

7

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.854/2001

Wednesday, this the 7th day of November, 2001

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri S.A.T. Rizvi, Member (Admn)

7

Mr. Surjit Lal
S/O Shri Darshan Ram
Aged 52 years
Director
Directorate General of Supplies & Disposals
Department of Supply, Min. of Commerce
Jeevan Tara Building
5, Parliament Street
New Delhi-1.

..Applicant

(By Advocate: Ms. Alpha M. Prasad)

Versus

1. Union of India
through its Secretary
Ministry of Commerce
Nirman Bhavan
New Delhi-11
2. Union Public Service Commission
through its Chairman
Dholpur House, Shahjahan Road
New Delhi
3. Director General of Supplies & Disposals
Jeevan Tara Building
5, Parliament Street
New Delhi-1.

...Respondents

(By Advocate: Shri R.N.Singh)

O R D E R (ORAL)

Hon'ble Shri S.A.T. Rizvi:-

On a set of five different charges, including the following

- 2
- "(iii) ensure to obtain as per the prescribed procedure/instructions the Banker's report and a proper & valid Income-tax Clearance Certificate (ITCC) in respect of the agent firm, M/s Electronics Enterprises, and also a capacity report on the manufacturer firm, M/s AKJ Accoustics (India) Ltd., Gurgaon, from the Inspection Authority stated in the indent before

(2)

taking a decision for awarding the contract on M/s Electronics Enterprises, an unregistered and untried firm as also an agent."

a charge sheet was served on the applicant on 5.7.1994 (Annexure A-5). He was proceeded against thereafter and an order of punishment dated 9.2.1999 (Annexure A-1) was passed by the disciplinary authority imposing on him the penalty of withholding of one increment for two years with cumulative effect. The aforesaid penalty order has been implemented by the respondents vide their order dated 31.3.1999 (Annexure A-2). Both these orders have been impugned by the applicant in the present OA.

2. The aforesaid penalty order was sought to be reviewed under Rule 29-A of C.C.S. (CCA) Rules, 1965. The review authority has thereupon passed orders dated 27.3.2000 (Annexure A-11) upholding the order passed by the disciplinary authority and rejecting the review petition filed by the applicant. The aforesaid order, we hasten to add at this very stage, has not been impugned by the applicant in this OA.

3. We have heard the learned counsel on either side at length and have perused the material placed on record. We also had occasion to peruse certain rulings rendered by the Apex Court on the various issues raised in the OA copies of which were supplied by the learned counsel.

4. The learned counsel appearing on behalf of the applicant has taken us through the report of the inquiry authority in detail and also through a number of documents

2

placed on record to establish that the aforesaid single charge also cannot be sustained. On a careful consideration, we find that the aforesaid charge, which happens to be the only charge found proved by the inquiry authority, falls in three parts. One part of the charge relates to failure on the part of the applicant in his capacity as Director in the Directorate of Supplies and Disposals to obtain a proper Banker's report in regard to M/s Electronics Enterprises. The other part deals with the failure on his part to obtain a proper and valid Income-tax Clearance Certificate (ITCC) in respect of the same firm. In accordance with the aforesaid charge, the aforesaid report and certificate should have been obtained before a decision was taken to award contract to M/s Electronics Enterprises. The aforesaid charge also contains an insinuation to the effect that in the event a contract has been awarded in favour of an unregistered firm which is also an untried firm, insofar as the supply of material to the AIR through the DGS&D is concerned. The aforesaid charge also finds fault with the applicant in regard to the capacity verification report prepared and utilised in respect of the manufacturing firm, namely, M/s AKG Accoustics (India) Ltd. Gurgaon.

5. The report of the enquiry officer, we find, is a very comprehensive report (Annexure A-7) and the same deals with each charge levelled against the applicant in sufficient detail. The evidence which became available during the enquiry has been carefully analysed and the inquiry authority has arrived at his conclusions through application of mind and on a proper appreciation of the

10

(4)

evidence. We cannot, therefore, find fault with the inquiry authority's report which found only one charge, namely, the one reproduced in paragraph 1 above as proved.

6. Insofar as the specific charge of not obtaining the Banker's report and ^aproper and valid ITCC is concerned, the learned counsel appearing on behalf of the applicant has sought to argue that the Banker's report in question was to be obtained by a subordinate of the applicant and, therefore, the applicant himself cannot be blamed, if the said report did not become available at the material time. In relation to the ITCC, it has been found by the inquiry authority that the certificate furnished relates to one Shri S.C. Gupta, HUF who is the proprietor of M/s Electronics Enterprises. The report also shows that the aforesaid Shri S.C. Gupta paid income-tax year after year amounting to a couple of hundred of rupees. On this basis, an impression has been formed by the inquiry authority that sufficient caution was not exercised by the Director (applicant) about the financial capacity of the agent firm. That the aforesaid agent firm was unregistered and had also not been tried in the past is also clearly established in that no supply is shown to have been made by the said firm to the AIR through the DGS&D. In relation to Banker's report, the applicant has clearly failed to exercise the supervisory authority available to him.

7. The aforesaid charge also refers to capacity ²verification report in respect of the manufacturer firm and conveys

2

that the said report was not obtained on the prescribed proforma so as to enable the Tender Purchase Committee (TPC) and the AIR to arrive at a correct conclusion in regard to the aforesaid firm's manufacturing capacity in respect of the items proposed to be purchased by the AIR. The allegation made is that correct proforma was not made use of for the aforesaid purpose. The learned counsel appearing on behalf of the applicant submits that the revised/updated proforma has been prescribed only in 1989 and the same could not, therefore, be utilised as the supply indent in the present case was placed with the DGS&D on 5.10.1987, i.e., on a date prior to the coming into force of the revised/updated proforma forming part of the Manual of Office Procedure for Supplies, Inspection and Disposals (MOPSID) issued in 1989. The learned counsel for the respondents has disputed the aforesaid contention by explaining that MOPSID is a compilation of the instructions and proformae already in use for several years and that it would be incorrect to say that correct proforma for capacity verification was prescribed for the first time by the aforesaid publication (MOPSID). According to him, as Director in the DGS&D and also in his capacity as a member of the TPC, it was the bounden duty of the applicant to ensure that a capacity verification is prepared on a proper proforma. The contention raised on behalf of the applicant that one Shri B.K. Gupta, Assistant Director in the DGS&D was responsible for obtaining capacity verification report (CVR) in the prescribed proforma is, according to him, the least

dr

(6)

convincing for the very same reason which has been stressed in the previous paragraph regarding Banker's report.

8. A further contention raised on behalf of the applicant is that one Shri M.M. Agarwal, Deputy Director had been made personally responsible for recording the minutes of the TPC and for checking the merits and de-merits of each tender for factual correctness. The said Shri M.M. Agarwal, according to the learned counsel, failed to discharge the aforesaid specific responsibilities given to him. He also failed to inform the TPC that Banker's report had not been received. The same Shri M.M. Agarwal also falsely certified that M/s Electronics Enterprises had been a past supplier (Annexure A-9). By advancing pleas on the aforesaid lines, according to the learned counsel appearing on behalf of the respondents, the cause of the action is not furthered at all as he cannot escape responsibility in the matter as Director in the DGS&D with supervisory role as well as a member of the TPC. Being a senior officer in the hierarchy and particularly since he was a member of the TPC, the applicant was undoubtedly bound to exercise utmost care to ensure that the Banker's report, the ITCC and the CVR are obtained on proper proforma, in each case, well in time so as to be available for consideration by the TPC before the award of contract in favour of M/s Electronics Enterprises. The applicant should also have ensured that no risk was actually involved in awarding contract to a firm which was neither registered nor had been tried in the past. That he miserably failed on all

dv

13

(7)

these counts is borne out from the report of the inquiry authority who has, in our view, for good and sufficient reasons, found the aforesaid charge as proved.

9. The learned counsel appearing on behalf of the applicant has next proceeded to argue that a copy of the CVC's report was not made available to the applicant and, therefore, the departmental proceedings stand vitiated on account of the failure on the part of the inquiry authority as well as the disciplinary authority to observe the principles of natural justice. According to her, while a copy of the CVC's recommendations made by the Commission at the stage of imposition of penalty was supplied to the applicant, a copy of the Commission's recommendations obtained by the disciplinary authority at the stage of service of charge-sheet was not supplied. By this, according to him the legitimate defence of the applicant has been seriously prejudiced. The aforesaid argument, according to the learned counsel for the respondents, is wholly untenable on the basis that non-supply of the aforesaid recommendation of the CVC was not made an issue during the disciplinary proceedings, nor has the applicant mentioned it in his review petition under Rule 29-A of the CCS (CCA) Rules, 1965. In support of the aforesaid contention regarding non-supply of CVC's recommendation at the stage of service of charge-sheet, the learned counsel appearing on behalf of the applicant has place reliance on the order passed by this Tribunal on 11.5.2001 in OA-1309/2000 in M.M. Agarwal Vs. Union of India. The applicant in the aforesaid OA is the same person with whom the applicant has found fault in the

(8)

present OA and a brief discussion in respect of which is available in paragraph 8 above. By placing reliance on State Bank of India & Ors. Vs. D.C. Aggarwal and Anr. decided by the Hon'ble Supreme Court and reported in (1993 (23) ATC 403, the D.B. of this Tribunal in the aforesaid OA had allowed the OA and had remitted the case back to the disciplinary authority with a direction to supply a copy of the CVC's advice to the applicant in that OA. We find it useful to reproduce the relevant paragraph of the said judgement of the Supreme Court as under:-

"The order of the disciplinary authority in this case is vitiated not because of mechanical exercise of powers or for non-supply of the inquiry report but for relying and acting on material which was not only irrelevant but could not have been looked into. Purpose of supplying document is to contest its veracity or give explanation. Effect of non-supply of the report of Inquiry Officer before imposition of punishment need not be gone into nor it is necessary to consider validity of Rule 50(5) of the S.R.I. Supervisory Staff (Service) Rules. But non-supply of CVC recommendation which was prepared behind the back of respondent without his participation, and one does not know on what material which was not only sent to the disciplinary authority but was examined and relied on, was certainly violative of procedural safeguard and contrary to fair and just inquiry. The submission that CVC recommendations are confidential, copy of which could not be supplied, cannot be accepted. Taking action against an employee on confidential document which is the foundation of order exhibits complete misapprehension about the procedure that is required to be followed by the disciplinary authority."

(emphasis supplied)

10. It would appear from the above that non-supply of CVC's recommendation will be violative of the procedural safeguard and contrary to fair and just enquiry only if

2

(9)

the CVC's recommendation has not only been relied upon by the disciplinary authority, but has also been made foundation of the order passed by him. Nothing has been placed on record on behalf of the applicant to show that the disciplinary authority in the present OA has imposed the penalty in question exclusively by relying on the CVC's recommendation in question or that the said recommendation has been made the foundation of the disciplinary authority's order. On facts also, the aforesaid judgement of the Supreme Court is distinguished for the reason that the respondent in that case had been exonerated by the inquiry authority and the Commission had recommended imposition of a major penalty of removal. Furthermore, in the aforesaid OA, the applicant had filed a review petition taking the ground that the penalty imposed upon him needed to be reviewed as the advice of the CVC had not been made available to him. In the present case, no such ground was taken by the applicant in his review petition.

11. Furthermore, we have already noted that the copy of the CVC's recommendation not supplied to the applicant in the present OA related to the stage of issue of charge-sheet. The Supreme Court in the aforesaid case of State Bank of India & Ors. Vs. D.C. Aggarwal (supra) has found that in such an event it would be enough if a copy of the Commission's advice (first stage advice) is made available to the employee for his information, and it is not necessary to call for a representation of the employee on the first stage advice inasmuch as the employee, in any case, gets a due opportunity to represent

d

(10)

against the proposal for initiation of departmental proceedings against him. Thus, in our judgement, it is of no great consequence that a copy of the first stage advice of the CVC has not been supplied to the applicant. In terms of the aforesaid judgement of the Supreme Court, a failure on the part of the disciplinary authority to supply a copy of the first stage advice cannot amount to a meaningful breach of the principles of natural justice. The relevant extract taken from the aforesaid judgement of the Supreme Court in State Bank of India & Ors. Vs. D.C. Aggarwal (supra), reproduced by the D.B. of this Tribunal in the aforesaid case of M.M. Agarwal reads as under:-

"The Commission, at present, is being consulted at two stages in disciplinary proceedings, i.e., first stage advice obtained on the investigation report before issue of the charge-sheet, and second stage advice is obtained either on receipt of reply to the charge-sheet or on receipt of inquiry report. It, however, does not seem necessary to call for the representation of the concerned employee on the first stage advice as the concerned employees, in any case, gets an opportunity to represent against the proposal for initiation of departmental proceedings against him. Therefore, a copy of the Commission's first stage advice may be made available to the concerned employee along with a copy of the charge-sheet served upon him for his information. However, when the CVC's second stage advice is obtained, a copy thereof may be made available to the concerned employee, along with the IO's report to give him an opportunity to make representation against IO's findings and the CVC's advice, if he desires to do so."

12. If one has regard to the foregoing discussion based on the Supreme Court's judgement in State Bank of India & Ors. Vs. D.C. Aggarwal (supra), the plea advanced by the learned counsel appearing on behalf of the

de

(11)

applicant that the CVC's recommendation was not supplied to him and, therefore, the proceedings stand vitiated will be found to be wholly untenable and is, in the circumstances, rejected.

13. The learned counsel appearing on behalf of the respondents has raised the further issue that while the applicant has impugned the order of penalty imposed upon him by the disciplinary authority, he has not taken care also to impugn the order passed by the competent authority on his review petition on 27.3.2000 (Annexure A-11), and for this reason alone, the OA must fail. According to him, the order passed by the disciplinary authority stands merged in the order passed by the competent authority on the review petition filed by the applicant and, therefore, no purpose will be served by dealing with the order passed by the disciplinary authority alone. Setting aside of the disciplinary authority's order, in the circumstances, will not affect the order passed by the competent authority on the review petition which will, in any case, survive.

14. The learned counsel for the respondents has next raised the issue of limitation. The impugned orders were passed respectively on 9.2.1999 (Annexure A-1) and 31.3.1999 (Annexure A-2). The present OA has been filed on 30.3.2001, i.e., nearly two years after the aforesaid orders were passed. Section 21 of the Administrative Tribunals Act, 1985 lays down a time limit of one year within which such orders should have been challenged before this Tribunal. No justification has been advanced by the applicant for coming up before this Tribunal so

18

by the applicant for coming up before this Tribunal so very belatedly. According to the learned counsel for the applicant, such a plea cannot be raised at this stage after the OA has been admitted and is at the stage of final hearing. The learned counsel for the respondents insists that the plea of limitation can be raised at any stage and in support of this, places reliance on the principle upheld by the Supreme Court in Municipal Council, Ahmednagar & Anr. Versus Shah Hyder Beig & Ors. decided on 8.12.1999 and reported in (2000) 2 SCC 48 which reads as under:-

"While it is true that the plea of limitation ought to be raised at the first available opportunity but that does not mean and imply that the party raising it even during the course of hearing would be barred therefrom...."

15. We have considered the matter and in view of the aforesaid judgement rendered by the Supreme Court, we do not find merit in the reliance placed by the learned counsel for the applicant in Union of India & Ors. Versus Basant Lal & Ors., decided by the Supreme Court on 18.2.1992 and reported in AISLJ 1992 (Vol.1) 190. The principle upheld in the aforesaid judgement, namely, that "Where a point raised in application is not specifically denied, it amounts to admission", will not find application in the facts and circumstances of the present case. In the case before the Supreme Court in Basant Lal (supra), it was alleged that the respondents had worked for over 120 days and had thus become eligible for the grant of temporary status and the aforestated fact had not been specifically denied. That was clearly an averment

2

19

based on facts. In the present OA, the issue of limitation is a mixed question of law and fact and that being so, the applicant placing reliance on the aforesaid judgement of the Supreme Court in Basant Lal's case (supra) will not assist him.

16. The learned counsel appearing on behalf of the respondents has submitted that the departmental proceedings have been conducted in the present case totally in accordance with the procedure prescribed under the relevant rules. Nothing has been alleged in the OA or in the rejoinder filed by the applicant to show that the prescribed procedure has not been followed. The principle of natural justice has been observed at every stage of the proceedings and there is no allegation of malafide against the disciplinary authority. The report prepared by the inquiry authority is a balanced report and the said authority has arrived at his conclusions objectively and carefully after taking into account the entire evidence made available during the enquiry. The order passed by the disciplinary authority is a speaking and a reasoned order and displays application of mind in an objective manner. The UPSC has also examined the case comprehensively and extremely objectively. This Tribunal is not empowered to reappreciate the evidence and to arrive at a conclusion different from the conclusion arrived at by the inquiry authority or by the appellate authority. He also submits that in accordance with the judgements rendered by the Supreme Court in Director General of Police and Ors. Versus R. Janibasha decided on 5.8.1997 and reported in (1998) 9 SCC 490 and

2

20

Commissioner and Secretary to the Govt. and Ors. Versus C. Shanmugam decided on 9.12.1997 and reported in (1998) 2 SCC 394, in exercise of the power of judicial review, this Tribunal cannot reappreciate the evidence and substitute its own findings in place of the findings of the disciplinary authority. He further submits that in accordance with the procedure prescribed in MOPSID, it is necessary to ensure, before awarding a contract, that the party to be considered is reliable, dependable, financially sound and has necessary experience in supplying the particular line of product. There is considerable advantage in choosing the right supplier. The aforesaid objective is achieved by awarding contracts to firms who are already registered with the DGS&D and who have successfully supplied the items in the past according to the prescribed specifications. In the present case, the firm in question, namely, M/s Electronics Enterprises has, as already stated, never supplied any item to the AIR or to Doordarshan or to the CPWD through the DGS&D. It was, in the circumstances, a bad decision to select the aforesaid firm as a supplier to the AIR in the present case.

17. In view of these considerations and whatever else has been discussed in the preceding paragraphs, there is no merit in the argument advanced by the learned counsel for the applicant in terms of para 4.4.4 of the report of the inquiry authority which reads as under:-

"4.4.4. Firstly, the fault lies with the Indentor cum Inspecting Authority i.e. All India Radio. Had the concerned officers in the AIR had exercised due care, caution and diligence and followed

d

21

the terms and conditions of the contract in right earnest and had straightway rejected the stores which were uninspected and not contracted for, rather than giving the Receipt Certificates, the fraud committed by the firm could have been avoided. In the absence of receipt certificate and inspection notes by the Indentor cum Inspecting Authority, it would not have been possible for the firm to claim fraudulent payments. Secondly, the office of the Controller of Accounts failed in exercising necessary checks as required in the Manual with regard to release of the payment and the provisions of contract. Had these two authorities act in their wisdom by following the laid down guidelines, the fraudulent payments as mentioned in the charge sheet could have been avoided."

There is no doubt that the inquiry authority has, in the above, found fault with the AIR and the office of the Controller of Accounts, both of whom have failed to observe the requisite formalities before awarding contract and at the time of making payments. But finding fault with the aforesaid authorities cannot amount to exoneration of the applicant who has, for good and sufficient reasons, been found guilty of negligence in the discharge of his duties, irrespective of the fact that it was he who lodged a FIR in the present case by his letter of 21.3.1990 (Annexure A-4). The role played by the applicant has been discussed in detail in the report of the inquiry authority. We have also referred to his role and his responsibilities in the matter briefly in earlier paragraphs on the basis of the report of the inquiry authority. The disciplinary authority has again, for good and sufficient reasons, held that the applicant failed to maintain devotion to duty and has acted in a manner unbecoming of a Govt. servant and further that the

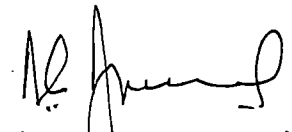
22

circumstances of the case clearly revealed negligence and carelessness on his part.

18. For all the reasons contained in the above discussion, the OA is found by us to be devoid of merit. It is also hit by limitation. The present OA is accordingly dismissed without any order as to costs.



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



(Ashok Agarwal)
Chairman

/sunil/