



**CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH : JAMMU**

**T.A No. 61/687/2020
M.A/61/916/2020**

New Delhi, this the 4th Day of November, 2020

Through Video Conferencing

**Hon'ble Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Shri S. K. N. Haider (age 60 years)
S/o. Mr. Fazal Imam
Chief Project Manager,
Rural Electrification Corporation Limited,
157 Gandhi Nagar,
Jammu. ...Applicant

(By Advocate : Shri M. K. Raina

Versus

1. Chairman/Managing Director,
Rural Electrification Corporation Limited,
Core-4, Scope Complex,
7, Lodhi Road,
New Delhi - 110 003.

2. Director Finance,
(Disciplinary Authority),
Rural Electrification Corporation Limited,
Core-4, Scope Complex,
7, Lodhi Road,
New Delhi - 110 003. ...Respondents

(By Advocate : Shri Sudesh Magotra, Dy. Advocate General)

O R D E R (ORAL)

Hon'ble Ms. Aradhana Johri, Member (A)

The applicant was a Chief Project Manager, heading the Project Office, Patna in 1998 under the respondents-organisation Railway Electrification Corporation (REC). He



was charge sheeted on 03.11.1998 for executing a bulk guarantee with the State Government of Bihar which incorporated two additional clauses without prior approval of the Corporate Office. This is said to have resulted in financial loss to the tune of approximately Rs.10.52 crores to REC. He was also charged with misconduct and negligence in performance of his duties. An inquiry was held in which the inquiry officer was Sh B. R. Raghunandan, Company Secretary, who submitted his report exonerating the applicant of the charges. However, the Disciplinary Authority disagreed with the finding of the inquiry officer and recorded a disagreement note. Vide order dated 26.07.2000 he imposed the following major penalty of *"reduction to a lower stage in a time scale of pay for a period of one year from the date of issue of these orders. His pay is reduced to Rs.14,300 the minimum of the scale of pay of Joint Chief i.e 14,300-400-18300"*.

2. Appellate Authority, vide order dated 02.02.2001, proposed enhancing the punishment to termination (removal) of service. However, after the applicant's reply to the show cause notice, the Appellate Authority did not impose the penalty of termination but he still enhanced penalty imposed by the disciplinary authority. Vide his order dated 23.05.2001 the Appellate Authority imposed



the penalty of reversion to the post of Deputy Chief and in the applicable scale of pay, and the applicant was to be placed at the lowest level on the date of the impugned order. Further, his retirement benefits other than the statutory ones were to be released only after the Corporation had recovered the full funds erroneously released to Bihar State Electricity Board (BSEB) on the basis of the defective documents which were executed by the applicant.

2. The applicant has challenged the orders of the Appellate Authority dated 23.05.2001 and of the Disciplinary Authority dated 26.07.2000 and prayed that they be set aside. He has contended that both the additional clauses in the bulk guarantee were in the knowledge and with the approval of the Corporate office and he did no wrong in executing the said agreement. He has further stated that this was an agreement with the State Government and not a private party so no motives or mala fides can be attributed. As per his contention the inquiry officer has analysed the circumstances of the additional clauses and execution of the documents and exonerated him of the charges. He has also alleged that in order to save the officers of Corporate Office, the Disciplinary Authority and Appellate Authority have put



the blame on him. He has further stated that he has had an impeccable record of service and blaming him in this manner at the fag end of his career is incorrect and not based on facts.

3. The respondents have denied the claims of the applicant and have stated that he is guilty, in that he executed the documents without prior approval of the Corporate Office. Furthermore, he also did not inform Corporate Office after having executed the said documents, which caused loss to the respondents.

4. Heard Sh M. K. Raina, learned counsel for applicant, Shri Sudesh Magotra, Dy. Advocate General, learned counsel for respondents and perused the records.

5. Before proceeding any further, it would be relevant to reproduce the two additional clauses which were added in the bulk guarantee :-

"(i) Freezing of outstanding interest and penal interest charges as due from the BSEB and giving an opportunity for the Govt. of Bihar/BSEB to get this amount waived from the REC in due course as proposed by them in the Clause-XII (additional para) :

(ii) Adjustment of 50% of the total amount to be released against principal dues and the release of balance amount in cash to the BSEB."



6. These clauses were added to the bulk guarantee which is said to have caused financial loss of approximately Rs.10.52 crores to REC.

7. Since the circumstances and purport of these clauses is the centre point on which the whole case hinges, at this stage it would be relevant to analyse the facts put in by each of them.

1. Freezing of outstanding interest and penal interest charges as due from the BSEB and giving an opportunity to the Govt. of Bihar/BSEB to get this amount waived from the REC in due course as proposed by them in the clause (xii).

It has been contended by the applicant that Bihar State Government and Bihar State Electricity Board (BSEB) informed him that these two additional clauses were included after a high level meeting taken by the Union Minister of State for Power on 04.11.1997 at his residence wherein MOP, CMD (REC), Finance and MHA Ministers of Bihar State Government, Chairman SED and other senior officers were present. Though the minutes of the meeting were not supplied to him despite various requests for the same, thereby making it difficult for him to know the precise decision taken. From a perusal of the minutes of



the said meeting of 04.11.1997 it was discussed as follows:-

"MoS (P) stressed that if Bihar would agree to re-schedulement of the loan and the interest, the question of penal interest would be considered later."

The applicant has further stated that he apprised the General Manager (PI) on 31.03.1998 on telephone at 9.22 p.m. regarding the two additional clauses, and after his approval he executed the agreement.

8. The respondents have denied granting any prior approval.
9. The inquiry officer has exonerated the applicant of this charge and held that had the copy of the minutes been made available to the applicant, he would have acted more prudently and cautiously as the situation demanded, instead of taking oral instructions from the GM (PI) at the last minute.
10. The inquiry officer has also held the loss projection as exaggerated beyond any realistic level, to pass on blame to the applicant in order to save the corporate office who actually processed the matter and released the funds.
11. We are of the view that no doubt the clause in the bulk guarantee documents, though on the broad lines of



the minutes of the meeting of 04.01.1997, but specifically contains different details. This situation would have been obviated had there been better formal intra-organisational communication so that the senior most officer in the field would have formally been communicated high level decisions instead of having to hear them from an outside party, the Bihar Government/BSEB or informally getting directions from superiors. It is further noted that the actual release of funds was processed and carried out by the Corporate office without perusing the actual documents executed, which does indicate that they were aware of the contents. Therefore, we find ourselves in agreement with the inquiry officer.

12. The inquiry officer has also held the loss projection as exaggerated beyond any realistic level, to pass on blame to the applicant in order to save the corporate office who actually processed the matter and released the funds.

2. Adjustment of 50% of the total amount to be released against principal dues and the release of balance amount in cash to the BSEB :

The applicant has filed a fax message from GM (PI) dated 22.12.1997 which is addressed to Chairman, Bihar State Electricity Board (BSEB) which states the following :-



Kindly refer your fax vide No. 510 CH-Release-3011-97 dated 8th December, 1997 and subsequent discussions with CMD REC on 16th December, 1997 regarding cash releases to BSEB as already intimated vide my fax order dated 27th November, 1997. REC as a special case is agreeable to consider cash releases up to Rs. 10 crores in instalments for completing works and submitting claims of Rs 20 crores. Thus in the process BSEB may get reimbursement of claims 50% in cash and balance 50% are likely to be adjusted towards dues. You are again requested to kindly confirm and ask the concerned officer to send the request for release of funds against claims and or inventory loan. In case of Inventory Loan, we may have to sanction the same and the cash funds can be released immediately on completion of legal formalities. Regards.

13. From the above it is clear that the matter of reimbursement of claims of 50% in cash and balance 50% likely be adjusted towards dues was agreed to by the Corporate office and was also conveyed to the Bihar SEB, well before the date of execution of the documents.

14. In light of this, the contention of the applicant that he telephonically took approval of the GM (PI) on 31.03.1998 at 9.22 P.M., would be read with the said fax message. The respondents, though admitting to the conversation, have denied that the additional clauses were mentioned in the telephonic conversation. The inquiry officer has also held that the approval of the Corporate Office was taken telephonically which is borne out by the call records, therefore, in the balance of things the applicant cannot be disbelieved on this issue.



15. The inquiry officer has further held that the applicant's sole interest was to restart the flow of funds to BSEB for revival of RE programme in Bihar which was the collective concern of the Union Minister of Power, CMD (REC) and the Bihar Government. He has noted the impeccable record of the applicant and stated that it should not be treated lightly under the facts and circumstances.

In a nutshell he has held that :

"There is no justifiable ground, substance, basis or evidence to establish that Shri S.K.N. Haider has acted in a manner prejudicial to the interests of the Corporation (First Article of Charge) or has shown any negligence in performance of his duties and committed acts of misconduct (Second Article of Charge), as defined in Rules 5(4) and 5(9) respectively of the REC CDA Rules. The basis and the reasons in arriving at the above findings are already explained elaborately in this Inquiry Report and more specifically brought out under the head "Assessment of the evidence by the Inquiry Officer". It is therefore considered not necessary to repeat all over again the same facts and circumstances appearing earlier in this Report based on which the findings have been arrived at."

16. The Disciplinary Authority has not agreed with the inquiry officer and chosen to believe that the applicant did not inform the GM(PI) regarding the deviations in the bulk guarantee during the said telephonic conversation. The Appellate Authority has also chosen to go ahead with the Disciplinary Authority.

17. It is very important to note the circumstances of the whole matter. The meeting held at a high level of the Union



MoS (P) and the subsequent communication at the highest corporate level with the Bihar Government/BSEB shows the importance and urgency of the matter. The fax sent by GM(PI) on 22.12.1997 to Chairman UPSEB further reinforces this view. Ultimately, the bulk guarantee document was obtained at 9.00 p.m. by the applicant from the residence of the Chief Minister of Bihar, and at 9.22 he telephoned the General Manager (PI) after which the Corporate Office released the first tranche of 5 crores just on the basis of this telephonic conversation and a subsequent fax by the applicant that the documents had been executed. It is noteworthy that such was the hurry that the Corporate office did not even wait for a copy of the document before releasing the funds. The whole matter has to be viewed in this light. No doubt prior written approval must be taken at each stage for every action from the competent authority which was not done in this case. But to hold the applicant entirely responsible for the whole thing is certainly unfair. The entire machinery of the respondents-organisation was in a great hurry since the financial year ended on 31st March and it is obvious that they were keen to disburse the money on that date itself. Hence, a whole lot of formalities were completed on that day, including obtaining the documents from the residence



of the Chief Minister, signing of the documents, approval of and actual release of funds. In fact, what is said to have caused harm to the organisation, is sometimes said to be a strength in the sense that where there is urgency, then on the basis of mutual trust, certain actions are carried out, which are regularised subsequently.

18. In this case, it appears that when the Audit report pointed out the matter then only the fault finding began and the applicant was found to be the person on whom all responsibility and blame was fixed. The decisions of the Disciplinary Authority and the Appellate Authority are also to be viewed in this light since it appears that they wanted the Corporate Office and themselves to be absolved from accountability, and laid the blame at the door of the applicant in view of the audit report. We do not agree with this approach.

19. The OA is allowed. The impugned order dated 26.07.2000 passed by the Disciplinary Authority, and order dated 23.05.2001 of the Appellate Authority are set aside. Since, the applicant retired from service, the benefits that accrued to him as a result of setting aside of the two orders shall be worked out and the resultant amount shall be paid



to the applicant within a period of 2 months without interest. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narsimha Reddy)
Chairman

/Mbt/