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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.No. 1260/90

New Delhi this the 18th Day of November, 1993.

Hon'ble Sh. J.P. Sharma, Member(J)
Hon'ble Sh. B.N. Dhoundiyal, Member(A)

Sh. R.S. Saini
S/O Sh. Baili Ram
R/O Block No.69, Quarter No.14,
Pushap Vihar, Saket,
New Delhi-110 017.

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Petitioner

(By advocate Sh. G.D. Gupta)

versus

1. Union of India
through the Secretary,
Ministry of Urban Development,
Nirman Bhavan,
New Delhi-110 001.
2. The Director General of Works,
Central Public Works Department,
Nirman Bhavan,
New Delhi-110 001.

Respondents

(By advocate Sh. P.H. Ramchandani)

ORDER

(delivered by Hon'ble Sh. B.N. Dhoundiyal, Member(A))

This O.A. has been filed by Sh. R.S. Saini against the order of the Director General of Works, Central Public Works Department dated 3.12.1986 removing him from service, the order of Appellate Authority dated 6.6.1989 rejecting his appeal and the order of the Revisional Authority dated 5.4.1990 dismissing the revision petition.

The admitted facts of the case are these. The applicant was chargesheeted under Rule 14 of CCS(CCA) Rules, 1965 vide memo dated 9.4.1985. The main charge was that while working as Assistant Engineer from 24.1.1982 to 17.7.1983 he was incharge of the work of 'Major extension to Govt. Higher Secondary School, R.K. Puram, New Delhi' during the progress of work on the night of 17.7.1983 a part

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of Block-IV of three storeys, which was under construction collapsed. A Committee of the Experts nominated by the Department attributed the collapse & badworkmanship and use of substandard material. Thereafter an enquiry was held for the following charges:-

- (i) Sh. R.S. Saini allowed sub-standar work to be executed by the contractor and accepted the same for the purpose of payment in contravention of specifications and special conditions of the agreement of the work;
- (ii) Shri Saini failed to ensure proper & effective supervision of the work done by the contractor and this led to the poor quality of the work;
- (iii) Shri Saini allowed inadequate depth of wall foundation to be provided by the contractor which was not in conformity with the depth indicated in structural drawings pertaining to the work;
- (iv) Shri Saini was negligent inasmuch as he did not ensure corrective action even after the construction defects were pointed out by the Quality Control unit of CPWD;
- (v) Shri Saini did not make proper arrangement for safe custody of cement at the site of work leaving adequate room for possible pilferage of cement by the contractor.

The Enquiry Officer found charges I,II and V as proved.

In the impugned order dated 3.12.1986 the Disciplinary officer held that " Sh. Saini has been callous when he allowed and tolerated so many defects in the work under his charge". I am, therefore, of the opinion that a penalty of removal from service be awarded on Sh. R.S. Saini, Asstt. Engineer. I hereby order accordingly." Aggrieved by the order of the Disciplinary Authority Sh. Saini submitted an appeal on 17.2.1987. In consultation with

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the U.P.S.C. the respondents rejected his appeal vide order dated 6.6.1989. A similar revision petition was rejected on 05.04.1990.

The applicant has challenged these orders on the ground that the collapse took place when, after heavy rains, the rain water from the higher areas on the till seeped through and eroded the foundations which had not been planned taking the seeping of the rain water into account. He has referred to the correspondence with the Central Design Organisation from September, 1980 onwards which shows that the Executive Engineer had doubts about the load bearing capacity of the soil. His contention is that the Departmental Committee was protecting the Central Design Organisation. The bias of the committee is by their not allowing samples to be taken before the charged officers. He has also contended that the findings of another Committee consisting of three eminent engineers, whose report was also sought by the Vigilance Deptt. of the CPWD, has been totally ignored by the enquiry officer, who himself was a non-technical person. The Disciplinary Authority blindly followed the report of the Departmental Committee and did not record its own findings on each of the articles of charge. It did not indicate whether the findings recorded by the Disciplinary Authority was that the applicant had been callous which means 'Hardened, unfeeling', which is not proved by the material on record. The report of the enquiry officer was not provided to the applicant. He has also contended that the actual division of work amongst various officers was not taken into account while holding the applicant responsible. The work was actually carried out by the Junior Engineer and the applicant had been pointing out

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the defects in work from time to time. The site order book was full of defects pointed out by the applicant. Payments were released to the contractor on the order of Executive Engineer. Thus, the applicant was made responsible for the fault of the Central Design Organisation. He has prayed that the impugned orders be set aside and quashed and the applicant be reinstated in service retrospectively from the date on which he was illegally removed from service, with all consequential benefits.

In the counter filed by the respondents, the main averments made are these. Sh. R.S. Saini was the A.E. incharge of the work of 'Major Extension to Govt. Higher Secondary School, R.K. Puram'. While the work was in progress a part of the 3 storey building collapsed on the night of 17.7.1983. An Expert Committee was appointed which concluded that the collapse occurred due to sub-standard workmanship and material. he had earlier filed O.A.No.1168/87 and the Tribunal had given directions to dispose of his appeal within a period of 3 months from the date of judgement. His appeal was rejected by the President of India on 6.6.1989 and his revision petition on 5.4.1990. The order of the Disciplinary Authority dated 3.12.1986 clearly indicates that the Disciplinary Authority has carefully considered all the documents and the enquiry report before arriving at final decision. CCS(CCA) Rules, 1965 do not provide for giving a copy of enquiry officer's report to the charged officer before taking a final decision. However, this report was available to the applicant before he submitted his appeal. His contention that the collapse occurred due to seepage of water from Malai Mandir into the foundation, has not been found correct by the Departmental

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Expert Committee. No seepage was seen in the foundation and hence the Committee looked for other explanation and ultimately found that this was due to sub-standard work. They have denied that the applicant and other charged officers were prevented for being present when samples were being taken. The so called eminent enquiries arranged by the contractor and prepared a report and the CPWD did ask for a copy thereof. During the enquiry proceedings and even after words the applicant did not bring any evidence to show that the proceedings have not been carried out as per rules. The applicant was given ample opportunities to cross examine the witnesses who categorically stated that there was no design defect in the foundation and the collapse was mainly due to sub-standard work and materials.

We have gone through the records of the case and heard the learned counsel for the parties. The learned counsel for the applicant took us through these records and contended that these proceedings were vitiated as no notice was given for initiating proceedings under Rule 14(4) of the CCS(CCA) Rules, 1965 and nowhere the Disciplinary Authority has mentioned that he agrees with the findings of the enquiry officer. The Disciplinary Authority has also not given any comments on each of the charges. The considered opinion of the three eminent experts was ignored and the punishment awarded was grossly disproportionate. The learned counsel for the respondents stated that it is not the task of the Tribunal to reassess the evidence produced before the enquiry officer and shall interfere only if it is a case of no evidence. We find that there is substantial evidence that sub-standard workmanship at materials were at least contributory factors in the collapse of the building. As

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regards the use of work callous, it has to be read need in its proper context. The sentence reads "Shri Saini had been callous when he allowed and tolerated so many defects in the work under his charge." When the Disciplinary Authority agrees with the enquiry officer, a detailed order is not necessary under the rules. The report has to be treated as push of the order with which it was endorsed. According to the learned counsel for the respondents this Tribunal would also not go into the question of quantum of punishment as held by the hon'ble Supreme Court in Sunil kumar Vs. State of West Bengal SLR 1980(2) P. 147.

In fact, it is clear from Rule 15(2) that only in case where the Disciplinary Authority disagrees with the finding of the enquiry officer or any article of charge, which has recorded reasons for disagreement and record its own finding on such charge. A perusal of the enquiry report as well as the reports of the Departmental Committee and the Committee convened by the contractor shows that even if it is taken that there was some controversy regarding the design of the foundation bad workmanship was certainly a contributory factor. It has been brought out that no settlement of the foundation was seen even after digging the foundation, that some pillars were out plumb and that the ground floor had not collapsed at all. This issue has been avoided by the contractors committee by stating that workmanship and the material used were of the same standard as in other CPWD buildings. We, therefore, hold that this is not a case of no evidence and no malafide has been alleged or proved by the applicant against any of the respondents. Supplying a copy of the enquiry report to the applicant before passing the order of punishment is to be treated as mandatory only after

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the judgement of the Supreme Court in the case of Mohd. Ramzan case decided in November, 1990. All the documents and the witnesses relied on have been subjected to a scrutiny and ^{by} ~~cross~~ examination during the enquiry.

In the facts and circumstances of the case, we hold that this application has no merit and it is hereby dismissed. There shall be no orders as to costs.

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(B.N. Dhoundiyal) 18/11/92
Member(A)

J.P. Sharma
(J.P. Sharma) 18.11.92
Member(J)

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