

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

21

O.A./TxRx No. 1796 of 1995

Decided on: 9.11.98

Shri T.D.S. TulsianiApplicant(s)

(By Shri Sohan Lal Advocate)

Versus

U.O.I. & AnotherRespondent(s)

(By Shri Mohav Panikar Advocate)

CORAM:

THE HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER(J)

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter or not? *yes*

2. Whether to be circulated to the other Benches of the Tribunal? *X*

C
(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1796 of 1995

New Delhi this the 9th day of November, 1998

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Shri T.D.S. Tulsiani
S/o Late Shri S.D. Tulsiani
R/o 465, Sector-17,
Faridabad,
Haryana.

..Applicant

By Advocate Shri Sohan Lal.

Versus

Union of India through

1. Secretary,
Ministry of Urban Development,
Government of India,
Nirman Bhawan,
New Delhi-110 011.
2. The Director-General of Works
Central Public Works Department,
Nirman Bhawan,
New Delhi-11.

..Respondents

By Advocate Shri Madhav Panikar.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

Applicant seeks to set aside and quash the departmental proceedings initiated against him by the impugned memorandum of the respondents dated 9.8.95. By the aforesaid order, respondents have proposed departmental action against him under Rule 16 of the CCS (CCA) Rules, 1965. In the statement of imputations it is stated that during the execution of certain works for the construction of 120 houses at Motia Khan including water supply, sanitary installation and internal development (construction of 120 MIG Houses, Group-IV), the applicant in his capacity as Executive Engineer (Civil) committed certain lapses in that he did not get the sub-standard work on the above construction work rectified and

28

also that he failed to initiate reduction item statement for the substandard work reported by the Quality Control Cell and the measurements of the work executed and entered in various Measurement Books and also paid by the applicant were not test checked by him thereby violating provision under Section 7 of the CPWD Manual, Vol.II.

2. The applicant contests this impugned order on the following grounds:-

(i) The allegations in the impugned memo are vague. It did not indicate the reduced rates for which the work was sanctioned.

(ii) No particular location or reference to Measurement Books have been given.

(iii) The disciplinary authority has not considered the various actions taken by the applicant on the observations of the Chief Engineer, and the Quality Control department. The defects pointed out against the applicant's charge were never pertaining to the applicant as they were based on the observations of the Chief Engineer, Quality Control when the applicant had not even joined the division in question.

(iv) The disciplinary authority had not considered that it was impossible for the applicant to cast the raft foundation of Block No.4 simultaneously with blocks No.1, 2 and 3 as foundations of these blocks were already constructed and the

29

sample from the foundation of Block No.4 was never taken and the sample results of the concrete 1:4 were never pertaining to the period for which the applicant was incharge and no sub-standard work was executed by the applicant.

(v) The applicant could not be held responsible for the illegal loading of the quarters in Blocks 1, 2 and 3 because it was not necessary to construct the houses in each blocks in equal heights as the design is to be based on the critical condition of loading and secondly the tilt of the blocks was not because of the poor quality of the work and the tilting of blocks No.2 and 3 was because of poor bearing capacity of the soil and its unpredictable behaviour.

(vi) The work related to the construction in 1982 and after delay of 13 years, the respondents have proposed the disciplinary action. The said quarters constructed had been demolished without any intimation of the applicant and, therefore, no evidence was available for verifying the defects.

(vii) The allegations have been made against the applicant in order to save the predecessor who had now become Chief Engineer. In a similar case in OA 229/91, the Guwahati Bench of the CAT had declared that charge-sheet on that case was illegal on grounds of delay and the SLP was also dismissed by the Supreme Court.

3. The respondents have filed a counter-reply and have averred as follows:-

28

(i) The impugned order is a charge-sheet for minor penalty proceedings and is based on specific lapses brought out against him. These charges were for the lapses on his part in not getting the sub-standard work rectified, failure on his part to indicate the reduction-items statement for the sub-standard report by the Quality Control Cell and for not test checking the measurements of the work executed and entering in various Measurement Books and also paid by him.

(ii) The respondents further contend that there is no specific charge to the allegation in the raft foundation of Block No.4 that continuous raft foundation had to be laid along with Block No.4 with other block. In case of changed site conditions, the matter should have been got settled with the designers of the foundations before actually casting the foundations of block No.4 by the applicant as, he being the Executive Engineer incharge of the work should have taken a correct step. In regard to the sub-soil, the applicant being the Executive Engineer should have taken corrective measures in this respect and should have ^{made} his best efforts to contain the damage to the minimum instead of going ahead with the work thereby causing dead load of virtually 100% on footings of block No.2, 50% on footings of block No.3 and 10% on the footings of block No.4. They have further asserted that the defects were very well known to the applicant. For minor penalty proceedings the necessary details/documents required by the applicant can always be requested by him indicating the relevancy and the custodian thereof so that the documents can be shown to him and the applicant already had made a request in this respect. Respondents further assert that the applicant

26

was Executive Engineer in-charge of the work from February, 1983 to March 1985 and the lapses in the charge-sheet related to only this period and there was nothing vague about them. In regard to the delay in the proceedings, the respondents aver that an many officials were involved in the investigation proceedings and detailed investigation had to be finalised after consultation with various authorities, it took time to finalised the charge-sheet against the applicant apart from other officers involved. He has given opportunity at the preliminary enquiry stage and, thereafter, he was issued as many as 8 reminders from 1992 to 1994 but the applicant did not bother to submit his version and the competent authority was left with no other option except to proceed with the case in the absence of his reply. In fact, the respondents assert that the applicant himself was strictly responsible for 3.1/2 years' delay in the proceedings as he did not respond to any of the reminders.

4. We have heard the learned counsel for the parties and have also perused the record:

5. From the impugned charge-sheet it is seen that the applicant is proceeded against, on the basis of certain lapses on his part in the execution of work specified in the statement of imputations and it is stated that the applicant was at the relevant time incharge of that work. From the respondents reply it is seen that the Chief Engineer, Quality Control advised vide his letter dated 21.12.1982 that pending investigation of structural stability/rectification of defects/sanction of reduced rates statements, corresponding

27

amount should be withheld from the contractor's bill. The applicant admittedly had joined the post in February, 1983. It is argued that withholding of the amount had to be continued till the finalisation of structural stability and sanction of reduced statements. It is also stated that the defects during the 3 years when the applicant was incharge of the work from February, 1983 to March, 1985 were not finalised. The respondents aver that being incharge, he should have settled with designers in case of site condition as, the raft foundation for blocks No. 2, 3 and 4 was designed as continuous raft. It is clear from the reply that the respondents after coming to know of the lapses on the part of the applicant called for his explanation and his version in regard to the alleged lapses at the preliminary enquiry stage only in September, 1990, i.e., almost after 5 years after his leaving the charge. It is stated that many officials were involved and investigation proceedings took sometime for consultation with various authorities. Looking into the technical nature of the work, the alleged lapses have to be clearly pinpointed by the respondents but the applicant has also not responded promptly to the respondents memo of September, 1990 and it is stated that 8 reminders remained unresponded by him. In the rejoinder the applicant submits that the original allegations in the memo dated September, 1990 were dropped and fresh allegations were made in August, 1992. This does not appear to be correct as in the OA, he has referred to another memo dated 11.7.90 and has stated that the allegations therein were dropped. It is relevant to mention here that the applicant has not referred to the allegations of the respondents' memo dated 25.9.1990, in his application. On

being pointed out in the reply, he submits in his rejoinder that the allegations in the memo had been dropped. He has not supported this by any document of the respondents, to substantiate his claim. Consequently it has to be presumed that he has no answer to the delay on his part in responding to the aforesaid memo, as 8 reminders were issued to the applicant which were not responded by him. In the circumstances, it cannot be said that the delay in proceeding against the applicant is totally unjustified. It was open to the applicant to respond to the CVO's memo dated 25.9.90. There is no evidence also on record to suggest that the allegations in the aforesaid memo were substantially and materially different from the impugned charge-sheet. The respondents maintain that charge-memo of 11.7.90 was on entirely different issues and lapses and are not connected with the charges contained in the impugned memorandum. It is also stated by them that because he did not respond to the memo of 25.9.90 and subsequent 8 reminders, that the competent authority was left with no other choice except to process the case for the issue of impugned charge-sheet. In the facts and circumstances of this case, it cannot be said that respondents have delayed the issue of charge-sheet without any justifiable reason. The respondents had in fact given considerable time and opportunity to the applicant to respond to their memo of September, 1990 and even after 8 reminders, since he had not responded to them, they had proposed this charge-sheet and issued the impugned memo. In the circumstances, it cannot be said that the delay in the initiation of the charge-sheet is totally unjustified and unexplained.

(29)

6. In O.A. No. 1229 of 1991 decided by the Guwahati Bench of the Tribunal referred to by the applicant it was held that the charge-sheet was served after a lapse of 12 years although the original explanation was called for in October, 1981 and applicant's reply was also received in December, 1981 which was not found to be satisfactory by the respondents and in the facts and circumstances of the case it was held that the delay was without any justification and satisfactory explanation. In this case, however, there was a delay of more than 3 years attributable to the applicant himself due to failure to respond to the several reminders. Moreover, the nature of the charges alleged required detailed investigation and consultation before the charge-sheet could be finalised and, therefore, we are of the view that there was justification for the delay. In the other cases of **State of A.P. Vs. N. Radhakrishan, JT 1998(3) SC 123**, the facts and circumstances in this case are not parimateria with those in the present case. In those cases delays in conducting the enquiry were found to be unexplained and, therefore, it was held that this delay caused prejudiced to the applicant. In the case of **State of M.P. Vs. Bani Singh, AIR 1990 SC 1308** relied upon by the applicant, the delay in issuing charge-memo was not explained satisfactorily. In the present case, however, we are satisfied that respondents had reasons for the delays, as explained above.

7. In the facts and circumstances of the case, therefore, the decision of the Tribunal relied upon by the applicant in OA 229/1991 of the Guwahati Bench of the Tribunal as well as that of **State of A.P. Vs. N. Radhakrishan (Supra)**, are not of

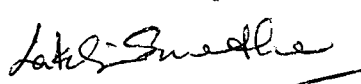
30

much assistance.

8. In the light of the above and in view of the facts and circumstances of the case, we do not consider it appropriate to interfere with the impugned order. However, since the matter related to the works executed sometime in 1983 to 1985, it is necessary that the proceedings should be continued on day to day basis as expeditiously as possible. Applicant is also directed to cooperate fully in the enquiry. It is open to the applicant to raise all his objections and show his defence in the enquiry.

9. In the circumstances, there is no merit in the application and it is accordingly dismissed and the respondents are directed to proceed with the enquiry and complete the same as expeditiously as possible within a period of 4 months and pass appropriate orders within a month thereafter and the applicant is also directed to cooperate fully in the enquiry for its early conclusion. No order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)


(MRS. LAKSHMI SWAMINATHAN)
MEMBER (J)

Rakesh