

Central Administrative Tribunal, Principal Bench

OA-1520/94

New Delhi this the 9th day of November, 1999.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman(J)
Hon'ble Mrs. Shanta Shastry, Member (A)

S.C. Anand

...Applicant

(Applicant in person)

-Versus-

Secretary,
Deptt. of Supply & Ors.

...Respondents

(By Advocate Shri N.S. Mehta)

1. To be referred to the Reporter or not? YES/NO

2. To be circulated to other Benches of
the Tribunal?

YES/NO


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

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

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S.C. Anand,
S/o Shri Jia Ram Anand,
R/o A-1, Greater Kailash Enclave-II,
New Delhi. ...Applicant

(Applicant in person)

-Versus-

1. Secretary, Deptt. of Supply,
Nirman Bhavan, New Delhi.
2. Secretary, UPSC,
Shahjahan Road, New Delhi.
3. Sh. A.K. Rastogi,
Commissioner, Departmental Inquiries,
Jamnagar House, Akbar Road,
New Delhi.
4. Shri D. Prakash, Commissioner,
Departmental Inquiries,
Jamnagar House,
Akbar Road, New Delhi. ...Respondents

(By Senior Standing Counsel Shri N.S. Mehta)

ORDER

By Reddy, J.-

The applicant, who was working as Deputy Director (Inspector) in the office of the Director General, Supplies and Disposals (DGS&D for short) Bombay during the relevant period (since retired) challenges the order dated 15.1.92 (Annexure A-1) whereby he was awarded the penalty of censure and also prays for his promotion to the post of Director from the date when his juniors were promoted along with consequential benefits.

2. The facts leading to the passing of the above order are stated in brief as follows:

CAS

(2)

2.1 M/s Agro precision Implements Pvt. Ltd.

Ahmedabad has applied to Director General, Supplies and Disposal for registration as an approved contractor. The application was sent to the Director of Inspection (DI for short) Bombay on 4.2.82. Some deficiencies were pointed out and the firm was asked to rectify the same. Accordingly the mistakes were rectified and the firm resubmitted the application. The department finally recommended consideration of the firm for registration for one year for concrete mixers. In the meantime, the DGS&D has floated a separate tender inquiry for supply of concrete mixers on rate contract. Five firms including the above firm quoted in response to the tender inquiry. The applicant, on consideration of necessary information, stated that the firm could be considered capable for manufacturing concrete mixer as per the tender inquiry requirements. The DI by his letter dated 14.10.82 asked the Inspecting Officer Ahmedabad for clarification on certain points. After the said firm had clarified on the points raised, the applicant by telegram dated 14.10.82, recommended the firm for rate contract for the supply of concrete mixers. It is, however, the case of the department that this telegram of the applicant was contrary to the note of the DI dated 29.10.82 wherein the Director has recorded that the firm might be recommended for price agreement. Departmental proceedings were initiated against the applicant under Rule 14 of CCS (CCA) Rules in the proceedings dated 12.6.85 on the following article of charge:

"Shri S.C. Anand while functioning as Dy. Director of Inspection in the office of Director of Inspection,

Cd/-

Bombay during the period 1982 committed grave misconduct inasmuch as he acted contrary to the orders dated 29.10.82 given by the Director of Inspection, Bombay on file No.CO/C&R/1688 and on his own recommended the firm M/s Agro Precision Implements Pvt. Ltd., Ahmedabad for award of Rate Contract for model 200 T Type Concrete Mixers.

Shri Anand by his aforesaid acts of commission and omission failed to maintain absolute integrity and devotion to duty and conducted himself in a manner unbecoming of a Government servant and contravened the provisions of Rule 3 (1) of the CCS (Conduct) Rules, 1964."

2.2 The applicant was asked to give his statement of defence and according to the applicant he had submitted his defence statement. However, as it was not brought on record it was treated as if there was no defence statement. An enquiry Officer was appointed to conduct the enquiry. The enquiry officer examined certain witnesses on behalf of the prosecution as well as on the defence and on the basis of the evidence on record, arrived at the following findings:

"Findings:

(a) The charge that the C.O. acted contrary to the orders dated 29.10.1982 given by the D.I. Bombay in Ex. S-1 and of his own recommended the firm M/s. Agro Precision Implements Pvt. Ltd., Ahmedabad, for award of rate contract for Model 200 Type concrete mixers is partially established to the extent that the C.O. did pass orders for recommending the firm as stated above when the Director of Inspection was away on tour. However, the evidence available on record also indicate the following which may be construed as extenuating circumstances:-

(i) The orders of the D.I. dated 29.10.1982 recommending the firm for price agreement appears to have been tentative or provisional in any case not final do not appear to be well reasoned. On the contrary, the notings of the C.O. on

several occasions in the same file recommending the firm for rate contract appear to be more well-reasoned and based on facts.

(iii) Price Agreement as a form of contract appears to be less legally enforceable than a rate contract and hence less in the interests of DGS&D.

(iv) Deputy Directors of Inspection were fully authorised to finally dispose-off capacity reports of the type under consideration in this case without reference to any higher authority.

(v) Director of Inspection Bombay had himself authorised the C.O. and his other Deputy Directors to dispose-off capacity/registration reports during his tour period.

(b) The charge that the C.O. took this decision in order to favour the firm is not established.

(c) The charge that the C.O. did not put up the file to the D.I. later to apprise him of the orders passed by him and get it ratified by him is partially established to the limited extent that the C.O. did not put up the file to the D.I. specifically to get the C.O.'s orders ratified ex-post-facto. However, there is evidence on record to indicate that the CO did put up the file to the Director about 10 days after his orders dated 9.11.1982 and had raised the entire issue of price agreement and rate contract which is very much relevant for the case under discussion and had not therefore made any effort to conceal his earlier decision."

2.3 It is evident from a close reading of all the findings that the enquiry officer has almost exonerated the applicants of the charge.

2.4 The enquiry officer's report was submitted on 21.2.89 to the disciplinary authority. The disciplinary authority having considered the findings in the E.O.'s report, however, found that the charges were established. The President considering the advice tendered by the Union Public Service Commission (UPSC) in

considering the record of the case sent their advice in its letter dated 24.10.91 which was also of the view that the charge against the applicant was proved, imposed the penalty of "censure" on the applicant by order dated 15.1.92, which is challenged in the OA.

3. The case of the applicant is that he has not taken any decision in violation of the note put up by the DI. In fact the DI had authorised him to finalise the tender inquiry of the firm concerned and that the applicant was competent to decide both the capacity and registration papers and in case the Director was of the view that the action taken by the applicant was erroneous it was open to him to have reviewed the order passed by the applicant and that no loss was also caused to the department as the firm was not given the contract. It is argued by the applicant, who appeared in person, that the enquiry officer had exonerated him of the charge and if the findings of the enquiry officer were not accepted by the disciplinary authority the applicant should have been afforded an opportunity to represent before any final decision was taken to award the penalty. It is, therefore, pointed out that the applicant suffered prejudice in his defence and the same is also violative of the principles of natural justice. It was further contended that the UPSC has erred in coming to its own conclusions based on conjectures and presumptions dehors the evidence on record or the findings of the Enquiry Officer. The findings of the UPSC and disciplinary authority are, therefore, opposed to the evidence on record and the impugned order is, therefore, liable to be set aside.

4. It is further contended that the applicant was denied of his valuable right of promotion, though his juniors have been promoted and that the punishment of censure should not have come in the way of considering his case since it was a minor punishment.

5. An elaborate counter was filed by respondent No.1 stating that the applicant has recommended the firm in question on rate contract instead of price agreement as decided by the DI and further not getting the same ratified clearly amounted to misconduct under the CCS (CCA) Rules. Since the firm was unregistered and untried by DGS&D it should not have been recommended for the grant of rate contract and it should be given only price agreement inconformity with the provisions of the 'manual'. Hence, the applicant acted unauthorisedly in issuing the order. It was also contended vehemently by the learned Senior Standing counsel for the respondents, Shri N.S. Mehta that the Tribunal will not normally interfere with the findings arrived at by the disciplinary authority and that the jurisdiction of the Tribunal would be limited only to see whether the findings were arrived at by following the due procedure, and not to see whether the findings are correct.

6. We have given a careful consideration of the arguments of the applicant as well as the arguments of the learned counsel for the respondents and perused

the record in the case, produced before us pertaining to the proceedings relating to the DPC meeting held for considering the case of the applicant for promotion.

7. The applicant at the relevant time in 1982 was a Deputy Director (Inspection). He retired from service on 30.1.97. The gravamen of the charge as seen from the charge extracted in the narration of the facts is that the applicant has recommended rate contract to the firm for the supply of mixers contrary to the note of the DI dated 29.10.82. It is not the case of the respondents that by virtue of the recommendation of the applicant the contract was in fact awarded and that the department suffered any loss by virtue of the contract. Thus the charge comprises of the applicant's remissness in not strictly followign the note of the Director.

8. From a close reading of the enquiry officer's report and the findings arrived at by the enquiry officer it is manifest that the crucial note in question dated 29.10.82 of the DI recommending the firm for price agreement was only tentative and not final and that the applicant had on previous occasions made notings recommending the firm for rate contract which were well reasoned and that the price agreement was less in the interest of DGS&D than the rate contract which is more beneficial to the department. It was also found that the Director had authorised the delinquent and other Deputy Directors to dispose of capacity reports during his tour period and that though the telegram given by the applicant was not put up to the Director subsequently, he had not made any attempts to conceal his earlier

decisions. It was also found that the applicant has also given various valid reasons for giving the telegram during the tour period of the Director. More importantly the enquiry officer has found that the decision of the applicant was not taken in order to favour the firm. A clear finding to that effect was also given. In the circumstances on all counts the enquiry officer has exonerated the applicant. It is true that the disciplinary authority is empowered under law to disagree with the findings of the enquiry officer. But it is incumbent upon the disciplinary authority if there is such disagreement, to record reasons and give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the enquiring authority did not suffer from an error and that there can be no occasion to take a different view.

9. We have perused the advice of the USPC. We wish to point out that the UPSC has ^{er}fallen into an error in coming to the conclusion that the enquiry officer held that the article of charge was proved against the applicant. This conclusion, in our view, is wholly unfounded. As stated by us supra the enquiry officer has exonerated the applicant of the gravamen of the charge.

10. Further the UPSC proceeded to analyse the facts of the case and while doing so held that the applicant exhibited undue interest in awarding the rate contract to the firm. It was conjectured that there was hardly any justification to issue the letter dated

9.11.82 when the DI was on tour and that the approval of the DI was necessary before communicating it to the DGS&D. These conclusions are contrary to the conclusions of the enquiry officer. The disciplinary authority was also of the wrong view that the enquiry officer found the applicant guilty.

11. Thus, this is a case where the disciplinary authority has disagreed with the findings of the enquiry officer. It is not in dispute that the applicant was not afforded any opportunity of representation against the conclusions or reasons given for disagreement of the findings of the enquiry officer. The applicant relies upon Yoginath D. Bagde v. State of Maharashtra & Anr., JT 1992 (6) SC 62, in support of his contention. Learned counsel for the respondents, however, contends that it was not incumbent, under the rules, for affording of any opportunity of hearing even in cases of disagreement by the disciplinary authority with the findings of the enquiry officer. It is true that under Rule 15 (2) of the CCS (CCA) Rules, it was not required to afford of an opportunity of hearing if the disciplinary authority disagrees with the findings of the enquiry officer. The disciplinary authority is entitled to proceed to record its reasons for such disagreement and record its own findings on the charge on the basis of evidence and impose punishment on the Govt. servant. In the case of Yoginath D. Bagde (supra) the enquiry held under Rule 9 of the Maharashtra Civil Services (Disciplinary & Appeal) Rules, 1979 was under consideration. In those rules also there was no provision for affording an opportunity in cases of

disagreement with the findings of the enquiry officer by the disciplinary authority. But the Court, after considering several decisions of the Supreme Court on the point held thus:

"33. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of Article 311 (2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent upto the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or Service Rule including Rules made under Article 309 of the Constitution."

9

12. Applying the above ratio to the facts of the present case, as the disciplinary authority, without giving any ~~issued~~ [✓] any opportunity of hearing, has decided to award the punishment disagreeing with the findings of the enquiry officer, we have to hold that the enquiry is vitiated.

13. The next contention raised by the applicant also appears to be equally substantial, as there is no evidence on record to hold the applicant guilty of the charge.

14. The UPSC has taken the view that the applicant has shown undue interest for recommending the rate contract in the firm contrary to the note of the DI where he suggested to give price contract and that there was hardly any justification to issue the said letter by the applicant before the DI returned from tour which was only the next day of the recommendations made by the applicant. In fact this finding was given purely on conjectures. The UPSC has not cared to look into the enquiry officer's report at all. Nowhere in the advice of the UPSC a mention was made about the findings of the enquiry officer. The enquiry officer examined one prosecution witness SW-1 and one defence witness and marked several documents. SW-1 is the Deputy Director of Inspection Mr. Arora and on whose evidence the entire charge rests. On the basis of the exhibit D-3 which shows the duties and responsibilities of the Deputy Director Inspection dated 16.2.63 and the letter dated 20.2.61, exhibit D-4 it was clearly found by the enquiry officer that the Deputy Directors were empowered to

10

finalise both the capacity and registration report till February, 1991 and thereafter it became necessary to get the necessary approval of the Director before finalising the registration report alone. Thus the Deputy Directors were competent to finalise the capacity report on their own. There was also evidence to corroborate this in exhibit A-6 which is the compilation of his own report issued by the Director of Bombay. Further exhibit D-5 the instructions issued by the DGS&D also corroborated the above findings. It was stated by Enquiry Officer as a finding of fact that "the documentary evidence adduced by the defence is overwhelming in favour of the CO's contention that he was fully authorised to finalise the capacity report." Thereafter the enquiry officer has considered the reasons given by the applicant for recommending rate contract. DI has only marked the file to Shri Arora DDI. The enquiry officer has also considered the reasons why the applicant has called for the file on 9.11.82 and found (vide D-6) that all the important and urgent work should be disposed of with the approval of the applicant and only if the applicant goes on leave such work should be disposed of by the DDI Arora. Enquiry officer came to the conclusion that the applicant was entitled to finalise the rate contract to the firm and that the approval of the DI was not necessary. He has also given reason that the applicant being the concerned DDI and he was authorised by the Director himself he has finalised the contract. It was only found that the applicant can only be faulted for the technical lapse in not explicitly putting up the file to the Director on his return from tour. But again the enquiry officer found that the action of the applicant

was in accordance with the relevant instruction. The enquiry officer also considered whether the price agreement is beneficial or the rate agreement and found that interest of DGS&D would be better protected by entering into rate contract rather than price contract. It was also found that the action of the applicant did not confer any favour on the firm nor he ^{had} any intention to favour the firm. In view of the above evidence on record both oral and documentary and the findings arrived at on the basis of the documentary evidence the findings arrived at by the UPSC and Disciplinary Authority can only be categorised as mere surmises and not based on evidence.

15. It is true that the Tribunal will not go into the validity of the findings reached by the employer in awarding the punishment. But the Tribunal, certainly, has jurisdiction to interfere with the orders passed by the Disciplinary Authority, if they are opposed to the evidence on record and if there is no evidence on record for the conclusions drawn as in such eventuality the order would become an arbitrary exercise of power. In the Yoginath's case (supra) this question came for consideration and it was held thus:

"The law is well-settled that if the findings are perverse and are not supported by evidence on record or the findings recorded at the domestic trial are such to which no reasonable person would have reached, it would be open to the High Court as also to this Court to interfere in the matter. In Kuldeep Singh v. The Commissioner of Police & Ors., JT 1993 (8) SC 603, this Court, relying upon the earlier decisions in Nand Kishore v. State of Bihar AIR 1978 SC 1277 = (1978) 3 SCC 366 = (1978) 3 SCR 708; State of Andhra Pradesh v. Sree Rama Rao, AIR 1963 SC 1723 = (1964) 3 SCR

25; Central Bank of India v. Prakash Chand Jain AIR 1969 SC 983; Bharat Iron Works v. Bhagubhai Balubhai Patel & Ors. AIR 1976 SC 98 = (1976) 2 SCR 280 = (1976) 1 SCC 518 as also Rajinder Kumar Kindra v. Delhi Administration through Secretary (Labour) & Ors. AIR 1984 SC 1805=(1985) 1 SCR 866 = (1984) 4 SCC 635, laid down that although the court cannot sit in appeal over the findings recorded by the Disciplinary Authority or the Enquiry Officer in a departmental enquiry, it does not mean that in no circumstance can the court interfere. It was observed that the power of judicial review available to a High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and the Courts can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse."

16. In the instant case as we have scrutinised the evidence and found that the conclusions drawn by the disciplinary authority and the UPSC and on the basis of which the impugned order was passed are opposed to the evidence on record, We have to hold that the impugned order is vitiated and is, therefore, quashed.

17. The applicant's last contention relates to his promotion. We have perused the records in the case and the minutes of the DPC held in 1984 and it was found that the applicant's name was kept in a sealed cover on the ground that disciplinary proceedings were pending against him. It was also alleged that subsequently no DPC was held and only in 1996 ^L when the DPC ~~was~~ the applicant was promoted on ad hoc basis as Director on 16.9.96 on the eve of his retirement on 30.9.97. The question raised at the Bar that minor penalty of "censure" even if it were valid, would not have been a bar for considering the applicant for regular promotion

need not be decided, as we have now set aside the impugned order. The applicant is, therefore, entitled for consideration for promotion to the post of Director with effect from the date of the promotion of his junior consequent to the DPC held in 1984 and for the grant of consequential benefits, including financial benefits. We, therefore, direct the respondents to convene a review DPC to consider the promotion of the applicant treating him as if there were no disciplinary enquiry pending against him or no punishment was awarded to him, w.e.f. 1984.

18. The OA is accordingly allowed with costs of Rs.5,000/- (Rupees five thousand only).

Shanta Shastri
(Smt. Shanta Shastri)
Member (A)

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

"San."