

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1572/94

199

T.A. No.

DATE OF DECISION 7-9-99

Sh. K.K. Chakravarty

....Petitioner

Sh. R. Doraiswamy

....Advocate for the
Petitioner(s)

VERSUS

UOI through the SecretaryRespondent
to the Govt. of India, Department
of Supply.

Sh. N. S. Mehta, Sr. Standing CounselAdvocate for the
Respondents.

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble Shri S.P. Biswas, Member (A)

1. To be referred to the Reporter or not? YES
2. Whether it needs to be circulated to other Benches of the Tribunal? NO.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

O.A. 1572/94

New Delhi this the 7 th day of September, 1999

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri S.P. Biswas, Member(A).

K.K. Chakravarty,
S/o late Shri Dines Chandra Chakravarty,
R/o 7B, Evershine Housing Society,
Block 'D' Vikaspuri,
New Delhi.

... Applicant.

By Advocate Shri R. Doraiswamy.

Versus

Union of India, through,
The Secretary to the Govt. of India,
Department of Supply,
'C' Wing, Nirman Bhawan,
New Delhi.

... Respondent.

By Advocate Shri N.S. Mehta, Sr. Standing Counsel.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the respondents' action in issuing charge-sheet dated 30.4.1991 and the penalty order passed after holding disciplinary proceedings against him dated 22.1.1993 reducing his pay in the time scale of pay for three years without cumulative effect. The revision petition filed by him against the penalty order passed by the President has also been rejected by order dated 11.2.1994.

2. The brief facts of the case are that the respondents initiated minor penalty proceedings against the applicant for certain alleged acts of commission and omission, while dealing with a purchase order dated 15.10.1984 placed on M/s K.K.K Mills, Ludhiana for supply of woollen yarn. The applicant has stated that he had submitted a detailed representation against the charge-sheet dated 30.4.1991. Shri Doraiswami, learned counsel for the

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applicant has very strenuously argued that the charge against the applicant that he had stalled the proposal of the Section Officer (S.O.) to refix the delivery date as per the terms and conditions of the offer of firm has not been established by the evidence. His contention is that a false Note had been prepared by the concerned S.O that he had discussed the case with the applicant. He has also submitted that the letter issued by the S.O. on 8.1.1985 is without the approval of the Director which the S.O. should have obtained as the value of the contract was more than Rs. 20 lacs. The applicant has annexed the extracts of the relevant file. According to the learned counsel, after the Note of the S.O. Shri J.S. Panwar dated 9.11.1984, he did not put up the file further to the applicant till 2.2.1985 when the Note was seen and signed by the applicant. He has submitted that there was no rhyme or reason for the applicant to stall the proposal of S.O. to refix the delivery date, as requested by him. Learned counsel has submitted that when another S.O started dealing with the concerned file, the applicant had noted that Shri Panwar, the then Section Officer, had not made correct Note as there was no discussion with him which has been noted by the applicant on 26.6.1985. This later Note had been recorded by the applicant before he held the discussion with the Addl. Legal Advisor on 5.7.1985, wherein that officer had discussed with Shri M.C. Panda, Director (W.L) and the applicant. From these Notes in the file which have been extracted and copies placed by the applicant as annexures to the O.A. learned counsel has very strongly argued that all these are manipulated at the hands of the then SO Shri J.S. Tanwar for which no action has been taken by the respondents whereas the applicant has been illegally punished for having stalled proposal of the S.O. to refix the delivery date as per the offer made by the firm. In the circumstances, the

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learned counsel has submitted that as there is no evidence of any wrongful action taken by the applicant, the impugned charge memo and penalty orders passed by the respondents should be quashed and set aside with costs.

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3. The respondents in their reply have denied the above allegations. They have submitted that they have not taken any illegal action against the applicant. They have submitted that the charge-sheet was issued to the applicant for specific misconduct relating to the refixation of delivery date in the Acceptance of Tender dated 15.10.1984 placed on the firm M/s K.K.K. Mills, Ludhiana for supply of woolen yarn. They have submitted that having not found the applicant's explanation satisfactory, the disciplinary authority decided to forward the case records to UPSC for their advice in the matter which had held that the applicant stalled the proposal of S.O. to refix the delivery date. They have submitted that the disciplinary proceedings have been conducted in accordance with law and there is no merit in the applicant's contentions. Shri N.S. Mehta, learned Sr. Counsel, has submitted that the applicant's action had caused loss to the department of over Rs.9 lacs by way of additional cost in repurchase. He has also submitted that the disciplinary authority i.e. the President after careful consideration of records, facts and circumstances of the case, concluded that the applicant stalled the proposal of the S.O. to refix the delivery date. Learned Sr. counsel has also submitted the original records for our perusal, extracts of which are already on record. Shri N.S. Mehta, learned counsel, has contended that if the contention of the learned counsel for the applicant that the applicant had stated in his Note dated 26.6.1985 that he had not discussed the matter with the S.O., that is after his Note of

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9.11.1984, is tenable, then the applicant could have mentioned this fact much earlier when he admittedly signed the Note dated 2.2.1985. This has not been done. He has also submitted that in the Note of Ministry of Law and Justice while it is recorded that the case was discussed with Shri M.C. Panda, Director (W.L) and the applicant, the applicant had not again stated that he had not discussed the matter earlier with the Section Officer. Learned counsel has, therefore, submitted that since the applicant was admittedly the senior officer of the S.O., he cannot be exonerated from the charge of delay caused in finalising the proposal of the firm which delay has, in fact, caused loss to the Government. In the circumstances, he has submitted that the competent authority i.e. the President after considering the records and the evidence placed before him during the disciplinary proceedings came to the conclusion that the applicant should be punished. He has submitted that the Tribunal ought not to interfere with the penalty imposed which, according to him, has been done in accordance with the rules. He has, therefore, submitted that the application may be dismissed.

4. We have also heard Shri Doraiswami, learned counsel at some length in reply to the submissions made by the learned counsel for the respondents. He has submitted that while the S.O Shri Panwar has only been given a penalty of censure, the applicant has been given a more severe punishment by the respondents in respect of the same contract.

5. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

6. The applicant was admittedly a more senior officer to the S.O, Shri Tanwar during the relevant time when the contract for which he was charge-sheeted had taken place. From a perusal of the relevant records submitted by the respondents, we are unable to agree with the learned counsel for the applicant that there has been an interpolation in the Note of the Section Officer dated 9.11.1984 that he had discussed the matter with the applicant. In any case, it is admitted by the applicant that he had signed the Note on 2.2.1985 and since he was the senior officer who was dealing with the file, he could have pointed out the wrong Note at that time itself which he has failed to do. The contention of the applicant's counsel that the applicant had pointed out that the Section Officer had not discussed the case with him on 26.6.1985 i.e. nearly four months after he admittedly signed the Note on 2.2.1985, can hardly be a factor which is sufficient to set aside the impugned charge-sheet or penalty orders. It is settled law that the Tribunal is not to sit as a Court of Appeal or to reappreciate the evidence or substitute its own conclusion while exercising the power of judicial review. From these facts, it is, therefore, seen that there is no unreasonableness or arbitrariness in the conclusions arrived at by the President in passing the penalty orders after holding the disciplinary proceedings against the applicant in accordance with the provisions of the CCS (CCA) Rules, 1965. We are also not impressed by the arguments of the learned counsel for the applicant that while the S.O. has been given a penalty of censure, the applicant, who was the supervisory officer, senior in rank has been given unduly as more severe punishment in respect of the same contract which requires the penalty to be set aside. That cannot be a ground to set aside the penalty orders imposed on the applicant reducing his pay by three stages in the time

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scale of pay for three years. It is settled law that the Tribunal ought not to interfere with the findings of the Inquiry Officer or the competent authority where the conclusions are not arbitrary or perverse. In this case, having regard to the facts and circumstances, we find that the procedural safeguards in favour of the charged applicant have been fully met with and there is no justification to interfere with the penalty orders passed by the respondents.

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7. For the reasons given above, we find no merit in this application and it is accordingly dismissed. No order as to costs.


(S.P. Biswas)

Member(A)

'SRD'


(Smt. Lakshmi Swaminathan)

Member(J)