

Central Administrative Tribunal, Principal Bench

Original Application No.2354 of 2000

New Delhi, this the 28th day of May, 2001

Hon'ble Mr. V.K. Majotra, Member(A)
Hon'ble Mr. Kuldip Singh, Member (J)

M.C.Sharma s/o Shri Shankar Lal Sharma
aged 60 years,
last employed as Chief Departmental Representative,
CEGAT, Ministry of Finance (Department of Revenue)
New Delhi and presently residing at
C-II/82, Bapa Nagar, Dr. Zakir Hussain Marg,
New Delhi-110003 - Applicant

(Appeared in person)

Versus

Union of India through Secretary (Revenue)
Ministry of Finance
Department of Revenue,
North Block,
New Delhi-110001 - Respondent

(By Advocate - Shri R.R. Bharti)

O R D E R (ORAL)

By Hon'ble Mr. V.K. Majotra, Member (A)

Applicant has challenged order dated 12.11.99
(Annexure - 1) whereby penalty of censure has been
imposed on him on the advice of Union Public Service
Commission (in short 'UPSC'). Vide memo dated
14/18.9.95, the following article of Charge was framed
against the applicant:

"That Shri M.C. Sharma, while working in
the capacity of Chief Controller, Govt. of
Opium and Alkaloid Factories, Gwalior,
during the period from 9.5.83 to 23.6.86
failed to maintain absolute integrity and
devotion to duty in the matter of purchase
of two numbers of Clarifiers from M/s
Paschedag of West Germany for modernisation
of the plants at Govt. Opium & Alkaloid
Works, Neemach and Ghazipur without
following the procedures mentioned in DGS&D
Manual for purchase of imported equipments
in as much as he accepted late/revised
tender of M/s Filton India, Pune (for the
equipment of M/s Paschedag of West Germany)
in which the concerned firms enhanced its
price for the equipments considerable from
the price quoted in the first tender, and

9

placed supply order for the said equipments on 2.2.85 at a total cost of Rs.14,55,793.81 on M/s Paschedag of West Germany (Indian Agent M/s Filtron India, Pune) by ignoring the lowest rate of M/s Alfa Leval for 2 numbers of Centrifugal Decanter and the equipments so purchased were found totally unsuitable for the purpose for which they were purchased and the supplier could not be held responsible as Shri Sharma did not mention the "Pre-shipment Inspection" and penalty clause in the said supply order which resulted in total loss of Rs. 14,55,793.81 to the Government of India also.

And, thereby, the said Shri M.C. Sharma, contravened Rule 3(1) (i) and (ii) of CCS (Conduct) Rules, 1964."

2. While the applicant was working as Chief Controller of Opium and Alkaloid Factories, Gwalior during the period 9.5.83 to 23.6.86, National Chemical Laboratory (in short "NCL") was appointed as consultant by the Government for advising on the scheme of modernisation of Opium and Alkaloid factories. A committee of management was appointed under the chairmanship of Additional Secretary in the Ministry of Finance, Department of Revenue for co-ordinating action on the part of several agencies for expeditious execution of the project modernising the said factories. Equipments were to be procured on the advice of NCL and on the orders to be issued by the Chief Controller of Factories on the approval of the committee of management. The applicant has alleged that after ten years, the said chargesheet was issued against him holding him responsible for the failure of equipment and causing financial loss to the Government. The enquiry officer broke ^{the} charge into following six allegations:

6

9

Allegation-I

In the purchase, procedure as mentioned in DGS&D Manual was not followed in as much as he accepted late/revised tender of M/s Filtron India, Pune, (for the equipments of M/s Paschedag of West Germany).

Allegation-II

The company in the second tender enhanced its price for the equipments considerably from the price quoted in the 1st tender. The second tender was accepted by Shri M.C.Sharma.

Allegation-III

He placed order for the said equipments on 2.2.85 at a total cost of Rs.14,55,793.81 on M/s Paschedag of West Germany (Indian Agent M/s Filtron India, Pune) by ignoring the lowest rate of M/s Alfa Laval for 2 numbers of Contrifugal Decanter.

Allegation-IV

The equipments were purchased and were found totally unsuitable for the purpose for which they were purchased.

Allegation-V

The supplier could not be held responsible as Shri Sharma did not mention the "Pre-shipment Inspection" and penalty clause in the supply order.

Allegation-VI

The supply order has resulted in total loss of Rs.14,55,793.81 to the Government of India."

3. He held charges 1, 4 and 6 as proved and allegation 5 as partly proved. The UPSC was consulted. It observed that the charged officer was not really responsible for the events that occurred. At the most, it could be said that when this firm was included as a supplier the CO might have questioned his technical advisers more closely as to its established competence and, perhaps, also raised with NCL the question of what happens if the equipment does not work. At the time the

h

h

10

decision was taken, it was assumed that the NCL was experienced and competent enough to give sound advice in technical matters. The UPSC opined that at the most, the charged officer could be held partly and only constructively responsible for allegations-I and IV. Thus the Commission recommended penalty of censure against the applicant and the same was imposed on him vide order dated 12.11.99.

4.. We have heard the applicant as well as learned counsel of the respondents.

5. The applicant maintained that he was not final authority for accepting or approving the tender. The final authority rested with managing committee headed by the Additional Secretary. The tenders were to be received by NCL. They processed the tenders and through him, placed before the managing committee. According to applicant, the UPSC has basically exonerated him except that they have made certain conjectures and surmises and held him partly and only constructively responsible for allegations 1 and 4. The applicant stated that he had done everything and there are no grounds in the chargesheet which could hold him guilty of the charges ultimately held against him.

6.. Learned counsel of the respondents Shri Bharti stated that the equipment that had been procured on the basis of the orders for modernisation, did not work. The matter was enquired by the CBI and CVC and disciplinary proceedings were conducted against the

11



applicant who was the nodal authority and he had not taken certain steps such as inclusion of pre-shipment inspection and penalty clause in the supply order and also ~~was~~^b accepted^b the late/revised tender of M/s. ^b Filtron India which ultimately led to ^b dysfunctional equipment which further led to a loss to the Government. It has also been stated on behalf of respondents that the applicant having retired in June, 2000, the penalty of censure basically is infructuous.

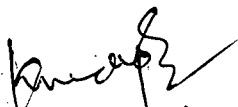
7. We have also consulted the departmental record made available to us. We find that the final authority of approving the tenders as well as draft orders rested with the managing committee and not with the applicant. The tenders were invited and received by the NCL which were the technical consultants in the matter. It is true that the applicant had not suggested the conditions of pre-shipment inspection and penalty clause but ultimately he had suggested that a team of officers should go for undertaking the pre-shipment inspection, which was not approved. The advice of the UPSC does not hold the applicant guilty of charges. It only holds him constructively responsible for allegations 1 and 4. We are also of the view that retirement of the applicant does not render the penalty against the applicant as infructuous. It does affect applicant's reputation adversely and has to be considered on its own merits.

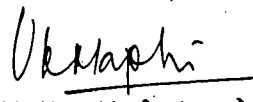
^b

12

8. We are inclined to agree with the applicant that as the managing committee was the final authority in accepting the tenders and finalising the orders and also that the applicant had only a limited responsibility, in our view the respondents have not brought home the charges against the applicant. We are further of the view that advice of the UPSC is also based on conjectures and surmises and not on concrete facts.

9. Having regard to the reasons and discussion made above, the impugned order dated 12.11.99 (Annexure-1) is quashed and set aside. No costs.


(Kuldip Singh)
Member(J)


(V.K. Majotra)
Member(A)

/dinesh/