

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.3366/2001

This the 6th day of August, 2002.

(2)

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Surjit Lal S/O Darshan Ram,
R/O Flat No.72, DDA Flats,
Gulmohar Enclave,
New Delhi-110049.

... Applicant

(By Shri Mukesh Kumar Gupta, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of Commerce,
Udyog Bhawan, New Delhi-110011.
2. Directorate General of Supplies
& Disposal, 5 Sansad Marg,
New Delhi-110001.

... Respondents

(By Shri Bhaskar Bhardwaj, Advocate)

O R D E R

Hon'ble Shri V.K.Majotra, Member (A) :

Applicant has challenged Annexure A-1 dated 19.5.1999 and Annexure A-2 dated 11.12.2000. Vide Annexure A-1 applicant has been imposed penalty of reduction by three stages in the time scale of pay for a period of three years with a stipulation that he would not earn increment during the period of such reduction and on its expiry the reduction would have the effect of postponing future increments of pay. By the latter order, the review petition against Annexure A-1 was rejected.

2. Applicant was charge-sheeted vide memorandum dated 30.9.1996 (Annexure A-3) alleging the following :

W

"Shri Surjit Lal, while functioning as Director of Supplies in Electronics Instruments Directorate of DGS&D, New Delhi during the year 1989-90 and dealing with the cases relating to procurement of Blood Gas System against the indents received from Kalawati Saran Children's Hospital, New Delhi and Deen Dayal Upadhyay Hospital, New Delhi committed the grave misconduct as under, which showed undue favours to the contractor firm who made wrongful gains.

Article I

While dealing with case No.EI-2/207/135/29-11-89/KSCH/KOPRAN/COAD/82/349 relating to indent No.89/89-90/KSCH/Stores/4454 dated 24.11.1989 received from Kalawati Saran Children's Hospital, New Delhi for procurement of Blood Gas System Shri Surjit Lal committed the following lapses/irregularities :-

- (i) The offers received and opened on 15-2-1990 in response to the Limited Tender Enquiry were not properly analysed. The offers were not referred to the indentor so as to give them an opportunity to consider the alternative stores available as also prices offered as compared to the make or brand indented for and select the stores meeting their requirements. Thus the instructions contained in Office Order No.100 dated 15.11.1988 for the procurement of items supported by Proprietary Article Certificate were violated.
- (ii) Without examining the comparative merits and competitiveness of either of the alternative models offered by M/s Kopran or of the remaining five offers the order was placed for the costlier model offered by M/s Kopran and the reasonableness of prices on which the order was placed on M/s Kopran was not considered. this resulted in avoidable extra expenditure to the Government.
- (iii) M/s Kopran's letter No.KOP/HC/1111 dated 23.2.1990 showed that price negotiations were conducted with that firm only without the consent/association of Integrated Finance as per the provisions contained in Office Order No.7 dated 1.1.1988 and Office Order No.25 dated 17.11.1989.

Article II

While dealing with case No. EI-2/215/303/28.2.90/DDUH/KOPRAN/CAOD/82/370 relating to

4

indent No.12(195)/90/DDUH/Pur/4492 dated 27.2.1990 received from Deen Dayal Upadhyay Hospital, New Delhi for procurement of Blood Gas System, Shri Surjit Lal committed the following lapses/irregularities :-

(9)

(i) The said indent was received in the DGS&D's office on 28.2.1990 requesting for purchase of Blood Gas System (1 number) on approved A/T of Kalawati Saran Children's Hospital, New Delhi in so far as specifications of the item were stated to be exactly the same as approved for by Kalawati Saran Children's Hospital. The case was decided with undue haste so much so that the order was placed on the same day i.e. 28.2.1990. while approving the order for placement of repeat order, the requirement of Proprietary Article Certificate (PAC) was not ensured.

(ii) The order was placed on M/s Kopran in violation of the Government instructions contained in para 31.1.4 of DGS&D Manual of Office Procedure for supplies, Inspection and Disposal (1985 Edition) for placing repeat order.

Shri Surjit Lal by the aforesaid acts of commission and omission failed to maintain absolute integrity and devotion to duty and conducted himself in a manner unbecoming of a government servant violating the provisions of Rule 3(1) of the CCS (Conduct) Rules, 1964 thereby rendered himself liable for disciplinary action under CCS (CCA) Rules, 1965."

2. The second article of charge was not proved by the enquiry officer, UPSC and the disciplinary authority. The penalty is thus based on proving Article-I by respondents in the enquiry.

3. The learned counsel of applicant stated that six tenders were received in response to LTI including one from M/s Kopran. M/s Kopran is the only registered and past supplier which offers ^{ed} two models No.178 and 288. Model 178 was cheaper in comparison to Model 288 but the earlier model did not meet the specifications prescribed.

b

The learned counsel stated that the indenting office had upgraded the demand from ordinary to operational category before the tenders could be opened on 15.2.1990 and also produced Proprietary Article Certificate (PAC) with a specific requirement that the said instrument shall be manufactured by M/s Ciba Corning Diagnostic (HK) Ltd. It was also stated, "No other make is acceptable" for the following reasons :

- "a) Because of quality and less Blood Sample/Specimen,
- b) is required for doing all tests such as Blood gases,
- c) Sodium, potassium and calcium for neonates/paediatric patients."

4. As per Annexure A-4 colly., the indenting office also reduced the delivery period from three months to one month. The learned counsel stated that when the five tenders were received from firms which were neither registered nor past suppliers and when the indenting office had upgraded the demand from ordinary to operational category and furnished proprietary article certificate, the question of comparing the price quoted by M/s Kopran with that of other firms was not at all necessary. He further stated that the office order No.11 dated 1.1.1988, para 3(a) clarifies, "In the case of operational indents, 100% of the quantity should be straightaway covered on registered/past suppliers without considering the offers from unregistered/untried firms". The learned counsel further stated that whereas applicant had made a detailed representation on 22.1.1998 in response to memo dated 6.1.1998 that he had not been

12

supplied copies of five documents contained in DGS&D purchase file, Ex.S-1 mentioned in Annexure-III of memorandum of holding an enquiry (Annexure A-3), the same was not made available to him despite orders of the enquiry officer. It has caused a serious prejudice to applicant's defence. The learned counsel further stated that M/s Kopran had themselves offered a discount of 3% whereby government had gained, and as per government instructions, post-tender revision whereby government gains and no one else suffers, could be accepted. The learned counsel stated that whereas there has been no evidence against applicant, he has been penalised. The learned counsel relied on the following :

- (1) **Kuldeep Singh v Commissioner of Police & Ors.,**
(1999) 2 SCC 10;
- (2) **Ahmedabad Municipal Corporation v Virdnera Kumar Jayantibhai Patel,** 1997 SCC (L&S) 1676; and
- (3) **Chandrama Tewari v Union of India,** AIR 1988 SC 117.

Relying on the above citations, the learned counsel contended that there has been no evidence against applicant and as such, the authorities have reached a perverse conclusion and held him guilty. He further stated that respondents did not supply him copies of documents which were crucial for his defence.

5. On the other hand, the learned counsel of respondents stated that respondents have not relied upon any document copies whereof were not supplied to applicant and as such, no prejudice has been caused to him. He further stated that while dealing with the

(12)

indents, applicant did not associate Integrated Finance and went ahead with the processing of the case and placement of orders on M/s Kopran.

6. The facts of the case in brief are that DGS&D received an indent from Kalawati Saran Children's Hospital on 28.11.1989 and issued a Limited Tender Inquiry (LTI) on 11.1.1990. Six offers were received against the LTI. Before the tenders were opened, the indenting office informed DGS&D that the indented item (a blood gas analyser) was a proprietary article of M/s Ciba Corning Diagnostic (HK) Ltd. and that no other make of the item was acceptable to them. They also intimated that the requirement was operational, i.e., it was of an urgent nature and the delivery period was reduced from three months to one month. Tenders were opened on the scheduled date, i.e., 15.2.1990. Applicant and Shri Bhoop Singh approved the proposal for purchasing the item from M/s Kopran Chemical (P) Ltd. It has been contended on behalf of applicant that in view of the indented item being proprietary and [↳] ~~because~~ no other make than that of M/s Ciba Corning Diagnostic (HK) Ltd. being acceptable to the indentor, it was not possible to compare the prices quoted in the different offers. The learned counsel also stated that applicant had asked for copy of the DGS&D purchase file relating to the six tenders and although the enquiry officer had agreed for supplying the same, respondents did not produce the same and he was not supplied or shown the concerned file containing all the quotations from different parties. Respondents have not rebutted these contentions and have stated that "the

Wb

presenting officer could not produce them as they were not traceable". This statement is not enough, basically in view of the indented item being proprietary and a particular make being acceptable to the indentor. Thus, the question of comparison with other offers would not arise. In any case, if at all a comparison had to be made, the related file and other offers should have been shown to applicant. A mere allegation that other offers contained lower prices and the indenting office must have suffered a loss is misplaced. Non-production of the DGS&D purchase file, Ex. S-1, cited in the list of documents (Annexure-III) has certainly harmed the defence of applicant. This file contained five other offers and respondents have presumed that those offers quoted lower prices than the price accepted by applicant as purchase officer. Indirectly, they are placing reliance on those offers to prove that the offer accepted related to a higher price which caused loss to the indentor. Indirect reliance on offers not shown to applicant by way of non-production of DGS&D purchase file is certainly prejudicial to the defence of applicant and renders the present case as one of no evidence.

7. As to the question whether Integrated Finance was consulted before approving the proposal for procurement, we have seen the record produced by respondents relating to DGS&D indent No.EI-2/207/135/29.11.89/82. Note dated 26.2.1990 mentions about receipt of six offers, furnishing of PAC in favour of M/s Ciba Corning Diagnostic and also certificate of operational demand. It is stated that it

was not necessary to consider other offers in this background and purchase could be made from M/s Kopran who had also given a discount of 3%. On page 7 of the notesheet the proposal has been discussed and orders obtained as follows :

"EI-2/207/135/29.11.89/82

This case relates to procurement of Blood Gas Analyser against an indent received from KSC Hospital. Against an LTI opened on 15.2.90 we had received 6 offers. Before opening of tenders indentor had furnished PAC in favour of Ciba Corning and also certificate of operational demand (p.40-43/C). In view of this, it is proposed that we may not consider other offers and go in for purchase of BG Analyser from Kopran Chemicals who had also participated in the tender.

PRICES :

Equipment	\$ 40,000
Gas Kit	1,600
Optionals	3,347.30

	44,947.30

Less discount 3%	1,348.19

	43,599.11

Less 10% a/c	4,359.91 = Rs. 73,927.94

	39,239.20 = Rs. 6,70,754.88

	Rs. 7,44,682.82

Firm have furnished P/I (p.45-46/C) and agency certificate (p.47/C).

Firm's offer is now clear for acceptance both technically and commercially.

It is now proposed that we may cover the demand by placement of contract on M/s. Kopran Chemical at US \$ 39,239.20 on FOB basis with a/c of 4,359.91 with delivery of 10-12 weeks. As firm is a past successful supplier we may waive S.D.

Funds to the extent has been provided by Indentor.

Value Rs. 7,44,682.82
O.E. 28.2.90

h sd/-
(D.S.N.MURTHI)
ADS(GR.II)/EI-2/26.2.90

(B)

DDB(B)

US(IF) for procurement on PAC basis and waiver
of S.D.

sd/-
26/2 (C.O.)

US(IF)

sd/-
26/2/90"

Applicant had approved the proposal "for procurement on PAC basis and waiver of S.D." on 26.2.1990. US(Integrated Finance) had also signed on the same date.

8. In our considered view, Integrated Finance had been consulted for procurement on PAC basis and they had not raised any objection to certificate of operational demand, non-comparison with other offers, acceptance of 3% discount, etc. There is also no evidence pointed out by respondents of any undue favour or wrongful gain by applicant from the transaction. From the above discussion, we find that this case has turned out to be a case of no evidence but respondents have proceeded to prove the charges against applicant which cannot be countenanced and calls for interference in judicial review. Non-supply of the file relating to different offers has a bearing on charges against applicant. It has certainly caused prejudice to the defence of applicant. The ratios of the judgments cited on behalf of applicant support the contentions advanced by applicant.

9. Having regard to the reasons recorded and discussion made above, we find that respondents have

reached a perverse finding based on no evidence. Also 16 applicant has been denied access to the DGS&D purchase file which has prejudiced his case, which is against the principles of natural justice.

10. In the above facts and circumstances, respondents' orders dated 30.9.1996, 19.5.1999 and 11.12.2000 are liable to be quashed and are accordingly quashed and set aside. Respondents are directed to grant consequential benefits to applicant including restoration of pay, seniority and consideration for promotion to the next higher grade from the due dates as if the penalty of reduction in time scale of pay had never been imposed on him.

11. The OA is allowed in the above terms. No costs.

S. Raju

(Shanker Raju)
Member (J)

V. K. Majotra

(V. K. Majotra)
Member (A)

 /as/