

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.15/90.

New Delhi, this the 20th day of May, 1994.

SHRI J.P.SHARMA, MEMBER(J).

SHRI B.K.SINGH, MEMBER(A).

Shri A.K.Jain, son of Shri A.C.Jain,
Executive Engineer, Garrison Engineer (Independent),
Field Investigation, C.M.E.,
Kirkee, Pune-411031, and
resident of DG-II/216-A, D.D.A. Flats,
Vikas Puri, New Delhi-110018. ...Applicant

By advocate : Shri Sant Singh with Shri R.Doraiswami.

VERSUS

Union of India, through the Secretary,
Ministry of Defence, South Block,
New Delhi-110011. ...Respondent

By advocate : Shri M.L. Verma.

O R D E R (ORAL)

SHRI J.P. SHARMA:

The applicant was functioning as Assistant Executive Engineer/Assistant Garrison Engineer in MES, Itarsi during the period 1981-82. He was served with a memo of chargesheet that he has exhibited lack of integrity and devotion to duty inasmuch as he in collision with contractor, M/s. Vimal Enterprises, Itarsi failed to supervise the construction work of Over Head Tanks in Ordnance Factory, Itarsi, according to the specifications of the agreement of contract and also allowed use of sub-standard material due to which the Over Head Tank collapsed on 9-9-1991. Along with the memo of charge, he was given imputation of misconduct, list of witnesses to be examined and the list of documents to be relied upon in the departmental inquiry under rule 14 of the CCS(CCA) Rules, 1965.

Shri Mahrotra of the Central Vigilance Commission (CVC) was appointed as inquiry officer who gave his finding in the report dated 26-7-1988 which runs from page 33 to 52 of the paper book (Annexure A-3). Thus, the disciplinary authority agreeing with the findings of the inquiry officer imposed the penalty of reduction to a lower stage in the same pay scale from Rs.3400 to Rs.3100 for a period of 2 years with cumulative effect. The applicant aggrieved by the aforesaid order filed OA-889/89 before the Principal Bench which was decided by the order dated 28-4-1989 with the direction that the respondents should consider various points raised by the applicant and to pass a speaking order thereon and the original application 889/89 was treated to ^{be} a representation to the President against the impugned order of punishment dated 3-1-1989. The respondents by the order dated 18-7-89 considered the representation ^{penalty on} of the applicant and the imposition of ^{be} the applicant was maintained with the modification that, that will not have any cumulative effect and will not have the benefit of postponing the future increments of pay. The present application was filed by the applicant on 3-1-1990 and he has prayed for the grant of the reliefs that the departmental order dated 3-1-1989, the order dated 11-7-1989, the inquiry report dated 26-7-1988 be quashed and the pay of the applicant be restored along with seniority in the grade of Executive Engineer.

2. The respondents contested the application by filing a reply and opposed the grant of the relief on the ground that the Tribunal cannot interfere by substituting its own discretion for the disciplinary or appellate authority and reliance has been placed on

AMRIK SINGH v. UNION OF INDIA reported in 1989 VOL.2 ATLTI page 539. Reliance has also been placed on the Full Bench decision of SANKAR K. DAMLE v. UNION OF INDIA reported in 1989 Vol.II SLJ page 681.

3. The applicant has also filed a rejoinder reiterating the facts already averred in the original application.

4. We heard the counsel for the parties at length and perused the record. The learned counsel for the applicant has taken us to ground (a), (b) and (c) at page 15 of the paper-book. This relates to the grievance of the delinquent official that he has been denied fair adequate opportunities to defend himself; has been denied the opportunity to produce documents and witnesses and the findings and conclusions given by Ministry of Defence; repetition of the findings of the inquiry officer. The respondents in their reply have controverted these grounds and clearly stated that the applicant was given adequate opportunity. The counsel for the applicant could not ^{substantiate} ~~substitute~~ by documents as to how the applicant was put to a disadvantageous position either by unfair trial, as alleged, or by withholding document or oral evidence as averred by the applicant. The applicant's counsel has referred to the averment made in OA-889/89 which was treated as a representation against the order of punishment dated 3-1-89. At the time when the order was being dictated, the learned counsel for the applicant drew our attention to para (B) of the rejoinder and highlighted the fact that certain documents which are referred to in para 5(B) of the counter were not available at the time when the inquiry officer was ^{awized.} ~~ceased~~ of the matter. Though the inspection of these documents were allowed

to him and he has also extracted notes from them but because these documents were withheld on account of claiming privilege by the presenting officer, the finding of the officer became defective as he could not appreciate the contents of those documents while arriving at the conclusion against the applicant. We again heard the learned counsel but we are not convinced on the fact that the applicant was deprived of the opportunity. He had every right to refer to these documents and he could have given defence evidence as the documents were enclosed with O.A. no.889/89 filed earlier by the applicant before the Principal Bench. Thus, these contentions of not giving adequate opportunity to the applicant are only an after-thought and is not a genuine ground nor it is so established from the pleadings on record.

5. The learned counsel has placed utmost reliance on the fact that one similar officer Ved Prakash and another C.K. Ayappan who were subordinate staff posted along with applicant at Itarsi and had something to do with the construction of the project were also charge-sheeted and the article of charge against them were almost the same. The inquiry officer in the case was Brig. Sudhindra. Brig. Sudhindra submitted his report ^{against applicant} in June, 1988 i.e., earlier to the report filed by the Central Vigilance Commission. The findings of Brig. Sudhindra were in favour of the delinquents Ved Prakash and Ayappan holding that the charge against them is not established. Believing on that finding, the disciplinary authority, who is also the disciplinary authority in the case of the applicant, exonerated both these officials. The learned counsel, therefore,

argued that the applicant cannot be discriminated and that will amount to ~~violation of~~ article 14 and 16 of the Constitution and will also reflect the arbitrariness as well as unfairness on the part of the disciplinary authority. *Prima facie*, the argument of the learned ~~plausible~~ counsel is ~~plausible~~ and has influenced us but at the same time when we go to see the nature of the work and the responsibilities assigned to the applicant as Engineer incharge and while Ved Prakash and Ayappan ^{BR} were only incharge of the site as Superintending ones, there cannot be any similarity between them except that disciplinary proceedings were initiated against them with regard to the same project. The charge against the applicant is lack of supervision. Those in the lower rung of the services were treated in the same pattern by Brig. Sudhindra. Even then, we have gone through the inquiry report submitted by said Brig. Sudhindra which runs in 11 pages and the appreciation has been done only in a cryptic manner while the report of the inquiry officer Mehrotra of CVC runs into 30 pages and he has given details even of the agreement and disagreement with the report of the expert committee of the material. The finding of Shri ^{is that the building material} Mehrotra ^{used} was sub-standard and the defence of the applicant that there was a defect in the design itself has not been accepted substantially. We have also considered the contention of the learned counsel on the point that when 2 persons are charged with the same accusations and one of them is exonerated, the other should not be held guilty. The principles of juris prudance also run parallel to this proposition. However, in this case when we go to the material on record, the role assigned to the applicant is of higher ^{responsibility}

demanding comparatively greater integrity from the applicant. Thus, we find that the conclusion drawn by Shri Mehrotra inquiry officer in the report cannot be said to be based on no evidence or on inadmissible evidence or the finding is of such a nature as could not be arrived at by reasonable person. The Tribunal cannot sit as an appellate authority over these findings of the inquiry officer. The matter was remitted by the Tribunal by the earlier order on OA-889/89 to the appellate authority to consider every point in detail. It is not the fact that the President has not considered those points. No prejudice mala fide at any stage of the inquiry either before the disciplinary authority or the appellate authority has been alleged or averred. In such a situation, the contention of the learned counsel that the applicant deserves exoneration because others who were tried and persuaded in ^{separately} a departmental inquiry on the same and similar charge has been exonerated, cannot be accepted.

6. Primarily, a departmental inquiry is to ~~punish~~ ^{punish} the misconduct. In this case, the misconduct alleged is that the applicant was ^{lacking in} lack of supervision. This might have resulted into a major accident as the Over Head Tanks after construction has collapsed. Though the defect in the design is the defence of the applicant, yet it is the soil structure which counts most where the constructions are raised at ^{considerable} ~~sky~~ ^{height} ~~sketchers~~ above the ground. Taking into account the height of the construction, the soil is decided and ~~as per~~ if design of that standard, the site is shifted. These are the things for expert body to consider and the inquiry officer has already considered the ^{expert} ~~expert~~

report. The Tribunal, therefore, cannot tinker with that report on that sole ground.

7. In view of the above facts and circumstances, we don't find any merit in this application and the same is dismissed, leaving the parties to bear their own costs.


(B.K. SINGH)

MEMBER (A)


(J.P. SHARMA)

MEMBER (J)

'KALRA'