

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A. 2604/2001

NEW DELHI THIS....16..THE DAY OF MAY 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)
Hon'ble Shri Govindan S. Tampli, Member (A)

T.S. Sahota,
Block No. 253, Flat No. 8A,
Railway Officers Flats,
P K Road, New Delhi

.....Applicant
(By Shri Abinash K. Mishra, Advocate)

VERSUS

1. Union of India
through Secy. Railway Board,
Railway Bhawan, New Delhi
2. Ministry of Railway
through Member Traffic Railway Board,
Railway Bhawan, New Delhi
3. Ministry of Railway,
through Member , Traffic Railway Board,
Railway Bhawan, New Delhi
4. Mr. P S Meena, Dy. Secy.
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi

.....Respondents

(By Shri R.L. Dhawan, Advocate)

O R D E R

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

Reliefs sought for by Sh. T S Sahota, applicant in
this OA are as below:

- i) allow this application and set aside the orders dated 9.8.2001 (Confd) No.E/14/1222/RB/ED&A) passed by General Manager of Northern Railway & Order dated 31.7.2001 [Confidential No. E(O)I-99/AE/3/NR-5] passed by M S Mehra, Jt. Secy, Estt. Railway Board; read with the order/reason/conclusion dated 4.7.2001 [Confl. No. F.3/351/2000-SI] in Case No. E(O)I-95/PU-2/55; to the extent they justify the imposition of penalty on the applicant and exonerate the applicant;

- ii) quash the inquiry report dated 6.2.99 and the order dated 18.12.98 and
- iii) direct the respondents to provide the applicant all the consequential benefits arising out of setting aside of the afore-said orders and
- iv) pass such other and further order (s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.

2. Heard S/Sh. Abinash K. Mishra and R L Dhawan, learned counsel for the applicant and the respondents respectively.

3. The applicant who joined Indian Railway Traffic Service (IRTS) in 1970, was working as Chief Passenger Transport Manager (P) in Northern Railway. Since his promotion to Sr. Administrative Grade in 1990, he had worked as ADRM in Hubli, Vijayawada and Secunderabad in South Central Railway and thereafter at Ambala, Northern Railway. He has to retired on superannuation on 30.4.2002. While in service he has been performing functions of both technical and administration. Two charge sheets were issued to him, on his alleged misconduct/misbehaviour, while working as ADRM and Tender Accepting Authority (TTA), in Ambala. In one of the cases a minor penalty was imposed while in the other case where the Inquiry was instituted the I.O. held that out of the three articles of charge Article I of the charge-sheet was not proved while Articles II & III were proved. After considering the representation of the applicant, the Disciplinary Authority ie. Railway Board, accepted IO's report though it held the Article III as insignificant, and basing only on Article II, on 18.12.1998, imposed on the applicant the penalty of reduction by one stage in the time scale of pay for a period of three months,

with cumulative effect. The Appeal filed by him on 2.2.99, was not disposed of soon, forcing the applicant to file a CWP No.4781/2001, following which the appeal was rejected by the President on 31.7.2001, accepting UPSC's advice dt. 4.7.2001, and the same was communicated on 9.8.2001. Hence this OA.

4. Points urged in the OA, are, as below:

- i) the entire proceedings against him and the penalty imposed on him was relatable to Article II of the charges wherein it was alleged that he was unwilling to accept the tender floated by one Navrattan Kumar Anand, he did not accept Anand's withdrawal of conditions and though his offer was only 8.57% above the estimated cost did not accept his tender, denied him the opportunity to Anand to offer 25% discount and accepted the tender of one M/S M K & Co. at the cost of Rs.8,84,000/- which was 26.28% higher than the estimated cost. This did not represent factual position . Still both the Disciplinary Authority and the Appellate Authority felt that the charge was proved as indicated by the IO's report and penalised him.
- ii) when open tender were called for the work of raising clear ballast by cushion by lifting and deep screening of track was invited for Rs.7,00,000/-, Navrattan Anand had given a tender of Rs. 7,65,000/- but with a condition which was not accepted by the Tender Committee, who inspite of the above recommended his case for negotiations for withdrawal of the condition, but the applicant who was the TAA directed re-tender , the individual gave the cost at Rs.905250/- While the Tender Committee(T.C.) recommended the same, the applicant wanted negotiations. During negotiations M/s M K & Co reduced their offer to Rs. 8,84,000/- while Anand offered to give rebate , if the contracted is awarded within ten days. The offer by Anand was 0.25%, though in the Inquiry Report it was shown that the rebate offered was 9.25% though there was no evidence, supporting it. Accordingly the offer of M/s. M.K.& Co was accepted at Rs. 8,84,000/-. I.O. also noted that while the Finance and Technical Members of the T.C. , had differed from each other, the applicant agreed with the Finance ~~Member~~ , Disciplinary authority also opined that as the two Members of TC who were instrumental in the deliberations and presentation of analysis were not found guilty, the applicant's culpability was also reduced. This would show that there was no case for imposing the penalty.
- iii) In the appeal dated 2.2.99 filed by the applicant , he had specifically indicated the reasons for not accepting the Tender Committee recommendation and had *stated*

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that the rebate offered by Anand was only 0.25 as has been correctly recorded in favour of applicant in IO's report .

iv) UPSC's recommendation dated 4.7.2001 had also indicated that the applicant had acted correctly as he had recorded in the relevant file the reasons for getting the work retendered .

v) the Appellate Authority had failed to appreciate that nothing has been produced on behalf of Navrattan Anand to show that he had in fact offered 25% rebate , that the negotiated price / cost of work offered by M/S M K & Co. Rs. 8,84,000/- was much less than the price/cost of Rs. 9,05,250/- offered by Anand, that Anand's tender was wrongly presumed to be the lowest one and that the applicant's action was in consonance with the recommendations of the Finance Member of the Tender Committee and that neither the Technical Member nor the Finance Member of the Committee who had advised the applicant had been penalised.

vi) The applicant had been put to considerable inconvenience and loss of reputation on account of the pendency of the proceedings for a long time, by keeping him in the secret list from 18.12.98 to 17.12.2001 , and denying him any sensitive posting.

5. The grounds raised by the applicant are as below:

- a) the allegations in Charge II which is shown as having been proved in the IO's report is liable to be set aside as no evidence has been brought on record that Navrattan Anand findings to that effect has not been considered;
- b) there was no opinion tendered by the Technical Member supporting the case of Anand except reference to his experience and therefore the same has been correctly rejected.
- c) the attempt to show that Anand had given a promise of rebate of Rs.25% was not forthcoming on records and
- d) this is case of no evidence at all against the applicant .
- e) the order of the disciplinary and appellate authorities are arbitrary, non-speaking ;and
- f) the penalty imposed on him was illegal, harsh and excessive.

All the above points and grounds were forcefully reiterated by S/¹, Abinash Mishra, learned counsel for the applicant.

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6. In the reply filed on behalf of the respondents some preliminary objection like non impleadment of General Manager (P) Northern Railway and non mention of the previous remedies exhausted, are indicated. After narrating the details about the issuance of the Charge Sheet containing 3 Articles of Charge, the respondents point out that Article II to the effect that the applicant was unwilling to accept the tender offer of Navrattan Kumar Anand in Tender No. 56/DSE-I/93-94, having been proved, the impugned punishment has been imposed. The appeal has been disposed of in terms of the advice of UPSC that there was no merit in it and that the punishment imposed was not at all excessive. The applicant's allegation that appellate authority had failed to apply its mind in the case and that during negotiations on 17.11.93 Navrattan Kumar Anand had only offered 0.25% and not 25% and that the same was also valid only if contract was awarded within 10 days which made it non-competitive with that of M. K. & Co. is not correct. As the Inquiry Officer in para 5.2.9 of his report had clearly indicated that "in short the trend and nature of the noting made by the C.O. , in the tender, do establish that he was unwilling to accept the offer of Sh. Navrattan Kumar Anand, one way or the other." The Tender Committee had recommended the cancellation of the tender but the applicant had asked them to re-examine the same . During the re- examination while most of the members recommended cancellation but the Finance Member furnished an incorrect information without routing it through the Committee, on the basis of which the applicant awarded the work to M/s MK & Co:

7. It is further pointed out that if there was any confusion as to whether the rebate indeed was 9.25% or 0.25% as the tender accepting authority , it was incumbent on the applicant to have obtained the maximum advantage by adopting the higher rebate . Applicant did not at all raise any further query as he was not inclined to award the work to Navrattan Kumar Anand. Though originally the Tender committee had recommended the cancellation of the tender the applicant had asked them to re-examine the matter and got it allotted to M K & Co. UPSC had in their opinion dated 4.7.2001 observed that the C.O. (the applicant) did not prefer the award of work to Anand for which he even exercised undue influence on the negotiation committee and got prepared the note by the DEN and by the DEAO . With the result, the tender floated by the experienced contractor Navrattan Kumar was overlooked and the work was given to M K & Co. who was less experienced and whose tender was 26.28% higher than the estimated cost, without getting all the queries replied and without recording sufficient ground for the same. The appellate authority had considered all the points alongwith the recommendations given by the UPSC and had come to the conclusion that in the circumstances of the case the penalty of reduction by one stage in the scale of pay for a period of three months with cumulative effect was not at all excessive. The fact that the Technical and Finance Members of the Committee who were also charge sheeted were exonerated would not give any benefit to the applicant as he was more blameworthy in the entire proceedings.

8. The orders were passed by the Disciplinary Authority as well as by the Appellate Authority after considering all the aspects and correctly. The same did not suffer from any infirmity like non application of mind or lack of evidence or adoption of incorrect procedure. All the requirements under Railway Service (Discipline & Appeal) Rules 1968 have also been adequately met. In the above circumstances the OA has no merit whatsoever in the O.A and the same should be dismissed, according to the respondents. Shri R L Dhawan, 1d. counsel for the respondents strongly reiterated the above during the oral submissions.

9. In the rejoinder the applicant specifically denied the charge that the rebate offered by Navrattan Anand at the second tender was 25% as was being made out by the respondents, but the same is not proved by any evidence to support it. not done. Further, the IO himself had recorded that the Tender Committee had correctly read the percentage of the rebate as 0.25% and once this finding has been given it was not open for the IO to arrive at a different conclusion. In fact the entire proceedings rested on quantum of the rebate and the same had not been conclusively proved against the applicant. Thus on a case of no evidence he has been penalised in an arbitrary and improper manner, and that too when he was nearing the end of a totally unblemished and distinguished career. It was in these circumstances that Hon'ble Tribunal's immediate intervention is called for to vindicate his stand, urges Shri Abinash Mishra, learned counsel for the applicant.

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10. We have carefully considered the matter. Neither of the preliminary objections raised by the respondents are valid. In this OA the orders under challenge are the punishment order dated 18.12.98, passed by the Railway Board, and the appellate order by the President dated 31.7.2001, General Manager (P), Northern Railway, had only acted as an office of communication. There was therefore, no need to specifically implead him. Secondly after the President has rejected the appeal, the only course available is to move the Tribunal. Exhausting of any other remedy, is irrelevant.

11. Applicant in this OA is a Senior Officer of Indian *Traffic Service* Railways (IRTS) who has been, almost on the eve of his retirement on superannuation, penalised by imposition of penalty of reduction by one stage in the pay scale for three months with cumulative effect, following the issue of a charge sheet with the three articles of charge, relating to the period he was serving as Addl. DRM and Tender Accepting Authority (TAA) at Ambala, Northern Railway, during 1993-94. Article I of the Charge sheet is found *by the 10th* to have been not proved. Article III though proved was felt to be too insignificant to warrant any punishment. Applicant has thus been dealt with only in respect of Article II, which is shown as proved. It is therefore, necessary to confine our discussion only to the said article of charge which. reads as under:

" Shri Sahota was unwilling to accept the offer of Shri Navrattan Kumar Anand in the case of tender No.56/DSE-I/93-94, did not accept TC recommendation for one round of negotiation for the withdrawal of condition put by Shri Navrattan Kumar Anand, the

second lowest tender (lowest after the withdrawal of First lowest). The offer of Sh. Navrattan Kumar Anand was only 8.57% higher than the estimated cost. In the second call for the same work i.e. in open tender No.200/DSE-I/93.94, Shri Navrattan Kumar anand Kumar was the lowest tenderer. Shri Sahota prepared the base for rejecting the offer of Shri Navrattan Kumar anand by making a lot of correspondence with TC and then after negotiation he accepted the offer of M/S MK & Co at the total cost of Rs. 8,84,000/- 26.28% higher than the estimated cost ignoring the offer of Shri Navrattan Kumar Anand who was ready to offer 25% rebate on his offer, which was at par with the estimated cost."

11. The gravamen of the charge is that the applicant was prejudiced, without any basis against tenderer Navrattan Kumar Anand and had granted tender to a relatively less experienced tenderer M/S. M.K.& Co., which had cost the respondents to considerably . In his report, Inquiry Officer I.O. has recorded that the applicant had declined to accept the tender of Navrattan Anand, which was only 8.57% higher than the estimated cost and even when tenders were called again he did not want to give it to Anand, for which he used his undue influence on the Negotiating Committee and got a confidential note prepared in support of his views, and based on it had granted the tender to M/s. M.K.& Co. whose offer was 26.28% higher than the estimated cost. Though Tender Committee had, in the beginning itself, recommended negotiation on account of high rates and unacceptable condition to bring down the rates, the applicant preferred calling of fresh tenders, and reasons given by him for his decisions were not satisfactory. When fresh tenders came in, though Anand's tender was the lowest, the applicant raised queries which were not of any substantial relevance. The reduction in the cost he brought about by the second round of negotiations was not substantial, except that it made of M K & Co. the

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the lowest Tenderer, thereby showing them undue favours. I.O. has further shown that on the aspect of the rebate offered also the applicant was wrong. According to the IO, probably the rebate offered was 9.25%. The 9 has been struck off and what is left is .25%. This has been reproduced as such by the negotiating committee and read as 0.25% by the Tender Committee. During negotiation, however, the tenderer i.e. Sh., Navrattan Kr. Anand, when questioned, clarified, that he had reduced the rate by 25% and that decimal before 25 should not be considered. Reducing rebate from 9.25% to .25% is not logical as 0.25 is as good as zero and if the tenderer really intended to reduce it so low, he could have as well struck off the whole thing. It appears that the tenderer wanted it to increase to 25% but in hurry he deleted only 9 and not the decimal point. Thus the tenderers clarification is probable but once the mistake has been done nothing can be done and it was correctly read by the C.O., Negotiating Committee and Tender Committee as 0.25% and no dispute raised". Still the IO has gone on to record that "one thing is very clear that there was further scope of reduction in rates upto 25% and since second negotiation was not possible as MK & Co: could not be called due to ~~in~~ ^{their} inexperience, cancellation and re-invitation of the tender as recommended by the Tender Committee was the only alternative to secure reduction in rates in the interest of Rly." According to the I.O. it was in evidence that the approximate cost/value of the tender and not the estimated cost was Rs.700000/- and the ~~original~~ ^{first} offer of Sh. Navrattan Kumar Anand was for Rs.76500/- The offer of M/s. M K & Co. was for

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Rs.8,84,000/- . Thus the offer of Navrattan Kumar Anand was 9.28% and that of M/s. M.K.& Co.26.28% higher than the approximate cost/value. In view of the above, the IO felt that Article II stood proved, which was accepted by ^{bok} the DA/AA. To our mind, IO's arguments appear to be rather strained. On the one hand he indicates that the reduced rebate was correctly read as 0.25% by the Charged Officer negotiating committee and the tender Committee and in the next breath, he attempts to overlook the same only to state that the charged officer was at fault. It is also on record that there were differences of opinion between the Technical and Finance Members of the Tender Committee and the applicant had gone by the opinion of the latter. Though both the members were also charge-sheeted, they were let off, leaving the applicant alone being penalised, holding him to be more blameworthy. In this context following portion of the order of the Disciplinary Authority of 18.12.98 is relevant. "Now Railway Board, the Disciplinary Authority, after careful consideration of the Enquiry Report, Sh. Sahota's representation thereupon and all other factors relevant to the have observed as under :

" I have gone through the case file, IO's report and CO's representation on IO's report and considered other fats relevant to the case. While Charge-I has been held as not proved during the enquiry, financial implication of Charge-III is only Rs. 3600/- ,that being the difference between the offers of the two contracts, and works out to only about 0.7% of the total tender cost. The only remaining charge which has been held against the CO is charge-II pertaining to tender No. 56/DSE-I/93-94 wherein it is stated that Shri Sahota did not accept TC's recommendation for one round of negotiations for the withdrawal of condition put by Shri Nav Rattan Kumar Anand, the second lowest tenderer (lowest after the withdrawal of first). In the second call for the same work , i.e. in open tender No. 200/DEC-I/93-94. Shri Nav Rattan

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Kumar Anand was the lowest tenderer. Shri Sahota prepared the base for rejecting the offer of Shri Nav Rattan Kumar Anand by making a lot of correspondence with TC and after negotiation, accepted the offer of Messrs M K & Co: at a total cost that was 26.20% higher than the estimated cost ignoring the offer of Shri Nav Rattan Kumar Anand, who was ready to offer 25% rebate on his original offer which was at par with the estimated cost.

Repeated correspondence with TC by itself cannot be held against the TAA who has to satisfy himself particularly when he is suspecting a cartel formation . It is for the TC to clarify the points and convince TAA. Here it is pertinent to note that it is also revealed from the file that the Finance Member, who was also given a major penalty charge sheet which included two charges pertaining to the same case regarding non-discussion and misleading analysis of rates , had finally been recommended only a recorded warning. The fact remains that the comments/notes of the Finance Member carries a lot of weight for the decision making authority, TAA in this case. On similar charges , the Technical Member of the TC who was also taken up for major penalty has been exonerated. Thus two important members of the TC, viz. Technical and Finance Members , who were instrumental in deliberations and presentation of analysis , have been considered not guilty. Given these circumstances, I would feel that ends of justice would be met if a penalty of reduction by one stage in time scale of pay for a period of 3 months with cumulative effect is imposed on Shri Sahota."

The above has put the applicant in a considerably favourable light than what is attempted to be shown by the respondents. In fact both the Inquiry Report and the Disciplinary Authority's order have brought out points in favour of the applicant, but both of them have still proceeded to find him guilty and penalise him. This is sinewgat contradictory and cannot be endorsed.

13. Appellate orders dated 31.7.2001, has specifically relied upon the advice ~~of~~ somewhat 4.7.2001, furnished by the UPSC. After examining the issue in detail and recording that the CO had not committed anything wrong while directing that fresh tenders be called, though the TC had recommended negotiations, as he had recorded in the relevant file why he wanted the work

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to be re-tendered, the communication has observed that "instead of accepting the advice of the T.C., CO awarded the work at the cost of Rs. 8,84,000/- to Ms. M.K. & Co., agreeing with the Finance Member of TC and not agreeing with the Technical Member of TC Commission goes on to state that:

4.7. The Commission observe that the Enquiry Officer after a very exhaustive analysis of facts of the case, has come to the finding that CO 'did not like to award the work to Navrattan Kumar Anand for which he even exercised undue influence on the negotiating committee and got prepared the joint Note by the DEN and the DAO on 24.11.1993". Finally the EO has observed that CO was not prepared to accept the tender of Sri Navrattan Kumar Anand, who was an experienced contractor but readily accepted offer of M/s M K & Co, "which was 26.28% higher than the estimated cost without getting complete replies to his queries and without recording sufficient grounds for acceptance of high rates" (para 2.2.3.10 of EO's Report dated 6.2.1997.)

In the above findings, UPSC also finds partial merit in the action of the charged officer (applicant) but holds that the penalty was imperative. It becomes a bit too difficult to accept this recommendation especially as the CO has been faulted as not accepting the recommendation of the T.C., when Commission themselves have noted that there has been difference of opinion between the two members of the TC and the C.O. has gone by the opinion of the ~~Finance~~ ^{Technical} Member.

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14. As observed above, the only allegation against the applicant is that he did not accept the lower tender of the experienced person Navrattan Kumar Anand but granted it to M/s M K & Co, a comparatively less experienced tenderer. The fact however remains that the applicant had sufficient

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reason not to accept Anand's tender on account of the unacceptable condition in the first tender and due to the lack of proper confirmation about the extent of rebate granted by him during the second tender. He had also indicated the reasons for his reservations. It is also on record that out of the two members of the Tender Committee - Technical and Finance Member - who were to advice the applicant, had differed between themselves and the applicant had gone by the advice of the Finance Member while accepting M K & Co's tender. Interestingly both the members had also been charge sheeted in this matter but both of them had been exonerated that TAA is senior to the members of the T.C., does not alter the situation and make him more blameworthy. There was, therefore every reason to give the benefit of doubt to the applicant as well, in the case, instead of describing him as blameworthy and penalising him. In the circumstances of the case we feel that the imposition of penalty was not justified or warranted.

15. In the result the OA succeeds and is accordingly allowed. The impugned order dated 18.12.98 passed by the Disciplinary Authority reducing the applicant by one stage for three months with cumulative effect and the appellate order dated 31.7.2001, confirming the penalty are quashed and set aside with consequential benefits. No costs.

(Govindan S. Tampli)
Member (A)

Patwal

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman(J)