

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 425 of 2001

New Delhi, this the 7th day of March, 2002

HON'BLE MR. V.K. MAJOTRA, MEMBER (A)
HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

(17)

Dr. Prem Prakash
At present working as Dy. Director of Education
(North East)
Yamuna Vihar
R/o 46, Savarkar Apartment,
Patparganj, I.P. Extension,
Delhi-110 092.

-APPLICANT

(By Advocate: Shri Shyam Babu)

Versus

Lt. Governor,
Raj Niwas,
Delhi-110 054.

-RESPONDENTS

(By Advocate: Shri Ashwani Bhardwaj, proxy for Shri Rajan
Shrama, Counsel for the respondents)

ORDER (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (Judl)

The applicant was proceeded departmentally on the allegations as under:-

" That the said Dr. Prem Prakash while functioning as Dy. Director, North and North-West District during the year 1995-96 committed gross misconduct inasmuch as with ulterior motive and mala fide intention he clandestinely exercised his official influence by prevailing upon the subordinate staff of the District to make purchase of the books from a selected publisher on a lesser discount than offered by the contemporary publisher and caused monetary loss to Government.

Thus the said Dr. Prem Prakash failed to maintain absolute integrity and exhibited conduct unbecoming of a Government servant thereby contravening the provisions of Rule 3 of the CCS (Conduct) Rules, 1965".

2. An enquiry was held on the allegations as stated above. The Inquiry officer came to the conclusion that the charge against the applicant stands proved since the applicant had no justification for cancellation of

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tender/proposal for purchase of books from Rachna Store and to purchase books from M/s Arya Book Depot, who is distant relation of Dr. Prem Prakash (applicant) and thus has caused financial loss to the Government.

3. The applicant has submitted his representation against the report of the Inquiry Officer but ultimately he was punished by the disciplinary authority when a penalty of reduction of pay by two stages in the time scale of pay for two years with postponing of future increments of pay was imposed.

4. For impugning this order, the applicant has taken up the ground that the findings arrived at by the Inquiry Officer are not supported by any evidence and are based on surmises and conjectures.

5. The applicant further submitted that the predecessor of the applicant had appointed a Purchase Committee on 3.8.95 but predecessor was transferred on 16.8.95, despite that Chairman of the Purchase Committee had taken up a note on 21.8.95 for inviting tenders. The applicant took charge on 23.8.95, but the Purchase Committee did not put up the file before him. The Purchase Committee held its meeting on 5.9.95 and took a decision to invite tenders and thereafter took a decision to purchase books from M/s Rachna Stores who was merely a supplier and not reputed seller, as required under the General Financial Rules (hereinafter referred to as GFR) and thereafter the matter

[Signature]

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was put up before the applicant on 22.1.1996. The applicant recorded a note that in view of the GFR, the books may be purchased from one point, i.e., from any reputed dealer.

6. It is further submitted that the Inquiry Officer as well as the disciplinary authority had failed to appreciate that the applicant never visited personally M/s Arya Book Depot from whom the books had been purchased.

7. It is further submitted that PW-2 Shri Srivastava had admitted in the cross examination that there was no definite criteria for the Committee to suggest names of the firms and the said PW-2 had further stated that the applicant had only directed the Purchase Committee to select books from the reputed dealer and since most of the schools had been purchasing books from M/s Arya Book Depot as such books were purchased from M/s Arya Book Depot. PW-2 also admitted that M/s Rachna Store was not a reputed dealer but only a supplier.

8. It was also suggested that the predecessor of the applicant had also purchased books from M/s Arya Book Depot.

9. It is further stated that the Inquiry Officer had also recorded that as per Government of India instructions tenders need not be called for this purpose and books be purchased from standard book stores so the applicant is claiming that there is no procedure to be followed for calling of tenders and books could be purchased only from the standard book stores and this fact has been ignored by the Inquiry Officer.

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10. It is further stated that there is no evidence that the applicant had even given any directions to purchase books from Ms. Arya Book Depot.

11. The applicant has also taken up a plea that the punishment was to the effect that there will be reduction in applicant's pay by two stages in the time scale of pay for two years with further directions that he will earn increments during the period of reduction and that the reduction will have the effect of postponing of future increments of pay is neither legal nor valid so it is liable to be set aside on this ground alone.

12. The OA is being contested by the respondents. The respondents submitted that before the applicant had joined, a Purchase Committee had been appointed. The Purchase Committee after calling the tenders after completing all formalities and considering the offer of 20% discount for supply of books had given offer to Ms. Rachna Store for supply of books. The respondents deny that M/s Rachna Store was neither a reputed book seller nor publisher. There was no justification to cancel the quotation of M/s Rachna Store and while making the remarks the applicant had observed that keeping in mind the standard of books, which was contrary to the factual position, as the Purchase Committee had observed in minutes dated 10.10.1995, the books of any publisher in India and abroad can be purchased from M/s Rachna Traders with standard 20% discount. Thus the remarks were made by the applicant with ulterior motives and with mala fide intentions as there were no justified grounds or other facts on record to cancel the quotations of M/s Rachna Stores.

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13. It is asserted that the applicant had pressurise his subordinates for purchase of books on less discount to give undue benefit to the said supplier (M/s Arya Book Depot).

14. It is further stated that the orders passed by the disciplinary authority has been passed within the legal framework.

15. It is further stated that due opportunity was given to the applicant to defend himself before the Inquiry Officer and the applicant cannot take shelter under the GFR that tenders were not required to be called.

16. We have heard the learned counsel for the parties and gone through the records of the case.

17. The main plea of the applicant is that as per GFR and as per the Government decision for purchase of books there is no need to invite quotations and purchase orders of books thereafter, because as per the Government decision the books can be purchased from any reputed dealer. But as far this contention of the applicant is concerned, we find that though there is no requirement to call for the tenders but there is also no prohibition to call for the tenders and once the predecessor of the applicant had called for the tenders and the Purchase Committee had approved the name of M/s Rachna Stores, who was offering a higher discount, that shows that this fact was within the knowledge of the applicant that for the purchase of same books the department could get a higher discount had they purchased the books from M/s Rachna

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Store and once the supplier who is offering higher discount is available, then the applicant should not have resorted to purchase books from any other book dealer at a lower discount because that unnecessarily entails financial loss to the Government. So all the pleas taken by the applicant in this regard have no substance and the same cannot be pressed into by the applicant to vitiate the proceedings or to challenge the order passed by the disciplinary authority.

18. Once the Purchase Committee had been constituted and that Committee had recommended the name of books supplier who was offering a higher discount, so the applicant had no business to overrule the same by taking shelter under the GFR and the Government decision for not inviting tenders.

19. The applicant has also challenged the memo which is at Annexure C at page 64 calling upon the applicant to make representation against the enquiry report which has been signed by one D.R. Chopra, Secretary (Vigilance) and not by the disciplinary authority so the memo itself is bad and is liable to be quashed. In our view this contention of the applicant has no merits because this merely conveys to the applicant to file representation within 15 days of issue of Memorandum and simultaneously it also conveys that the disciplinary authority will take a suitable decision after considering the report, so Sh.D.R. Chopra, Secretary had not been assigned the power of disciplinary authority. He is just conveying an information to the applicant and the order which has been passed by the competent authority and is being impugned since that has been passed by order and in the name of the Lt. Governor, Delhi though it is also signed by D.R.

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Chopra, Secretary (Vigilance). So this contention of the applicant has again no force because the impugned order has been passed by the Lt. Governor, who is the disciplinary authority in the case of the applicant.

20. As regards the contention of the applicant that the Inquiry Officer had not appreciated the evidence of PW-2 properly since PW-2 had deposed about the procedure of purchase of books and had also proved that predecessor of the applicant had also purchased books from Ms. Arya Book Depot as all the books are generally available at Arya Book Depot. But we find that still the findings arrived at by the disciplinary authority which is based on the reasons given by the Inquiry officer show that when the school had adopted the procedure for purchasing books on the recommendations of the Purchase Committee, who had approved the proposal of M/s Rachna Store, who was ready to supply books at 20% discount when the same books was to be supplied by M/s Arya Book Depot at a lesser discount that will go to show that the fact that books were available at a higher discount when a written offer was available and then resorting to purchase of books from another supplier was bound to cause economic loss to the Government and there was no justification for cancelling the tender approved by the Purchase Committee, so this contention is not helpful to the applicant at all since the fact remains that the same books could be purchased at a higher discount, which were purchased at a lesser discount.

21. The applicant has also pointed out the he had joined the department on 23.8.95 and proposal to invite tenders was approved on 21.8.95 by his predecessor, but thereafter also Purchase Committee's meeting was held on

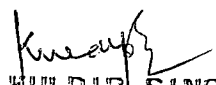
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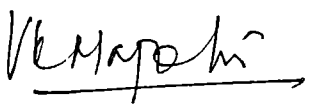
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5.2.95 without the file having been put up before the applicant. In our view this contention has again no merits because the Purchase Committee had approved the proposals to invite tenders so in pursuance of that a proposal was received whereas the books were available at a higher discount but still the applicant preferred the books from another standard dealer instead of Ms/ Rachna Stores, who were offering more discount, so this is a gross misconduct on the part of the applicant and he has been rightly held guilty.

22. Applicant has also stated that the orders of penalty as passed by disciplinary authority does not make any head or tail. But on going through the same we find that there is a slight typing error in the order which has been well understood by applicant and that is why he has challenged it before the court. Even otherwise during arguments this contention was not pressed.

23. None of the grounds taken by the applicant are sufficient to interfere in the impugned order or to quash the order passed by the disciplinary authority. In view of this, the OA has no merits and the same is dismissed. No costs.


(KULDIP SINGH)
MEMBER (J)


(V.K. MAJOTRA)
MEMBER (A)