

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

(6)

OA 2135/2001

New Delhi, this the 20th day of November, 2001

Hon'ble Shri Kuldip Singh, Member (J)  
Hon'ble Shri Govindan S.Tampi, Member (A)

Lt. Col.D.S.Manchanda  
S/o Late Shri G.R.Manchanda  
R/o A-38, New Krishna Park  
New Delhi - 110 018.

Working as Chief Engineer -II  
In the office of Civil Construction Wing  
All India Radio.

...Applicant

(By Advocate Shri Mukesh Kr. Gupta)

V E R S U S

UNION OF INDIA : THROUGH

1. Secretary  
Ministry of Information & Broadcasting  
Shastri Bhawan, New Delhi - 110 001.

2. The Cheif Executive Officer  
Prasar Bharti  
Mandi House  
New Delhi - 110 001.

3. The Director General  
All India Radio  
Akashwani Bhawan  
New Delhi - 110 001.

...Respondents

(By Advocate Shri R.V.Sinha)

O R D E R

By Shri Govindan S.Tampi.

Order No.7/25/2001-S III dated 7-8-2001, diverting the applicant, functioning as Chief Engineer II, Civil Construction Wing, AIR of financial and administrative powers is under challenge in this OA.

2. Heard S/Shri Mukesh Kr. Gupta and R.V.Sinha, representing the applicant and the respondents respectively and perused the relevant papers.

3. Brief relevant facts are that the applicant Shri D.S.Manchanda, an Engineer, who retired from the Indian Army in 1990, as Lt.Col. joined AIR in 1985, as Supdtg.Engineer (Electrical) and became

Chief Engineer-Level II in 1995. Between September 1996 and December 1999, he also worked against the post of Chief Engineer Level-I. He is the senior most officer in the entire Civil Construction Wing, but has not been promoted as yet as Chief Engineer Level-I, which post has been lying vacant since 1992. Civil Construction work attends to all the civil works in AIR and media units of I & B Ministry all over India. Though the applicant has been performing his duties satisfactorily, three charge-sheets had been issued to him on 9-6-96/28-7-97, 19-9-97 and 11-8-99, which are pending finalisation, challenging which OA No. 1277/2001, has been filed by him. The said OA is in final stages of hearing, when the applicant's financial and administrative powers have been withdrawn by the impugned order dated 7-8-2001. This is inspite of the fact that the proceedings in two of the cases were over long ago, but their finalisation have been inordinately delayed by the respondents and for no fault of the applicant. In the allocation of work, as per orders of 8-2-89, Chief Engineer -II have been assigned all construction work relating to South and West Zones including Budgeting, Planning etc. routine administrative work and recruitment of non-gazetted technical staff. Virtually all these powers have been taken away by the impugned order dated 7-8-2001, which he came to know of only on 17-8-2001, when he returned from leave. This order has been issued and circulated all around only to humiliate him before his juniors, while delaying the final disposal of disciplinary proceedings. Hence this OA. The grounds raised in the OA are that :-

(i) finalisation of the disciplinary

(9)

proceedings have been delayed to facilitate this order (10)

(ii) the facts concerned in the charge-sheets related to period much before his promotion as Chief Engineer in 1995 ;

(iii) the impugned order was malafide ;

(iv) it is illegal and arbitrary and issued in violation of the principles of natural justice, especially as there was no complaint at all about his functioning as Chief Engineer and ;

(v) while the applicant's legitimate promotion to level I was long overdue, he has been visited by this adverse order, which is punitive in nature, but without any basis.

Tribunal's intervention is, therefore, immediately called for, pleads the applicant.

On the day for hearing on admission, the impugned order has been stayed. Interim relief continues.

4. In the rebuttal on behalf of the respondents, it is pointed out that the applicant had been given three charge-sheets for acts involving misconduct and financial impropriety and his name has also been placed in the list of officers of doubtful integrity. Such officers could not be posted in "Sensitive" charges which involve heavy financial responsibilities as well as recruitment functions wherein considerable discretionary powers are present. Hence the decision of the competent authority to divest him of such sensitive duties, leading to the issue of the impugned order dated 7-8-2001. As the action has been taken in the best interest of the Govt., it cannot be called in question. It is also worthwhile to mention that a fourth charge-sheet has

been issued against him on 6-8-2001. These charge-sheets, except the one dated 19-9-1997, contains allegations pointing to lack of integrity and, therefore, the respondents cannot be expected to keep him incharge of higher responsibilities. Once the applicant is cleared of the charges, the powers which are withdrawn will be restored to him. According to the respondents, the applicant cannot claim that he should be placed in charge of higher and sensitive responsibilities when his integrity is suspect and proceedings are in progress against him. The matter has come to the notice of the Parliament as well. Respondents further state that this action of the Deptt. has nothing to do with the applicant's filing OA 1277/2001 before the Tribunal. The enquiries in the cases initiated against the applicant are proceeding in accordance with CCS (CCA) Rules. Further, the applicant is being permitted to perform all the functions which he has not been specifically divested of. Action of the respondents are correct, legal and fully justified and does not at all warrant any interference, according to them. Further the main relief and the interim relief being the same, the latter should not have been granted. Interim relief granted, therefore, deserves to be vacated.

5. All the points raised in the counter affidavit are rebutted by the applicant in his rejoinder. According to him, the respondents' action has been only to humiliate and harass him. None of the allegations in the charge-sheets would amount to a charge of "lack of integrity" and, therefore, divesting the applicant of his responsibilities was improper. It was necessary that the Deptt.

*b*

- 5 -

(12)

communicated the fact of including the name of the applicant in suspect list. It was further mentioned that Chief Engineer has no role in selection of tenderers in any work, which are in fact attended by the junior officers and then put up to Chief Engineer only after in depth scrutiny by all concerned. Therefore, it is wrong to hold that Chief Engineer can influence such transactions. Further all the events, alleged to have occurred, as per the charge-sheets had taken place during 1988-92, nearly 8-10 years ago and not at all concerned with the present job.

6. Reiterating the pleas raised both in the OA and the rejoinder Shri M.K.Gupta, learned counsel for the applicant avers that the respondents' impugned order dated 7-8-2001 is a sequel to the applicant's filing OA 1277/2001 challenging the proceedings initiated and calling for its earliest finalisation. Without finalising the three proceedings already set in motion, respondents are attempting to deal with the issue and the applicant by a short cut method of divesting him of his powers. This has no sanction in law and has to be immediately set aside. Besides, as recruitment of staff stood banned for the present, the applicant would not have excercised it and there was no need to take it away from him. Shri M.K.Gupta, learned counsel relied upon the decision of the Hon'ble Supreme Court in the case of S.R.Bommai & Ors. Vs. UOI & Ors. (AIR 1994 SC 1918) as well as UOI & Ors. Vs. Lt.Gen. R.S.Kadyan & Anr. (2000 (6) SCC 698)

7. On the other hand, Shri R.N.Sinha, learned counsel for the respondents states that the action taken by them was perfectly on the proper lines and

(13)

they could not have been expected to hold a different view in the specific circumstances of the case where a charged officer would otherwise have been handling important items of work. He pointed out further that as all the recruitments stood banned, the applicant should not at all feel aggrieved that he has been divested of the said powers.

8. We have carefully deliberated on the rival contentions and perused the records. While the applicant seeks to have the impugned order dated 7-8-2001 quashed and set aside, as according to him the same is illegal, arbitrary and not based on sound premises in law, the respondents hold that the order was totally unavoidable and necessary in the circumstances of the case. That three charge-sheets had been issued to the applicant and proceedings initiated by them are under various stages of progress is not disputed. A fourth charge-sheet has been issued on 6-8-2001. It is also a fact that the allegations contained in those charge-sheets, except one dated 19-9-1997 impinge upon the integrity of the applicant and his capacity to hold highly sensitive charges concerning heavy financial responsibilities and recruitment powers. Further, the applicants name is also included in the agreed list of suspect officers of doubtful integrity, who cannot be permitted to hold sensitive charges. That being the case, the respondents cannot be faulted for taking a policy decision that the applicant should be kept away from important items of work. The jobs earmarked for Chief Engineer are those involving high financial outlay, where judgement of the individual plays a crucial role. Therefore, respondents could not have

taken a decision that inspite of these charge-sheets for imposition of major penalty having been issued against him, he should continue to be vested with higher powers and responsibilities. They have also stated that once he is exonerated in the proceedings the charges would be restored to him. At the same time, we observe that there has been some delay in the finalisation of the proceedings by the Deptt. and the applicant states that they are being kept pending to identify him as individual under cloud. In this connection, we recall that the applicant had filed OA 1277/2001, challenging the charge-sheets. We have, by our order dated 19-10-2001, disposed of the said OA, directing that all the proceedings shall be finalised in accordance with law within a specific time frame. Delay in finalisation of the proceedings has been taken care of. Till such time the proceedings are over and the applicant is exonerated in those proceedings, directions cannot be issued by the Tribunal to the respondents advising them to restore to the applicant, the powers which he had been divested of by the impugned order. Besides, no Govt. servant can ask for any specific posting as of right and no posting made by the Govt. can be challenged unless and until it is malafide, as the Govt. as a employer has a full right to utilise the services of any of its employees where it finds the services are best made use of. When on the basis of existing circumstances, that the applicant is facing three charge-sheets, the respondents have correctly held that the applicant should not be permitted to perform certain functions for a certain period. The said action is correct in law and is endorsed by

administrative propriety. We also cannot accept the applicant's plea that in acceptance of high tenders etc. the role of the Chief Engineer was only minimal, for such a view would mean that the applicant is only entitled to hold a position with higher pay and powers, but has no responsibility. Similarly as there was already a ban on recruitment, the applicant need not have to worry much that the recruitment have been taken away from him. We also observe that in the peculiar circumstances of the case, the decision in Bommai's and Kadyan's case (supra), cited by the applicant do not come to his assistance, in any manner.

9. In the above view of the matter, we are convinced that the applicant has not made out any case for our ~~interference~~ OA, therefore, fails and is accordingly dismissed. Interim order granted on 22-8-2001 is vacated.

(Govindan S. Tampli)  
Member (A)

Kuldeep Singh  
(Kuldeep Singh)  
Member (J)

/vikas/