

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 822/88

New Delhi this 11th day of February 1994

1. Shri M.S. Laroia,  
deceased employee through Legal Representative  
Mr. Arun Laroia  
Son of Smt. and Late Shri M.S. Laroia,  
64 B/UA, Jawahar Nagar,  
Delhi-110 007.

2. Mrs. Ranjana Gaba,  
Wife of Shri Devinder Nath,  
resident of Malisua,  
Behind Jagat Cinema,  
Barreilly.

3. Mrs. Renu Talwar,  
Wife of Shri Anil Talwar,  
Resident of B-561 Kaberi Vihar,  
Jamni Bali, NTPC,  
Korba District, Bilaspur,  
Madhya Pradesh.

4. Mrs. Sashi Soni,  
Wife of Shri V.K. Soni,  
Resident of B-342, Brij Vihar,  
Ghaziabad-201 011, U.P.

5. Mrs. Indu Kanwal,  
Wife of Shri Manmohan Kanwal,  
Resident of B-146, Shivaji Vihar,  
Janta Colony,  
New Delhi-110 027.

... Applicants

(By Advocate Shri R.K. Kapoor)

Versus

1. The Director General (Works),  
Nirman Bhawan,  
New Delhi.

2. The Secretary,  
Ministry of Urban Development,  
Nirman Bhawan, New Delhi.

3. The Superintending Engineer,  
III Circle, PWD, D.A.,  
MSJ Building,  
Indraprastha Estate,  
New Delhi-110 001.

4. The Pay and Accounts Officer (XII),  
Delhi Administration,  
5th Floor,  
I.P. Estate,  
New Delhi.

... Respondents

(By Advocate Shri P.P. Khurana)

O R D E R

Hon'ble Mr. J.P. Sharma, Member (J)

Shri M.S. Laroia, deceased employee, entered in the service of Central Public Works Department (C.P.W.D) on 14.1.1947 as Junior Engineer. He was promoted as Executive Engineer in the year 1981. He was served with a charge-sheet with major penalty CCS(CCA) Rules 1965 on 27.8.1983 when he was under suspension with effect from 17.8.1983 in view of the aforesaid enquiry. However, he was reinstated 30.8.1983 and he retired on attaining the age of superannuation on 31.8.1983. The Enquiry Officer Shri M.K. Dixit, Commissioner of Departmental Enquiries submitted his report on 26.11.1985. The applicant was issued a show cause notice by the Deputy Secretary, Government of India on 25.3.1986 giving him an opportunity to show cause against the punishment proposed provisionally to be imposed upon him of withholding of pension permanently under Rule 9 of the CCS (Pension) Rules 1971. The applicant filed the reply to the show cause notice on 16.4.1986. The impugned order was passed on 16.2.1988 on behalf of the President after consideration of the representation and a penalty of stoppage of pension permanently was imposed upon him. The deceased employee filed the present application in May 1988. The prayer for the grant of the interim relief for paying pension or any part thereof either provisionally or subject to the applicants furnishing security was not granted.

2. The applicant prayed for the grant of the reliefs that the impugned order dated 16.2.1988 be set aside with the direction to the respondents to continue to pay the pension alongwith the dearness allowance and all other consequential benefits including gratuity, leave encashment etc. to him.

3. The employee, however, died on 27.2.1991 and the legal heirs of the applicant were brought on record by the order dated 12.8.1991.

4. The legal heirs have pursued the application filed by the deceased employee challenging the impugned order, proceedings of the enquiry, the documents were not supplied to the deceased and the relevant evidence has not been considered by the Enquiry Officer.

5. The respondents were issued a notice who filed their reply and contested the grant of the relief. The charges framed against the deceased employee are as follows:

Article I

"Shri M.S. Laroia, Executive Engineer, allowed sub-standard work to be executed by the Contractor and accepted the same for the purpose of payment. This is in contravention of "Specification and Special Conditions" attached with the agreement No. 1/LE/PWD-XXII/DA/81-82".

Article II

"Shri Laroia failed to ensure proper and effective supervision of construction work done by the contractor and this led to poor quality of work. This contravened the provisions of Circular No. 18/1/76-W(E-in-C)/CP13/78, dated 10.2.1978 issued by Director General of Works CPWD.

Article III

"Shri Laroia, Executive Engineer allowed inadequate depth of wall foundation to be provided with the depth indicated in the structural drawing No. SSWII/DA/SW1/SWIV/GHSS/RKP-2 issued by Superintending Surveyor of Work's Office".

Article IV

"Shri Laroia, Executive Engineer was negligent in as much as he did not ensure corrective action even after the Quality Control Unit of CPWD brought the construction defects to his notice".

Article V

"Shri Laroia did not make proper arrangement for safe custody of cement at the site of work, thus leaving adequate room for possible pilferage of cement by the contractor.

The deceased employee denied the Article of Charges and Shri M.K. Dixit, Commissioner of Departmental enquiries was appointed as Enquiry Officer. The Enquiry Officer submitted his report on 26.11.1985 where he held Article I to IV as proved and Article V has not been proved. The President considered the Enquiry Officer's Report and agreed with the findings of the Enquiry Officer. Since the deceased employee retired on 31.8.1983 the proceedings were deemed to be under Rule 9 of the CCS (Pension) Rules 1972. Ultimately, the impugned Order of punishment was passed after consultation with the UPSC imposing the penalty of stoppage of entirely monthly pension otherwise admissible to deceased employee. In para 10 of the reply the respondents have denied the various averments made in the original application as grounds for relief. It is, therefore, stated that the application is devoid of merit and be dismissed.

6. The Assistant Engineer Shri R.S. Saini who was working under the deceased employee and was looking

22

after the work of major extension to Government Higher Secondary School, R.K. Puram, New Delhi and during the progress of the work on the night of 17.7.1983, a part of Block 3 of 3 stories which was under construction collapsed was also charge-sheeted and was departmentally punished with the punishment of removal from service by the Order dated 3.12.1986 which was upheld by the appellate authority and the revisional authority by the Orders dated 6.6.1989 and 5.4.1990 respectively. Aggrieved by the same Shri R.S. Saini filed O.A. No. 1620/90 which was dismissed by the Principal Bench by the Order dated 18.11.1993. Certain evidence which has been taken by the Enquiry Officer in the present case was also subject for consideration in that case also. The judgement of the same has been placed before us and one of us was also sitting in the Bench which decided that case. The first contention of the learned counsel of the applicant is that the disciplinary authority while considering the Enquiry Officer's report has not given his own findings in view of the provisions of Rule 15(3) of the CCS(CCA) Rules 1965. The learned counsel has highlighted the words in Rule 15(3) "If the disciplinary authority having regarding to its findings ....." and also referred to Rule 15(4) highlighting the words "If the disciplinary authority having regarding to its findings....." and argued that the disciplinary authority is bound under law to give his own findings in case he agrees with the findings of the Enquiry Officer's report. The Hon'ble Supreme Court has considered a similar case in the case of IIT, Bombay Vs. Union of India reported

in 1991 SCC (L&S) P 1137. In that case the Enquiry Officer has given his findings on each of the Article of Charges. He submitted the report to the disciplinary Authority who agreed with the findings given by the Enquiry Officer on each of the charges and thereafter passed the order imposing the penalty on the basis of the established charges held by the Enquiry Officer. The disciplinary authority in that case did not give any fresh reasons on each of the charges nor gave his own findings on each of the Article of Charges. The matter was challenged and it was held that it is not mandatory that the disciplinary authority should give fresh reasons to arrive at the conclusion for giving the findings similar to that of the Enquiry Officer on each of the Article of Charges. The above case squarely on the principle applied to the present case. The Enquiry Officer's report is annexed to the application and is at Annexure AII and it is from page 36 of the paper book to page 82. It is an exhaustive report in which the Enquiry Officer has held after analysing the evidence in greater detail considering the different versions that the Article of Charges I to IV has been proved and Article of Charge No. V is not proved. The disciplinary authority issued a show cause notice on 25.3.1986 whereby it is specifically stated that on a careful consideration of the Enquiry Report, the President agreed with the findings of the Enquiry Officer and holds that all Articles of Charge except Article of Charge No. V are proved. In such a case it was not necessary for the disciplinary authority to again give the findings as it will only amount to reiteration of the same conclusions which have been drawn by the Enquiry Officer. The contention of the learned counsel, therefore, has no force.

32

7. The learned counsel further argued that in reply to the show cause notice dated 25.3.1986 the deceased employee had made a vivid representation and the disciplinary authority in the Impugned Order of Punishment did not affectively considered the same and it shows the non-application of the mind. Firstly, we find that after 76 amendment of the Article 311(2) of the Constitution of India the show cause notice for imposition of punishment was not at all required. The disciplinary authority in the impugned order stated that the reply furnished by the deceased employee to the show cause notice has been considered in consultation with the Union Public Service Commission. According to the recommendations of the Union Public Service Commission, the impugned order of punishment has been passed. It cannot, therefore, be said that the disciplinary authority has not applied his mind to the representation made by the applicant to the show cause notice.

8. The learned counsel for the applicant has argued for non supply of certain documents and that he was not associated by the Expert Committee when the inspection at the site was made. Certain photographs relied by the Enquiry Officer have not been supplied to the deceased employee for affective defence during the proceedings of the enquiry. It is also stated that the applicant was Executive Engineer and specific duties were assigned to Junior Engineer for brick work and the Assistant Engineer for foundation work as the deceased employee was having supervisory control cannot be held responsible. We have considered this

this aspect also. The deceased employee himself issued the letter of acceptance and signed the letter as Engineer Chief of the Work. The Assistant Engineer and the Junior Engineer were the authorised representatives to assist him in the execution of this work. They cannot, therefore be said to be in direct control and supervision of the day-to-day work. In view of this fact the deceased cannot shift the responsibility to Junior Engineer as well as to the Assistant Engineer. The case of the Assistant Engineer regarding punishment imposed upon him by the disciplinary authority has already been considered by the Tribunal in J.A. No.1260/90 and the punishment awarded to him has been upheld. In view of this fact it cannot be said that the applicant is not responsible for the defective work done in the construction of the school building. Regarding non supply of photographs that has not materially affected the defence of the applicant which he has produced during the enquiry. In para 4.19 of the Enquiry Officer's report the defence version has been fully considered. The only defence taken by the deceased was that the collapse of the building was due to under designing. He, however, in his defence has clearly stated that quality of RCC was not poor that is totally against the documents on record. The report of the Expert Committee in that connection is very detailed and the deceased had the due opportunity to ~~rebut~~ the same. In view of the above facts it cannot be said that the deceased in any way was not given adequate opportunity in the departmental proceedings.



There is no material document which was not given to the deceased. The Charged Officer was provided the defence assistant of his choice Shri M.S. Gadgil. He has also been supplied with the necessary documents referred to in the charge sheet. This the contention of the learned counsel, therefore, has no basis.

9. The learned counsel for the applicant has also argued that the Enquiry Officer relied upon the tests to give its findings but the sample for the tests were not collected in the presence of the deceased. In this connection the enquiry Officer's report in para 4.6 is material, where he has specifically written that he will treat his own conclusion from the photographs annexed with the report Exh. S-32 and the testimonies of the witnesses wherever reliable, convincing and supporting with reasonings. The Enquiry Officer has also observed that collapse of the school building is a matter of fact. The Director General (Works), CPWD constituted a Committee and submitted its report Exh. S-32 for investigating the collapse of the building. He has also referred to the report Exh. D-13 submitted by Shri G.K. Viz compliance by the memo issued by the Vigilance Unit CPWD, Director General (Works). He also referred to report Exh. D-14 prepared by Shri K.C. Sood, on being approached by Shri J.K. Goel, Contractor of the building. Similar another report Exh. D-12 has been prepared by Shri V.K. Gupta at the request of the Shri J.K. Goel, Contractor of the building and the charged officer himself. One of the findings of Shri G.K. Viz in the report Exh. D-13 is that the

that the quality of the material used and workmanship in building this portion of the school (collapsed portion) has no relevance to the collapse of the building. The defect according to Shri G.K. Viz report has been because of no investigation or exploration of the soil and the foundation before assuming a high bearing power of 20 tons per sq. meter, and so the design was wrong and faulty, as a result of which the collapse occurred due to sudden failure of the foundation. However, the report of S-32 clearly shows that the quality of RCC is very poor. The mix is poor in cement content and the coarse sand used in the collapsed portion contained large percentage of red bajri. The brick masonry work was of a poor quality and many of the joints in bricks work has not been filled with mortar. Mortar thickness is excessive and non-uniform. Walls were out of plumb. The reasons given by the Enquiry Officer, therefore, cannot be said to be based on no evidence. The charge against him has been allowing of sub-standard work executed by the Contractor and accepting the same for the purpose of payment which stands proved. The learned counsel has referred to the evidence also and from that highlighted the acceptance of some of the evidences by the Enquiry Officer. In fact the Tribunal cannot substitute itself as an appellate authority to appreciate the evidence. The material on record before the Enquiry Officer is sufficient to give conclusion drawn by him and inferences drawn and the findings given are in no way perverse. If the deceased had any doubt about the tests of the material done by the Expert Committee,

le

(M)

then he was free to cross examine and bring facts on record in that light. In fact he has done so by placing certain reports of the Contractor Shri V.K. Gupta and another. Those reports have also been considered by the Enquiry Officer. The deceased therefore cannot harboured any grudge on that account.

10. The contention of the learned counsel that the Expert Committee Report and the photographs were not supplied to him was a point which should have made an issue during the proceedings of the enquiry. When there were two other enquiry reports regarding the collapse of the school building it does go to show that the charged officer was aware of the Expert Committee Report as well as the photographs and the plea taken of non supply of Expert Committee report is after thought.

11. The learned counsel wanted to place reliance on the SOLVENT EXTRACTED OIL DE-OILED MEAL AND EDIBLE FLOUR (CONTROL) ORDER, 1967 and referred to Essential Commodities Act also for drawing samples, conducting analysis etc. That analogy does not apply to the present case. Heard the testimony of the witnesses of the administration which has been relied upon. Merely because some of the material was not fully considered by the Enquiry Officer like the CBI test report will not wash out the other admissible evidence which has been considered, analysed and evaluated by the Enquiry Officer to give his findings. There are grounds for rejecting the other reports and it cannot be said that the Enquiry Officer has not given reasons

Je

(12)

for rejecting those reports i.e. D-12, D-14 and D-14 respectively of the enquiry proceedings.

12. The learned counsel has emphatically placed certain reliance on the fact that only a portion of the building had collapsed and that was on account of settlement of the foundation. The Tribunal cannot sit in judgement to re-appreciate the evidence in the light desired by the learned counsel for the charged officer. If the design was incorrect or in any way faulty or the soil was not properly tested before construction, the charged officer is a senior officer who have refrained from executing the construction of the work. When the charged officer was fully satisfied regarding the foundation and the earth testing only then the execution of the work was taken. Now shifting the blame to foundation or poor testing of earth will not absolve the deceased from his responsibility.


13. The learned counsel for the applicant has argued on the quantum of punishment but the Tribunal cannot interfere on that account as it is for the administration to judge the punishment to be imposed on the gravity of the mis-conduct. The collapsing of the school building cannot be taken as lightly as argued by the learned counsel. The authority relied by the learned counsel in that regard cannot be applied to the case of the deceased. It was a serious lapse of duty in supervision by the charged officer who was overall in-charge of the construction and the payments thereof were made to the contractors after he has found the work and the workmanship agreed to in the contract. He was signatory to that contract.

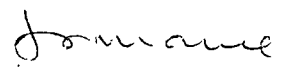
le

(V13)

-: 13 :-

14. In view of the above facts and circumstances, we find no merit in this application and the same is dismissed, leaving the parties to bear their own costs. Costs on parties.

  
(B.K. Singh)  
Member(A)

  
(J.P. Sharma)  
Member(J)

\*Mittal\*