

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA 2585/99

New Delhi, this the 23rd day of March, 2001

Hon'ble Mr. Justice Ashok Agarwal, Chairman  
Hon'ble Shri Govindan S. Tampi, Member (A)

Shri S.K.Chopra  
S/o Late Shri B.D.Chopra  
Aged 67 yrs, r/o C-I/58, Janakpuri  
New Delhi - 110 058.

...Applicant

(By Advocate : Shri A.K.Behera)

V E R S U S

Union of India : Through

1. The Secretary  
Ministry of Urban Development  
Govt. of India  
Nirman Bhawan, New Delhi - 110 011.
2. Director General (Works)  
Central Public Works Department  
Nirman Bhawan, New Delhi - 110 011.

...Respondents

(By Advocate : Shri Madhav Panikar)

O R D E R (ORAL)

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

Order No.C-13015/14/85-AVIII dated 17-5-99 in which the President has imposed a cut of 15 % in pension of the applicant for the period of 10 years on the applicant who was a Superintending Engineer (Electrical), retired from CPWD, is under challenge in this OA.

2. Heard learned counsel for the applicant and the respondents.

3. To state the facts in brief, the applicant who was working as Superintending Engineer in CPWD, was served with a chargesheet dated 14-10-1988 containing 13 articles of charges relating to

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decisions taken by him during the period 1981-84. He filed his reply on 24-11-88 and thereafter on 8-1-1990 the chargesheet was amended, with the appointment of I.O. and P.O. taking place on 26-2-90. On 28-5-90 first hearing took place and thereafter he submitted a list of document and he sought an adjournment. After considerable time, on 12-10-90, Inquiry Officer passed orders directing that certain documents asked for could be made available for which he directed the Presenting Officer. The same did not happen and in the meanwhile Presenting Officers were changed twice. The applicant retired on superannuation on 30-6-91. The new I.O. changed the procedure, ~~and~~ directing that it was the Charged Officer's responsibility to go and collect the relevant documents from respondents' organisation. The applicant's representation against the same was not heeded. So was his request ~~also~~ for the change of dates of enquiry on account of his heart ailment and treatment. It is in these circumstances, where the applicant was denied justice that the proceedings were completed by the Inquiry Officer, who held in his report dated 29-1-93, that out of the 13 articles of charges, 10 were proved and 3 i.e. articles II, IV and X were partially proved. In between the applicant's having retired on superannuation, the opinion of the UPSC was sought. UPSC examining the issue in depth opined on 7-1-97 that "in the light of their findings and after taking into account all other aspects relevant to the case, Commission advise that the proceedings against Shri S.K.Chopra be dropped and he be exonerated". At the request of the respondents the matter was re-considered by UPSC and in their second opinion of

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18-6-97 they indicated that the Commission consider that there is no justification for modifying the advice already in this case vide Commission's letter of even No. dated 7-1-97. They advise accordingly. However, the Disciplinary Authority took a different view and issued the impugned order dated 17-5-99, directing 15 % cut in the pension of the applicant for the period of ten years. Hence this challenge.

4. Shri A.K.Behra, counsel for the applicant, details the entire circumstances of the case and points out that the proceedings were initiated more than four years after the alleged events had taken place. Even thereafter considerable time was spent during the inquiry with the change of the Inquiry Officers and the Presenting Officers. Applicant's request for supply of relevant documents was partially granted by the first I.O., but the presenting officer did not do anything in that regard. The second I.O. changed the stance and directed that it was for the applicant to locate and take possession of documents. Charged Officer's <sup>request</sup> ~~request~~ for reconsideration of the decision and for changing the date of hearing on account of his cardiac ailment were not considered. The enquiry proceedings were held virtually ex-parte and the findings were recorded by the I.O. Thereafter UPSC who were consulted twice, opined both on 7-1-97 and 18-6-97, ~~opined~~ that as violation of principles of natural justice had taken place, the case is likely to fail in Court of Law, <sup>and as such</sup> recommended the dropping of the proceedings. According to Shri Behera, in the circumstances of the case, which was one of no substantial evidence, and old and also in view of the

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violation of the principles of natural justice, respondents should have accepted the recommendations of UPSC and dropped the proceedings. The same has not been done by them and, therefore, it was for the Tribunal to step in and do justice to the applicant, he pleads.

5. On the other hand, Shri Madhav Panikar, learned counsel for the respondents fiercely contents the above. Taking us through various articles of charge and the findings of the I.O. thereon, he states that in this case, the applicant, who is a senior officer of the rank of a Superintending Engineer, had acted in a manner totally unbecoming of his status and level of responsibility and failed to maintain integrity. Even if the charge of dishonesty is not specifically spelt out in the chargesheet, it is inherent in the various articles which stood proved. Clearly it was a case of a senior officer failing to discharge his duty properly. Conceding fairly that there has been delay in the proceedings, Shri Panicker points out that the said delay perse cannot vitiate the disciplinary proceedings and the findings recorded therein on the basis of evidence as the applicant had also contributed to the delay to some extent by his dilatory tactics. He further points out that the evidence brought on record clearly showed that the applicant had not discharged his duty properly and has caused monetary loss to the Government, did not follow the procedure prescribed for local purchases, accepted tenders at rates higher than market rates etc. Most of these articles have been proved. Hence the Inquiry Report and its

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acceptance by the disciplinary authority <sup>who</sup> declined to accept the recommendations of the UPSC and decided to impose a reasonable punishment on the applicant. He <sup>points out that</sup> ~~Further~~ <sup>prudent</sup> as disciplinary authority was not bound by the advice tendered by the UPSC. In the above circumstances, the action of the respondents was correct and proper and no interference at all was called for from the Tribunal, according to Shri Panicker.

6. We have examined the matter in depth, with specific reference to the rival contentions raised by the learned counsel for the applicant and the respondents and records placed before us. We observe that the chargesheet was issued on 28-10-88, and amended on 8-1-90, in respect of events which had taken place during 1981 to 1984. That there was considerable delay in the initiation of the proceedings is not disputed. But the same per se would not vitiate the proceedings as it is found that the applicant also had contributed to the delay to some extent. The relevant fact, however, is that though there was considerable time and opportunity available with the respondent to do so, they did not supply to the applicant relevant documents which he had sought in spite of repeated requests. Though the first I.O. agreed for the supply of a few documents, which he directed the Presenting Officer to do so, and which the latter failed to do, the second I.O. changed the stance and asked the applicant to collect it from the Department by his own efforts, denying him time to do so by rejecting his request for change of date of hearing. His pleas for adjournment on the

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health grounds also were not heeded. In the circumstances, he could not properly participate in the inquiry proceedings. Proceedings were, therefore, in effect ex parte in nature, resulting in the findings that ten (10) of the thirteen (13) charges were proved and that remaining three (3) were partially proved. It is thereafter that the UPSC was consulted. UPSC have in their first opinion of 7-1-97, has recorded as below :-

3.2 The commission on perusal of case records find nothing to disagree with the conclusions arrived at by the Inquiry Officer. They have, however, noted that in the instant case there is inordinate delay on the part of the Disciplinary Authority. The irregularities in Electrical Division were noticed in August, 1984, but the Charge Memo was issued on 14-10-1988, i.e., after a gap of four years. The charged Officer denied the charges vide his reply dated 23-11-1988. Instead of ordering an oral inquiry as is usually done in such cases, a corrigendum was issued on 8-1-1990, i.e., after a gap of approximately 15 months. In the said corrigendum, the Charged Officer was not asked to furnish his reply. The conduct of oral inquiry was further delayed due to subsequent change of P.O. and Inquiry Officers. When the P.O. failed to produce certain documents for inspection of Charged Officer, the Inquiry Officer vide order dated 4.10.91 directed the Charged Officer to contact the custodian of the documents for inspection himself. The Charged Officer represented against his order and the then Inquiry Officer directed the P.O. to produce the documents but no action appears to have been taken till appointment of the new Inquiry Officer on 11.11.1992. The new Inquiry Officer held one meeting on 26.11.1992 and then fixed regular hearing for 4th and 5th January, 1993, even though the said documents were not made available for inspection by the Charged Officer. The Charged Officer submitted a petition addressed to the President and a copy endorsed to the Inquiry Officer on 14.12.1992 requesting for change of Defence Assistant and seeking permission to appoint legal practitioner as his Defence Assistant. Vide letter dated 07.1.1993, the Charged Officer was permitted to change his Defence Assistant whereas the Inquiry Officer had already concluded oral hearing on 05.01.1993 despite Charged Officer's request

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dated 02.01.1993 expressing his inability to attend regular hearing due to his own illness for which he had also submitted a medical certificate advising him six weeks rest. A copy of letter dated 07.01.1993 was also forwarded to the Inquiry Officer advising him to provide another opportunity to Charged Officer if possible to avoid legal complications. The Inquiry Officer vide his letter dated 11.1.1993 disagreed to allow the Charged Officer another opportunity for regular hearing but instead mentioned that the Charged Officer should furnish his defence brief. According to the Inquiry Officer an inquiry can be held in abeyance only when he had to await decision from Disciplinary Authority in cases where bias is alleged against him or when there is direction from the court. On 18.1.1993 the Ministry again advised the Inquiry Officer to give Charged Officer an opportunity to attend regular hearing in order to avoid any legal flaw at a later date.

The circumstances of the case leads to the conclusion that the Charged Officer has been denied reasonable opportunity to defend himself, which is no violation of principles of natural justice. In the instant case, the Inquiry Officer should have waited for the decision from Disciplinary Authority instead of conducting ex parte proceedings. The Charged Officer, therefore, did not get reasonable opportunity to defend himself.

In the light of their findings as discussed above and after taking into account all other aspects relevant to the case, the Commission advise that the proceedings against Shri S.K. Chopra be dropped and he be exonerated."

On the respondents request, UPSC considered the issue once again, but reiterated their opinion on 18-6-97 as below :-

3.2 The Commission in this regard observe that the position explained by the Ministry regarding delay in issue of chargesheet/conclusion of proceedings shows that the delay is not attributable to Charged Officer. The Commission had considered this issue while examining the case in detail before tendering the advice in the case. As regards the Ministry's contention that by holding ex parte proceedings the Charged Officer has not been denied reasonable opportunity, the Commission observe that even though the inspection of listed documents was carried out by the Charged Officer on 12.10.1990 but all the additional documents demanded by him were not shown to him. When the Inquiry Officer disallowed certain documents demanded by him were not shown to him. When the Inquiry Officer disallowed certain documents demanded by the Charged

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Officer, the Charged Officer sought for an oral hearing to explain the relevancy of each document to the Inquiry Officer but in the instant case the Inquiry Officer did not provide him any such opportunity. The P.O. was changed on 08.10.1991. The new Inquiry Officer was appointed on 11.11.1992. He fixed the brief hearing for 26.11.1992 for which Charged Officer expressed his inability to attend due to serious heart problem. He also produced a medical certificate to substantiate his claim. The proceedings were, however, held ex parte by the Inquiry Officer during which the availability of the documents for perusal by Defence were considered. The Ministry's presumption that even if he was ill, he should have at least sent his Defence Asstt. do not seems to be in order since the inquiry was being conducted again the Charged Officer and his presence in the inquiry was necessary. Moreover, the Charged Officer had also reported about illness of his Defence Assistant to the Inquiry Officer and through his letter dated 14.12.1992 had requested the President of India to allow him to take assistance of a legal practitioner in place of the Defence Asstt. who was stated to be bedridden. A copy of this letter was also endorsed to the Inquiry Officer for his information and necessary action. In such a situation it was obligatory on the part of the Charged Officer to seek confirmation/decision of the President of India on the letter dated 14.12.1992. Despite this fact the inquiries were fixed for 24.12.1992 and 25.12.1992 for which Charged Officer submitted intimation to the Inquiry Officer that he was still not medically fit either go for inspection of the documents to P.O.'s office or to attend the regular hearing on 04.01.1993 and 5.1.1993. As per medical certificate submitted by the Charged Officer it has been observed that Charged Officer was advised 2 months plus 6 weeks rest w.e.f. 23.11.1992. The Ministry's presumption that even though the charge-sheet was served in October, 1988 the Charged Officer felt the need of assistance of legal practitioner only on 14.12.1992 is not correct since the Charged Officer had requested for change of his Defence Asstt. only when his Defence Asstt. was bed-ridden and was not in a position to attend the proceedings. Hence, referring to the period 1988 is irrelevant. Though the Charged Officer was free to change his Defence Assistant with due permission of the Inquiry Officer but since he had written to the President for allowing him to engage a legal practitioner mentioning therein the reasons for making such request, it was necessary that the decision on his request should have been awaited before fixing another date of hearing. The commission further observe that the Inquiry Officer fixed date of hearing viz. 4th and 5th January, 1993, which falls within the period of the medical rest advised to the Charged Officer as per

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M.C. It is true that the charges held as proved by the Inquiry Officer by holding ex parte proceedings are very grave but when the charges were grave it was all the more necessary that adequate opportunity should have been provided to the Charged Officer to defend himself. The decision on Charged Officer's request was communicated through letter dated 7-1-1993 according to which the Charged Officer was allowed to change his Defence Asstt. other than a legal practitioner but before Charged Officer could utilize this facility the Inquiry Officer had concluded the proceedings. A copy of this letter was also forwarded to the Inquiry Officer advising him to provide a further opportunity to Charged Officer to present his case. The Inquiry Officer, however, did not oblige. The Ministry again advised the Inquiry Officer on 18-1-1993 to give an opportunity to Charged Officer to attend regular hearing in order to avoid any legal flaw at a later date. The Inquiry Officer again did not agree with it. As per Rule 14 the Charged Officer is required to be given a reasonable opportunity to defend but in the instant case though the major delay was on the part of the Disciplinary Authority, the new Inquiry Officer treated the M.C. submitted by the Charged Officer as a dilatory tactics and conducted the inquiry ex parte. It is a mandatory provision that the Charged Officer should be given sufficient opportunity to defend himself in the inquiry proceedings and if this legal requirement is not fulfilled then all the proceedings can be vitiated. There is no denial that charges stand as proved against the Charged Officer, but the legal lacuna of not giving the opportunity to the Charged Officer under Rule 14 of The CCS (CCA) Rules holds good and if the Charged Officer goes to Court of Law the case will have no merit.

4. In view of the above position, the Commission consider that there is no justification for modifying the advice already tendered in this case vide Commission's letter of even number dated 7-1-97. They advise accordingly.

8. It is evident, therefore, that inspite of the gravity of the charges raised against the applicant on 28-10-88 and amended on 8-1-90 and shown as proved by the Inquiry Officer is his report dated 29-1-93, the proceedings were vitiated on account of non-adherence to the principles of natural justice as sufficient opportunity was not granted to the applicant to defend himself properly - by denial of

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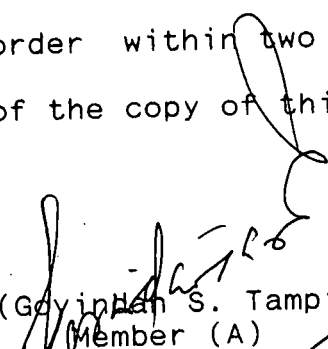
the supply of documents and refusal of his request for adjournment even on health grounds. UPSC's second advice<sup>WAPL</sup> that "there is no denial that the charges stand as proved against the Charged Officer but the legal lacuna of not giving the opportunity to the Charged Officer under Rule 11 of the CCS (CCA) Rules holds good and if the Charged Officer goes to the Court of Law, the case will have no merit". Hence UPSC's opinion to drop the proceedings and exonerate the applicant. We do appreciate, as the learned counsel for the respondents argues that though consultation with UPSC is mandatory in cases like these before imposition of punishment, the same is not binding on the President, on all times, as has been pointed out in the decision of the Hon'ble High Court in the case of A.N.D'silva Vs. Union of India (AIR 62 SC 1130),<sup>S</sup> this was a case where the circumstances called for the acceptance of the advice tendered by the UPSC. Still the respondents have ignored the advice and gone ahead to accept the findings of the I.O. and imposed the punishment by the impugned order dated 17-5-99. The order, therefore, suffers from illegality, non-application of mind and<sup>is</sup> non-speaking in nature. The fervent plea by the learned counsel for the applicant that the order should be sustained as the charges bordered on allegations of dishonesty against the applicant who was a senior officer, <sup>and</sup> delinquent in discharging his duty, is an inference which does not follow from the charges and at best remained only in the realm of suspicion. We are, therefore, of the view that the requirement of law and justice would

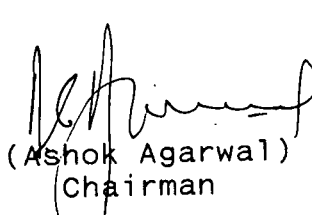
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have been more than adequately met by accepting the opinion of recommendations given by the UPSC and dropping the proceedings against the applicant.

9. In the result, the application succeed and is accordingly allowed. The impugned order dated 17-5-99 is quashed and set aside with full consequential benefits, by way of restoration of full pension to the applicant. Respondents are directed to ensure that all steps are taken to give effect to this order within two months from the date of the receipt of the copy of this order. No costs.

  
(Gopinath S. Tampi)  
Member (A)

  
(Ashok Agarwal)  
Chairman

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