

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

OA 331/2000

New Delhi, the.../3/... day of March 2001.

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Govindan S Tamai, Member (A)

N.N. Chakraborty
H-19-D Saket
New Delhi 110001
(By: Shri K.B.S. Rajan, Advocate)Applicant.

Versus

1. Union of India through Secretary,
Ministry of Communication,
20 Ashoka Road, New Delhi
2. Secretary UPSC
Dholpur House,
Shahjahan Road, New DelhiRespondents.
(By: Shri R.V. Sinha, Advocate through Sh. R N Singh, learned
proxy counsel)

ORDER

By: Govindan S. Tamai, Member (A)

Challenge in this application is directed against the order dated 6.1.99, communicating the President's Order effecting a cut of 10% in the pension of the applicant a retired Chief Engineer for a period of two years. Revision against this order has since been rejected on 4.9.2000.

2. To state in brief, the relevant facts are that on 11.5.94, a charge-sheet was issued proposing penalty under Rule 14 of the CCS(CCA) Rules, 1965 on Shri N.N. Chakraborty, Chief Engineer (Civil) with All India Radio, alleging irregularities in the award of Contract for Construction of Doordarshan Bhavan, New Delhi. The charge sheet alleged that the contract was awarded to one M/s Unibros on higher rate, highly inflated market rate justification prepared by the junior staff was not checked by the applicant that he did not properly brief the Work Advisory Board, emphasised the negative

qualities of a competitor and highlighted the positive qualities of M/s Unibros, permitted M/s Unibros to be pre-qualified on the basis of their work in Maruti Udyog Ltd. when the applicant was on deputation with them, managed to exclude NBCC from the Contract and did not give guide-lines to the Committee for pre-qualifying the firms. On the applicant's denying the charges, oral inquiry was ordered. I.O's report on 8.4.77 held the charges as partly proved. UPSC who were consulted in the matter, in their recommendations dated 23.9.97 and 16.11.98 held that the charges were found to be proved as correct except for one charge, regarding the exclusion of NBCC from the bid. Accordingly UPSC recommended 10%cut in the pension for two years of the applicant, who had retired in the meanwhile. The impugned order was accordingly issued. Hence this application.

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3. Heard the counsel for the applicant and the respondents. The pleas raised by the applicant, in the OA, forcefully reiterated by Shri KBS Rajan, learned Counsel are summarised as below:-

- i) proceedings were inordinately late, as for an alleged procedural lapse, which occurred in 1989-90, the inquiry was conducted as late as in 1997.
- ii) the order was perverse and bad in law.
- iii) after perusal of the Inquiry Report and the applicant's representation, UPSC found that though a few of the charges have been proved there was nothing to show the malafides of

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the applicant and had, therefore, only proposed withholding of one increment due on 1.12.97 till his date of superannuation. Still the respondents delayed follow-up action considerably, suggested enhancement of penalty and got the same agreed to by the UPSC and have imposed on the applicant the enhanced penalty of 10% cut in pension for two years, as he had retired in the meanwhile. The respondents also did not clear his regular promotion as Chief Engineer.

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iv) UPSC had observed that charges (i) & iii) were partially proved, ii) v), vi) and vii) were not established and iv) was proved. The expression "partially proved" was equivalent to the expression "not been conclusively proved" which was held to be improper in Ramdas Singh Vs UOI [(1990)(13) ATC 136] and thus be declared as not proved. Benefit of doubt in this case should go to the applicant. This would bring down the gravity of the offence and consequently the severity of the punishment. Further, the contract for construction was not awarded by the applicant but only by the Work Advisory Board. Second limb of the charge in (i) that the applicant found Diwan Chand's rate as 'unworkable' should have been linked to charge (ii), which has been held as not proved.

v) charge iv), which is shown to have been proved, does not mean much as the non-mention of negative qualities of Unibros and the positive qualities of Diwan Chand relate to periods before the applicant came on the scene and therefore nothing much turned on it. Even otherwise, the decision for awarding the contract was that of the Work Advisory Board and the applicant alone could not have influenced the decision, which is also clear from the deposition of the Secretary of the Board.

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vi) respondent's holding that the applicant was indirectly responsible for award of contract to the second lowest tenderer was irrelevant as the same was not the part of the charge.

vii) workability of the offer by the various tenderers was checked at various levels and the applicant was not solely responsible for it, as wrongly assumed by the respondents. Further, as the submission of WAB proposal in the CPWD format was not the adopted practice in WAB, recommendations of the Chief Engineer was also not applicable.

viii) it was wrong on the part of the respondents to suggest that the applicant was guilty of any suppression of relevant material as the records including the statement of witness No. 1 speak otherwise.

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ix) imposition of minor penalty itself was improper in the circumstances of the case. However, by their action of enhancing the same respondents have aggravated the injury.

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x) original punishment would have been operative just for a month i.e. December 1997 as the applicant was to retire at the end of the month, but the delay caused and irregularity committed by the respondents have led to its being increased considerably.

4. Concluding, Shri Rajan, learned counsel urged that this was a case of no evidence in that what was indicated in the charge was not proved and what was proved was not part of the charge. In view of the above, he pleaded that the impugned order of punishment dated 6.1.99 revision filed against which was rejected on 4.9.2000, be set aside. Learned Counsel referred to the decisions of the apex Court in State of Assam Vs Mohan Chandra Kalita & Another AIR 1972 Supreme Court 2535 and Managing Director, ECIL, Hyderabad and Others Vs B. Karunakar and Others (1993) 4 Supreme Court Cases 72) holding that in departmental proceedings, charges cannot be sustained on mere conjectures in the absence of evidence.

5. Sh. R.N. Singh, learned counsel for the respondents argues that the entire proceedings have been gone through correctly and punishment has been imposed properly. There was therefore no reason for interference

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by the Tribunal. The points highlighted by the learned counsel in reiteration of the written pleadings are the following:-

a) respondents had correctly sought reconsideration of the first opinion given by the UPSC, as it was felt that the punishment suggested was not commensurate with the gravity of the offence. On receipt of the second opinion suggesting 10% cut in the pension, it was given effect to.

b) The contention of the applicant that charges No. (i) & (iii) have been partially proved would have to be construed as not proved was totally mischievous.

c) Both the Disciplinary Authority and the UPSC had concluded that the rates quoted by the lowest contractor were not unworkable and it was irregular to ignore the lowest rate. Further, though the applicant was not directly responsible for the award of contract to the second lowest tenderer, he has been held as instrumental in award of the work to him at higher rates. While it was accepted that the applicant had incorporated the divergent recommendations of SE(C) and EE(C) in the agenda note he had in effect suppressed them by not bringing them out clearly.

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d) The applicant was of not much help to Work Advisory Board (WAB) with the result, the latter had to take the decision, on the basis of the meagre materials made available to them in the meeting. Being the head of the Wing, he should have intervened to extract the full information about the competing firms but he had failed to do so and permitted the wrong decision to be taken. Therefore, on the basis of preponderance of probability the applicant has been found guilty.

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e) The punishment has been only on the basis of evidence adduced during enquiry and keeping in view the fact that charges (i) and (iii) stood partially proved and charge (iv) stood fully proved.

f) The punishment cannot, in any way, be considered as harsh or unconscionably high.

Shri Singh, learned ^{prosy 13} counsel referred to the decision of the apex Court in the cases of B.C. Chaturvedi Vs Union of India [AIR 1996 SCC 484], State of T.N. and Anr. Vs. S. Subramaniam [(1996) 7 SCC 509], Director General of Police and Ors. Vs. R. Jani Basha [(1998) (9) SCC 490] and Commissioner & Secy. of the Government & Others vs. C. Shanumugam [(1998) 2 SCC 394] in all of which it has been indicated that it was not for the Tribunal to re-appreciate the evidence, which was within the exclusive domain of the Disciplinary Authority.

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6. Replying, Sh. Rajan indicated that the

respondents should have accepted the first advice of the UPSC which was for a minor penalty and if at all they did not agree with the same, they should have placed it before the Parliament. It was not open for the respondents to suggest to the UPSC to provide them the advice they found acceptable.

7. We have carefully deliberated on the rival contentions and perused the records placed before us.

8. In terms of the Charge sheet memorandum dated 11.5.1994 following seven articles of charge have been raised against the applicant:

"That the said Shri N.N. Chakraborty, while functioning as Chief Engineer (Civil), Civil Construction Wing, All India Radio, New Delhi, during the period from 1988 to 1990., committed the following serious irregularities in the award of contract for the construction of Doordarshan Bhawan, Mandi House, Phase-II, Sub Head, Sub Structure up to plinth level i.e. R.C.C. foundation and double basement:-

- i) He awarded the contract to M/s Unibros at rates higher by Rs.16,10,159/- as compared to the lowest rates quoted by M/s Dewal Chand which were not un-workable, for the construction of Doordarshan Bhawan, Mandi House, Phase-II Sub Head, sub Structure up to plinth level, i,e, R.C.C. foundation and double basement.
- ii) He did not check the highly inflated market rate Justification prepared by his subordinate staff.
- iii) He did not put up the agenda note to the Work Advisory Board in the format prescribed vide CPWD Circular No. CE/CON/814 dated 4-6-1985 and suppressed the divergent recommendations of Shri Munshi Lal, SE (Civil) and shri B.M. Mittal, EE (Civil), from the Work Advisory Board, and did not submit his specific recommendations to the Work Advisory Board.

iv) In the Work Advisory Board meeting, in the case of M/s Dewan Chand, it was stated that the work of Mandi House Phase-I was spilled over and extension of time was granted, and in the case of M/s Unibros, the quality of work done at CPU was satisfactory. No mention was made of the delay in completion of the CPU work by M/s Unibros or about the satisfactory quality of work of M/s Dewan Chand. Thus, the negative qualities of M/s Unibros were emphasised to favour M/s Unibros.

v) Shri Chakraborty allowed M/s Unibros to be pre-qualified based on a wrong certificate produced by them which indicated that they had completed a work of Rs.418 lakhs under M/s Maruti Udyog Ltd. and, therefore, Shri Chakraborty suppressed the fact that this was not a single work but consisted of several works.

vi) Shri Chakraborty managed to exclude M/s N.B.C.C. (who were already in the approved list of Civil Construction Wing, who were one of the three constructors fully satisfying the minimum requirements laid down in the pre-qualification committee) after collecting a few reports about their unsatisfactory performance, while no such performance reports were obtained in respect of the other parties.

vii) He did not give guide-lines to the Members of the committee to be followed in pre-qualifying the firms and did not call for fresh applications by giving advertisement in news papers when there was change in the quantum of work."

9. At the end of the enquiry, following findings have been recorded by the enquiry officer in his report dated 8.4.1997:-

- "(a) Charge I (a) - It cannot be concluded that CO awarded contract to M/s Unibros but he remained instrumental in getting the contract awarded to M/s Unibros.
- (b) Charge I(b) - Held as proved, as rates were workable.
- (c) Charge II(a) - Held as proved subject to observation contained in para 3.20
- (d) Charge II(b) - Held as NOT PROVED .
- (e) Charge III(a&b) - NOT PROVED.
- (f) Charge III(c) &(d)- PROVED.

- (g) Charge IV - PROVED.
- (h) Charge V - NOT PROVED.
- (i) Charge VI - PROVED.
- (j) Charge VII - NOT PROVED."

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10. The enquiry report along with the representation from the applicant were forwarded to the UPSC who in their letter dated 23.9.97 opined as below:

"To sum up the Commission hold that the element (i) & (iii) of the Charge are partially proved, element (iv) is fully proved but elements of charge at Sl. No. (ii), (v), (vi) & (vii) are not established against the CO. The Commission, however, observe that neither any evidence has been produced to prove the malafide intentions on the part of the CO nor the same has been established on the basis of the available evidence.

In the light of their findings as discussed above and after taking into account all other aspects relevant to the case, the Commission consider that ends of justice would be met in this case if the penalty of withholding of one increment due on 1.12.1997, is imposed on Shri N. N. Chakraborty till his superannuation. They advise accordingly. (emphasis supplied)

11. On the disciplinary authority requesting the UPSC to reconsider their advice, the latter, in their latter dated 23.9.1997, after repeating the earlier findings, recorded as follows:-

"The Commission still hold that keeping in view the factors, mentioned above, and for the reasons mentioned in detail in the earlier advice letter dated 23.9.1997 the penalty which was recommended therein was commensurate with the charge established against the CO, which while complying with the directions of the Hon'ble CAT, could have been implemented by the DA before the CO's retirement on superannuation on 31.12.1997. The Commission however, observe that since in the meantime the CO has retired, the penalty already recommended can no longer be imposed.

In view of their observations mentioned above and in the light of their findings as discussed in detail in this office letter of even number dt. 23.9.1997, the Commission consider that ends of justice would be met if 10% cut in pension is imposed on Shri N.N. Chakraborty for a period of two years and that his gratuity be released in full. They advise accordingly."

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12. Hence the following decision of the Disciplinary Authority dated 6.1.99:-

"The UPSC have tendered their advice vide their letters No. 3/114/95-S.I dated 23.9.1997 and F.3/114/97-S.I dated 16.11.1998 (copy enclosed). The Union Public Service Commission have also held all the elements of charge as proved, which were found to be proved by the Inquiring Authority, except the element of charge relating to exclusion of M/s N.B.C.C. from the pre-qualified tenderers. Thus, the UPSC have also held that the charged officer remained instrumental in getting the contract awarded to M/s Unibros, the rates of M.S. Diwan Chand were workable, the charged officer suppressed the divergent recommendations of SE (C) and EE(C) from WAB, the charged officer failed to submit his specific recommendation to WAB and the charged officer emphasised the negative qualities of M/s Diwan Chand and the positive qualities of M/s Unibros in the meeting of WAB. As such, the main elements of charge have been proved against the charged officer in this case. Therefore, the union Public Service Commission have advised that the ends of justice would be met in this case if the penalty of 10% cut in pension for a period of two years is imposed on Shri N.N. Chakraborty against the gravity of the misconduct proved and his gratuity is released in full.

The President has carefully considered the findings of the Inquiring Authority, submission made by Shri N. N. Chakraborty, the records of inquiry, the advice tendered by the UPSC and all other facts and circumstances of the case. Considering the circumstances in totality and on an objective assessment of the entire case the President has accepted the advice tendered by the UPSC. The President has accordingly ordered that the penalty of 10% cut in monthly pension for a period of two years be imposed on Shri N.N. Chakraborty and his gratuity be released in full provided no other disciplinary proceedings/judicial proceeding is pending against him. (emphasis added)

13. The applicant has argued that this is a case of no evidence and that what has been proved are not those in the charge-sheet and what were in the charge-sheet have not been proved. According to them the charges have not been proved but the Inquiry Officer has based his findings on mere conjectures which have formed the basis of the recommendation of the UPSC and the decision of the Disciplinary Authority, holding that some of the charges stood proved. According to them, there cannot be a case where charges are not conclusively proved as "the charge has to be held either as proved or not proved. There is no middle course", as held by Jodhpur Bench of the Tribunal in OA No. 235/88 in Ram Dass Singh Vs UOI & Others [(1990) 13 ATC 136]. However, this decision as well as the one in the case of Mohan Chandra Kalita Vs. State of Assam and ECIL Vs. Karunakar ^(Supra) would not come to the aid of the applicant. This is not the case of conjecture taking the phase of evidence. Nor is it one where any middle course is adopted. Out of the seven articles of charge two have been found to be partially proved on record and one fully proved. There is nothing strange or improper about it. That being the case for the Tribunal to interfere and re-appreciate the evidence will be its entering the exclusive domain of the disciplinary authority has been pointed out by the Hon'ble Supreme Court in the case of State of Tamilnadu & Another Vs. S. Subramaniam (1996) 7 Supreme Court cases 509 B.C. Chatterjee Vs. UOI & Others AIR (1996) SC 484 and Commissioner & Secy. to the Govt. & Others Vs C. Shanmugam (1998) 2SCC 394. It has been settled by the Apex Court that the function of the Tribunal is not appellate in nature but only one of the judicial review and that once it is observed that the

proceedings have been gone through correctly and principles of natural justice followed, it was not for the Tribunal to undertake re-appreciation of the evidence which have been examined in the disciplinary proceedings. It is also well settled that in departmental enquiry proceedings preponderance of probability and not rules of evidence which should determine the issue as laid down in the case of DGP & Others Vs. Jani Bhasha (supra) and that on technicalities, Tribunal shall not set aside punishments awarded after following proper procedure.

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14. The applicant has sought to indicate that he has discharged his duties correctly and that in certain aspects of work, he had only gone by the recommendation of the junior staff and in others it was the job of the WAB. This clearly is an attempt to shy away from one's responsibility. This argument however would not pass muster. As the Chief Engineer in charge of the project and an important member of the WAB it was his responsibility to bring to the attention of the WAB the relative merits of the competing tenderers in ~~the~~ case to facilitate the Board to arrive at a proper decision, which he had failed to do. The Enquiry Officer has therefore found that the applicant has failed in his duties, a view which was duly endorsed by the UPSC. This was adopted by the disciplinary authority. There cannot be any quarrel with such a finding.

15. With regard to the quantum of punishment we observe that the UPSC had, in terms of their original letter dated 23.9.97 suggested imposition of punishment of withholding of one increment due on 1.12.1997. This was to take place in December 1997 at the end of which he was to retire on superannuation. However, as the

Disciplinary Authority (the President) felt that this was not a punishment commensurate with the gravity of the offence it was suggested to the UPSC to reconsider their recommendations. Accordingly in their second letter dated 23.9.97 UPSC suggested that 10% cut in the pension could be imposed on the applicant. The ultimate decision of the President impugned in this OA, was in ~~time~~ ^{the} with this second advise of the UPSC. On behalf of the applicant it was attempted to be made out that the Disciplinary Authority should not have suggested reconsideration of the punishment originally proposed by the UPSC and should have placed the recommendations before the Parliament, if they felt that the same was not acceptable. Nothing much turns on this argument. While in terms of Article 320 of the Constitution the President should consult the UPSC, the advice tendered by the UPSC is not binding on him. In this context the decision of the Hon'ble Supreme Court in the case of AND' Silva Vs U.O.I. (AIR 1962 SC 1130) ^{respectfully} adopted in this Tribunal's decision in OA 647/97 in the case of Shri N.K. Jain Vs U.O.I., decided on 16.11.2000 is relevant. The relevant portion of the decision is given below:

"By Article 320(3) of the constitution it is provided that the Union Pub., Service Commission shall be consulted in all disciplinary matters affecting a person serving under the Govt. of India in a civil capacity, but the UPSC is not an appellate authority over the Inq. Officer. It is unnecessary for the purpose of this case to consider whether in making the recommendation of tendering their advise the UPSC may express a conclusion on the merits of the case as to the misdemeanour alleged to have been committed by a pub. servant, different from the conclusion of the Inq. Officer ---- it is also true that the President has, in recording his conclusion, used the same phraseology as was used by public service commission in making its recommendation, but on that ground we are unable to hold that the President has accepted the conclusion of the UPSC-----The President is by article 320 of the Constitution required to consult the Public

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Service Commission (except in certain cases which are not material) but the President is not bound by the advice of the Commission."

16. It is evident therefore that by suggesting reconsideration of the punishment originally suggested by UPSC the disciplinary authority has not acted incorrectly. All the more so as the UPSC, is not a fact finding body but only the recommendatory authority. Any how, this does not ~~assume~~ achieve any great significance in this case as the UPSC had found the suggestion of the department valid and changed their suggestion in the new circumstances. The President has accepted the said recommendation and imposed the punishment accordingly. It was correctly done. In the circumstances of the case it cannot be held that the punishment is harsh or something which would ~~much~~ shocked the judicial conscience as the applicant attempts to make it to be. The nature and extent of the responsibility expected of an officer of the rank of Superintending Engineer/Chief Engineer, that the applicant had become in the organisation, was of an order much higher than what a junior functionary was expected to discharge. And he had failed to do so. We are not, therefore, convinced that the punishment imposed on him calls for any modification.

17. In the above view of the matter, we feel that no case has been made out for our interference. The application, being totally devoid of any merit, is dismissed. In the circumstances of the case, we are not ordering any cost.

(Govindan S. Tamri)
Member (A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (A)

Patwal/