

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA-874/97

New Delhi this the 13th day of September, 2000.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman (J)
Hon'ble Mr. Govindan S. Tampi, Member (Admnv)

Vijender Kumar,
S/o Late Shri Vishwa Nath,
R/o 8A/108, W.E.A.,
Karol Bagh,
New Delhi-110 005.

...Applicant

(By Advocate Sh. V.K. Mehta)

-Versus-

1. Union of India,
through Secretary,
Ministry of Urban Development,
Nirman Bhavan,
New Delhi-110 011.
2. Director General of Works,
C.P.W.D.,
Nirman Bhavan,
New Delhi-110 011.
3. Union Public Service Commission
through its Secretary,
Dholpur House,
Shahjahan Road,
New Delhi-110 011.

...Respondents

(By Advocate Shri Madhav Panikar)

O R D E R

By Justice V. Rajagopala Reddy:

The applicant was working as Executive Engineer (PWD). He was incharge of the construction of the Government Co-Educational Senior Secondary School Building, Phase-II, Mundela Kalan, Najafgarh, Delhi. He was issued a chargesheet for major penalty in 1992 on three articles of charge on the allegations that sub-standard material had been allowed for the construction of the work due to which beams developed cracks within a year of completion. He retired on superannuation on 31.12.92. The proceedings were continued under Rule 9 (ii) (a) of the CCS (Pension) Rules, 1972. As he denied the charges an enquiry was held and the

CV

10

✓ enquiry officer found that he was guilty of the articles of charges No.II and III and not guilty for Article I and IV. The President, having considered the enquiry report, the representation of the applicant against the findings of the enquiry officer and after consulting the UPSC agreed with the findings of the enquiry officer and the recommendations of the UPSC and imposed the punishment of withholding of 20% of the monthly pension on a permanent basis, by the impugned order dated 13.8.96. Aggrieved by the said order the applicant filed the present OA.

2. We have heard the learned counsel for the applicant and the respondents. The learned counsel for the applicant Shri V.K. Mehta submits that the enquiry is vitiated in view of the inordinate delay in initiating the disciplinary proceedings. He contends that as the lapses pertain to the period November 1981 to May, 1983 and the test report was obtained in 1987, there could be no reason for initiating the enquiry only in 1992, just before his retirement in December, 1992. We are unable to agree. It is true that the courts have held that inordinate and unexplained delay in initiating or completing the enquiry would vitiate the final order as that would cause prejudice to the charged officer and that his case for promotion would also be unreasonably delayed in case of his eventual exoneration of the charges. But if the delay has been properly explained, the respondents cannot be faulted. In the reply it was averred that the PE report dated 4.9.86 regarding the building in question was sent to the Director, Vigilance, Delhi, requesting CPWD to initiate necessary action in the matter. But the report of the Chief Technical Examiner (CTE) could not be made available. It took some

✓

(3)

time to secure the report of the CTE. The CTE in its letter dated 6.3.87 stated that it was not the practice to send the CTE report to others in which complaints are referred by anti-corruption Branch. However, in the absence of CTE's report it was not possible to proceed further in the matter. The Deputy Secretary, Vigilance Delhi in his letter dated 18.12.87 addressed CPWD Vigilance Unit to make available the final report about the quality of work. The CPWD Unit in its letter dated 1.2.88 addressed to the Deputy Secretary, Vigilance requested to make available the original records alongwith the detailed investigation report. It was, however, informed that the records are with the CTE but on verification it was found that the records were not available with them. As the records were found to have already been handed over to the Auditor/AE of the Division concerned in March, 1988, the records could be sent to the CPWD, Vigilance Unit only on 23.9.91 mainly because of the confusion that has arisen in the description of the name of the School Mundela Kalan and Najafgarh. Thereafter the case was investigated in detail and the report was submitted by the CPWD on 24.11.92 and the chargesheet was issued to the applicant on 29.12.92 by the President. It is, therefore, contended by the learned counsel for the respondents that the delay was due to the facts stated above and could not be said as culpable on the part of the respondents.

3. From a perusal of the dates and the events given by the respondents in the issue of the chargesheet since initially the report itself was made on 9.12.86 and since then the delay was explained till the date the chargesheet was issued, it cannot be said that the delay occurred was due to the negligence of the respondents. It

(4)

12

cannot be said that there is inordinate and unexplained delay in this case. It should also be noted that the charges are very serious and in our view mere delay even if it is not properly explained, will not vitiate the enquiry or the final order. In the circumstances the objection as to the delay is rejected.

4. The next contention is as to the discrimination against the applicant. It is the case of the applicant that he was adversely discriminated in that though the junior engineers and the Assistant Engineers were stated to be responsible for using sub-standard material there is no reason to proceed only against the applicant. This contention appears to be wholly baseless. It is clearly stated in the reply that the chargesheet against the Junior Engineer Sh. R.P. Sharma was prepared on 11.2.93 but it could not be served upon him as by then he had already expired. Regarding the Assistant Engineer Sh. B.N. Mittal, by the time the investigation was completed in 1992 he had retired from Government service on 31.12.90.

5. The next contention of the learned counsel is that Exhibits S-3, S-4 and A-5 which are the reports as to the quality of work, relate to the work of Government Co-Educational Senior Secondary School Building, Najafgarh, New Delhi and not to the Government Higher Secondary School, Mundela Kalan, New Delhi which is the work that has been entrusted to the contractor under the contract agreement, Exhibit D-2. It is true that in the agreement of contract the work was described as the School at Mundela Kalan, New Delhi. Again in the chargesheet the work was referred to as Co-Educational Senior Secondary School Building Phase-II,

13

Mundela Kalan, Delhi. Thus, three different names are mentioned and according to the prosecution it refers to one and the same building whereas according to the applicant they are two different schools in two different areas. This question has been argued before the enquiry officer and he has addressed himself as to the correctness of the arguments. He has considered the evidence on this point deposed to by SW-2 and SW-1 and the documentary evidence S-3, S-5 and S-7 and S-8 and came to the conclusion that the School in Najafgarh as well as the School at Mundela Kalan at Najafgarh is the same School. It should be noticed that S-3 to S-5 relate to the Government School Building Phase II Mundela Kalan, Najafgarh, Delhi. The confusion in this case is as to whether the School at Mundela Kalan is different from the School at Najafgarh. As seen above, S-3 to S-5 being related to the School at Mundela Kalan, which is situated in Najafgarh, it cannot be said that they are two different Schools in two different areas. When once the enquiry officer having considered and examined and came to the conclusion that both the schools are the same to which S-3 to S-5 pertain, we cannot interfere with the said findings, as it cannot be said as wholly perverse or unreasonable. Except stating that they are situated in two different areas which is refuted by the respondents, there is no acceptable material placed by the applicant to show that there are two schools.

6. The learned counsel seeks to advance several arguments as to the validity of the findings given by the enquiry officer. It is his contention that as per the letter dated 10.2.78 of the Director General of Works Exhibit S-4 which clearly delineating the control over the

14

site in so far as the centering and shuttering for RCC work reinforcement and concrete and Brick Masonary, the Assistant Engineer and the Junior Engineer were responsible and not the Executive Engineer. It was also argued that final bill was passed by another Executive Engineer, who has taken over charge in 1983 who certified that the work has been carried out as per the CPWD specifications and also issued the completion certificate. Hence, thereafter the applicant cannot be faulted for the quality of work. There is no substance in the pleas. It should be kept in mind that as stated supra the Assistant Engineer and Junior Engineer could not be proceeded against for the reason that one had expired and the other had retired before the chargesheet could be served. Though the applicant had handed over charge in 1984 the completion certificate does not certify that the quality of work has been carried out as per the CPWD specifications. The quality of work would be found out only after any indications come to light after the construction of the work. Since in the present case beams developed cracks in 1987 and as the applicant was the concerned Executive Engineer, he was issued the chargesheet. We do not find any illegality in this. In fact the enquiry officer has gone into the question and also found that he was responsible for the charge.

7. It is also contended by the learned counsel that the evidence, both oral and documentary is wholly worthless and the enquiry officer had misdirected himself and misappreciated the entire evidence on record and that the evidence of SW-5 and the documents at Exhibit S-3 to S-5 are of no credibility.

(15)

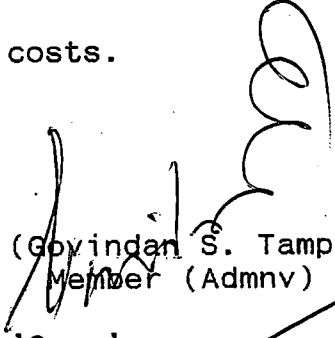
8. It should be kept in mind that it was not in dispute that the beams have been constructed when the applicant was incharge. The evidence of SW-6 supports the conclusion that there were minor cracks. On the basis of evidence both oral and documentary it was found by the enquiry officer that the sub-standard material has been allowed to be used in the construction of the building. Five beams developed cracks. The contention of the applicant that the beams were tampered with was also negatived by the enquiry officer. He rejected the evidence of SW-6 as not reliable. Thus, he came to the conclusion that the applicant was responsible for accepting sub-standard work, and it was so standard that some beams have developed cracks within a year of completion which need strengthening by guniting and as the applicant was the Executive Engineer incharge of the work he was responsible for the general quality of work. In view of the above the charges II and III were found established, which have been accepted by the President of India in consultation with the UPSC.


9. The learned counsel for the applicant raises several contentions as to the appreciation of the evidence. This cannot be said a case where there is no evidence. This court, exercising judicial review jurisdiction will not interfere with the findings of the enquiry officer, as we are not an appellate court.

(8)

16

10. In view of the aforesaid discussion, as we do not find any infirmity in the impugned order, we do not find any warrant to interfere with the impugned order. The OA, therefore, fails and is accordingly dismissed with. No costs.


(Govindan S. Tampi)
Member (Admnv)
'San.'


(V. Rajagopala Reddy)~
Vice-Chairman (J)