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Central Administrative Tribunal
Principal Bench

OA 1656/2001

This is the 28th day of May, 2002

Hon'ble Sh. Ashok Agarwal, Chairman.
Hon'ble Sh. S.A.T. Rizvi, Member(A).

Shri R.C. Kohli,
C-2/73, Bapa Nagar,
Dr.Zakir Hussain Marg,
New Delhi-110003. ... Applicant
(By advocate: Shri M.Chandershakeran with
Shri C.Hari Shanker)

Versus

Union of India
Through the Secretary,
Ministry of Home Affairs,
North Block,
New Delhi-110 001 ...Respondent.
(By advocate: Shri Inderjit Singh proxy counsel
of Shri Rajinder Nischal)

Order(Oral)

By Hon'ble Shri S.A.T. Rizvi, Member(A).

A departmental chargesheet has been issued to the applicant, who is a senior IPS Officer, vide Memorandum dated 21.6.2000 containing the following article of charge :

"That Shri R.C. Kohli, IPS (AGMU:66), while functioning as Deputy Director General (Civil Defence) in the Directorate General of Home Guards and civil Defence, Delhi during the period from 16.1.89 to 30.4.93 failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a member of the service in as much as he was instrumental in obtaining the approval of the competent authority to the purchase of EPABX Systems (MELTRON-1236 and MELTRON-2464) supplied by M/s Gurusons Communications Pvt. Ltd. for installation in the Headquarters and the Civil Defence Control Room of the Directorate General of Home Guards and Civil Defence, Delhi notwithstanding the fact that the offer made by the said private firm for supply of this equipment was costliest amongst the offers received in response to an open advertisement. The purchase of this costlier equipment

> was justified on the ground that the equipment offered by the said firm was of a superior technology without either indicating the reasons because of which it was held that the equipment offered was actually of superior quality or making any technical assessment of the cheaper equipment offered by other bidders.
>
> Shri R.C.Kohli, the then Deputy Director General (Civil Defence) in the Directorate General of Home Guards and Civil Defence, Delhi thereby contravened the provisions of Rule 3 (1) of the AIS (Conduct) Rules, 1968."

2. We have heard the learned counsel on either side and have also perused the material on record.

3. The learned counsel appearing on behalf of the applicant submits that the aforesaid article of charge does not contain any allegation which could be termed as misconduct inasmuch as there is no allegation of corruption therein. He has thereafter drawn our attention to the contents of the aforesaid article of charge in some detail. As per the article of charge, applicant was instrumental in obtaining the approval of the competent authority to the purchase of EPABX systems (MELTRON 1236 and MELTRON 2464) supplied by M/s Gurusons Communications Private Limited, notwithstanding the fact that the offer made by the aforesaid firm was the costliest among the offers received in response to an open advertisement. Further, according to the same article of charge, the applicant has sought to justify the purchase of the aforesaid costlier equipment on the ground that the same was of a superior technology, without indicating any reason on the basis of which the aforesaid equipment offered by the said firm was held to be of superior quality, and also without making any

technical assessment of the cheaper equipment offered by the other bidders. The aforesaid article of charge can be broken into the following distinct allegations:

i) The equipment offered by M/s Gurusons which was the costliest was preferred.

ii) No reason was given in support of the claim that the equipment supplied by M/s Gurusons was a product of superior technology.

iii) No technical assessment of the cheaper equipments offered by the other bidders was carried out.

4. The learned counsel for the applicant has stated that the entire matter/deal has been considered by a technical assessment committee and thereafter by a purchase committee and a final decision in the matter has been taken by the Director-General, Home Guards. The efficiency and superior technology of the equipment supplied by M/s Gurusons is sufficiently satisfactorily established, inter alia, by the fact that the same equipment had been purchased by several important institutions such as Special Protection Group (SPG) for the Prime Minister's residence, Hyderabad House, Ministry of Home Affairs, Narcotics Control Bureau (NCB), Cabinet Secretary and the Office of the Chief Election Commissioner. Based on this fact and the report of the team of technical officers who visited M/s Gurusons to assess the efficiency and suitability of MELTRON equipment, and based on their own experience, the aforesaid Committees have apparently found it unnecessary to have the equipments offered by the others assessed, or else the need to do so could have been pointed out and insisted upon in the meetings of the aforesaid Committees. In the circumstances, according

to him, the action initiated against the applicant is obviously vitiated both by malice in fact as well as malice in law. Further, according to the learned counsel, erroneous exercise of judgement, even if the present case is assumed to fall in that category, cannot be a ground for disciplinary action as it will not constitute misconduct. In support of this contention, the learned counsel has relied on Supreme Court's judgement in Union of India and Ors. Vs. J.Ahmed (1979) 2 SCC 286. Further, according to the learned counsel, the impugned proceedings are bad as these have been initiated after an abnormal delay of over 8 years as the matter relates to the period of the applicant's posting as Deputy Director General (Civil Defence) in the Directorate General of Home Guards and Civil Defence, Delhi during the period from 16.1.1989 to 30.4.1993.

5. The learned counsel appearing on behalf of the respondents has nothing much to say beyond what has been stated in the article of charge and the accompanying statement of imputations of misconduct supporting the article of charge. It is clearly stated in the statement of imputations as well as in the reply filed on behalf of the respondents that in order to study the equipment systems offered by M/s Gurusons, a team of four officials consisting of SSO(CD) two foremen and one research technician had visited the firm's office on two different occasions and had carried out a study of the Meltron System. It was found that the system/equipment offered by Meltron, which is a Government Undertaking, was ideally suited to meet the

requirement of the Control Room as well as the Headquarters. The Minutes of the Purchase Committee show that the comparative study of various offers was made in association with the Officers of the Communication Branch of the DGTD. In view of this, the deposition made by the SSO(CD) that the technical assessment of Meltron equipment alone was made cannot be used against the applicant. For the same reason, the statements supposed to have been made by the two other Member of the Purchase Committee to the effect that the report of the technical staff was not shown to them, will also have no meaning insofar as the applicant's conduct is concerned. The Minutes of the Purchase Committee are presumed to have been signed by all the Members of the Committee. It is this very committee which has asserted that Meltron equipment was the most suitable. In our judgement, it is not open to the Members of the said Committee thereafter to come out with veiled insinuations by making depositions of doubtful value before the Anti Corruption Branch of Delhi. The fact remains that no such issue was apparently raised in the meeting of the Purchase Committee. Furthermore, if any of the members of the Committee had any reservation in the matter, they could always record a note of dissent. Clearly, nobody dissented when it was time to disagree. Statements made later are to be regarded at best as afterthoughts. Such statements cannot be permitted to be used against the applicant particularly at this later stage. For these very reasons, the respondents' reply that available evidence prima facie established that the purchase in question was made in an irregular and malafide manner

cannot be accepted. Incidentally, the word 'malafide' we find, has not been used in the article of charge nor in the statement of imputations.

6. According to the article of charge, the applicant has been found guilty of contravention of the provisions of rule 3 (1) of the AIS (Conduct) Rules, 1968. The aforesaid Rule 3(1) simply provides that every member of the AIS shall maintain absolute integrity on devotion to duty at all times. Insofar as the issue of devotion to duty is concerned, the applicant clearly done what he was required to do in terms of the procedure to be followed and had done the job in time. The decision to purchase Meltron equipment has been taken not by him but by the Director-General on the basis of the reports of the Technical Assessment Committee and the Purchase Committee. The equipment/system supplied by M/s Gurusons was properly assessed by a team of technical officers and financial implications of the proposal were known to everybody in the aforesaid Committees as also to the Director-General. The Purchase Committee has, in no uncertain terms, recommended the purchase of the Meltron equipment/system. Meltron is a Government Undertaking and not a private company. M/s Gurusons, who presumably are the dealers/agents appointed by Meltron, had made an offer for the supply of the equipment/system in question alongwith several other firms. The equipment/systems supplied by them (MELTRON) is being used in several important governmental organisations/institutions. Just because bids were invited by an open advertisement and lower bids had been received, it does not follow that

the cheapest product on the offer must necessarily be purchased. The buyer department will be within its rights to look for the best equipment/system keeping in view its needs and requirements. There is nothing wrong if during the course of evaluation of competing offers, regard is also had to the reputation enjoyed by a supplier. In the decision making process, a large number of persons/officers are involved, on the finance side as well as on the technical side. There is nothing to show that the applicant exercised undue influence on any of the Members of the aforesaid Committees and teams to make a recommendation in favour of the Meltron equipment. In such a situation, it is not possible, in our judgement, to doubt the integrity of the applicant. The prima facie conclusions to the contrary arrived at by the respondents are, in our view, based on inadequate and improper appreciation of the facts and circumstances of the case, and inasmuch as no rational person would have, on due application of mind, reached the conclusions about lack of integrity, we are also inclined to hold that the aforesaid conclusion suffers from the vice of perversity.

7. In view of what we have discussed above, we find that no case of misconduct has been made out in the facts and circumstances of this case and, therefore, following the Supreme Court in **Union of India and Others** Vs. **Upendra Singh** dated 17th February, 1994, (1994) 3 SCC 357, we can interfere in the matter even at this stage of framing of charge. We are inclined to do so after perusing the chargesheet and the statement of imputations and hearing the parties.

8. Besides, the impugned proceedings are also bad and non-sustainable on the ground that there has been an unusually long delay of over 8 years in initiating the departmental proceedings, and the delay in question has not been explained. The respondents are, therefore, also responsible for laches and delay in issuing the impugned chargesheet belatedly in June 2000. In accordance with law laid down by the Supreme Court in **State of Madhya Pradesh Vs. Bani Singh and Another** decided on 5th April, 1990 and reproduced in 1990 (Supp.) SCC 738, the respondents ought to supply a satisfactory explanation for the inordinate delay in issuing the charge memo and that if such delays are not properly and adequately explained, it will not be fair to allow the departmental enquiry to proceed. This is what the Supreme Court has held in the aforesaid case:

> "The appeal against the order dated December 16, 1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decided the matter on merits. We are unable to agree with this contention of the learned counsel. The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any

> case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal."

In the present case, the disciplinary proceedings, based as these are on certain documents and the statements of witnesses could well have been initiated most expeditiously as all the necessary documents and the witnesses have remained readily available throughout. In view of this, there seems to be a good deal of substance in the plea advanced on behalf of the applicant that the respondent-authorities have decided to initiate the proceedings in question belatedly with the intent to harass the applicant at a time when he is about to retire from service.

9. For all the reasons brought out on the preceding paragraphs, the OA is found to have merit and substance and is allowed. The impugned orders dated 21st June, 2000, 14th March, 2001 and 14/16th March, 2001 are quashed and set aside. The applicant will be entitled to all the consequential benefits arising from the above. No costs.

(S.A.T.Rizvi)
Member(A)

(Ashok Agarwal)
Chairman

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