period of one month from the date of the receipt of that order. On receipt of such representation, the Respondents were directed to consider the

same and pass necessary speaking orders after affording the Applicant an opportunity of being heard. It was made clear that while adjudicating the representation to be filed by the Applicant, the Respondents shall keep in mind the cases of Shri S.N.Kale and Shri A.K.Silekar for extending similar benefits to the Applicant, and the representation shall be disposed of within a period of three months from the date of receipt of the representation.

3. The Applicant submitted a comprehensive representation as per the direction issued vide order dated 12.12.2013 in O.A.No.383 of 2013 by this Bench. The Respondents by the impugned Memorandum dated 08.9.2014 rejected the said representation by noting the following reasons:-

“4.0. As far as the other issue of giving retrospective effect to his penalty orders as in the cases of Shri A.K. Silekar and Shri S.N.Kale is concerned, his request cannot be considered as in the cases cited final orders were issued after five years after the UPSC advice was received. The order dated 02.06.2009 of Shri S.N.Kale were accordingly, modified vide order No.6/21/D-1/2010-VS II(Vol.IV)/AVI dated 28.12.2012 to take effect from 01.09.2004 as the UPSC advice was received on 23.07.2004. Similarly, a penalty order dated 01.06.2009 in respect of Shri A.K.Silekar was modified vide order No.6/25/D-I/2009-VS II/AVI dated

27.8.2012 to take effect from 01.07.2005 as the UPSC advice was received on 23.07.2004. But in the instant case of Shri Robin Deori, UPSC tendered its advice on 17.1.2007 and final orders were issued on 27.02.2007. Therefore, there seems no ground for considering the request of Shri Robin Deori for giving retrospective effect to the penalty order dated 27.02.2007 issued against him.

5.0 In view of the facts given above, the request of Shri Robin Deori to review and modify the penalty order dated 27.02.2007, is rejected.”

4. Heard Mr.M.Chanda, learned counsel on behalf of the Applicant and Ms.Gopa Sutradhar, learned Addl. C.G.S.C. for the Respondents, extensively, perused the pleadings and the documents produced by both sides.

5. From the facts narrated above, it is crystal clear that for the alleged irregularities committed in the year 1990-91, the Departmental proceedings were started in 1999, Enquiry Report was submitted in 2002, CVC's 2nd stage advice came in 2003. After submission of the representation in 2003, in seeking the approval of the Competent Authority the Respondents took another 3 years. From the undisputed facts, it is clear that the lapses alleged were procedural in nature and there is no financial loss to the Government. At one stage, the Respondents decided to initiate minor penalty proceedings, but they

initiated major penalty proceedings. The Enquiry Officer held that five charges were proved and one was partially proved, which was not accepted by the Competent Disciplinary Authority. The decision of the Competent Disciplinary Authority was supported by the Department of Legal Affairs. The Legal Affairs Department also after examining the entire matter, found that lapses were of procedural in nature and not serious enough to attract any major penalty. The Competent Disciplinary Authority at another stage, after exonerating the Applicant directed the Secretary to the Ministry of Urban Development to issue necessary final order immediately. When the matter was referred to it, the DOPT advised imposition of minor penalty and when referred to UPSC, it advised imposition of major penalty. These undisputed facts and protected Departmental Proceedings, must have subjected the Applicant to much more mental agony and sufferings than the punishment imposed.

6. The Hon'ble Supreme Court in the case of **P.V.Mahadevan, Vs. Md.T.N.Housing Board**, reported in 2005 6 SCC 636 in Para 11 has made the following observation:-

“Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protected disciplinary enquiry against a

government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protected disciplinary proceedings would be much more than the punishment”

7. In the impugned Memorandum No.9/1/DI/2014/VSII dated 8.9.2014 the Respondents contended that in the cases of **Shri A.K.Silekar and Shri S.N.Kale**, penalty orders were issued after five years after the UPSC advice was received. Whereas in the case of the Applicant, the penalty order was issued within a month of tendering of the UPSC advice. Thus, according to the Respondents there is no similarity between the case of the Applicant and those cases, as such the Applicant cannot be extended the same benefits. At the Bar also counsel for the Respondents vehemently submitted the same and contended that the Original Application be dismissed.

8. In our considered opinion, whether the delay is after the tendering of UPSC advice or before sending it to UPSC for its advice does not make much difference. As held by the Hon’ble Supreme Court, mental agony and suffering undergone by the C.O. is to be considered

irrespective of at what stage the delay has occurred in the Departmental Proceedings.

9. In view of the above facts and law laid down by the Hon'ble Supreme Court as extracted above, we allow the O.A. and set aside the impugned Memorandum No. No.9/1/DI/2014/VSII dated 8.9.2014 and direct the Respondents to give effect to the penalty order dated 27.02.2007 with effect from 7.8.2003.

10. No order as to costs.

(S.N.TERDAL)
JUDICIAL MEMBER

(MOHD HALEEM KHAN)
ADMINISTRATIVE MEMBER

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