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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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O.A. 2545 of 1990

New Delhi, this the 10th of January, 1995.

HON'BLE SHRI J.P.SHARMA, MEMBER (J)
HON'BLE SHRI B.K.SINGH, MEMBER (A)

Shri J.S.Mittal,
S/o Late Shri Lakshmi Chand,
(Ex.Assistant Engineer, C.P.W.D.),
Resident of B-277, Vivek Vihar,
Delhi - 110 032.

Applicant

(By Shri D.R.Gupta, Advocate)

Versus

1. President of India through the Secretary/
Deputy Secretary, Ministry of Urban
Development, Nirman Bhawan,
New Delhi.

2. Director General of Works,
C.P.W.D., Nirman Bhawan,
New Delhi.

Respondents

(By Shri P.H.Ramchandani, Advocate)

JUDGEMENT

HON'BLE SHRI J.P.SHARMA, MEMBER (J)

The applicant filed this application in December, 1990 and by the order dated 7.12.1990 the Original Application was admitted. Though the applicant has impleaded the President of India through Secretary/
Deputy Secretary as a party but the Tribunal while

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admitting the application directed that notice be issued to Union of India through Secretary, Ministry of Urban Development. The applicant was serving as Assistant Engineer and on 25th August, 1982 a trap was laid on the instance of a Contractor Ganda Lal Chhottey Lal informing the Vigilance Inspector that the applicant has demanded money and his junior engineer also. A trap witness Shri N.K.Joshi accompanied alongwith Inspector. Rs. 150/- was recovered from the drawer of the applicant and Phenolphthalein test was conducted. When the solution, on the washing of the hands of the applicant was collected, the solution turned purple. A chargesheet for major penalty under section 14 of the C.G.S.(CCA) Rules, 1965 was issued reciting therein that the applicant demanded Rs. 150/- from the Contractor Shri Ganda Lal Chhottey Lal on 20th August, 1982 and he has accepted the same on 25th August, 1982, in the matter of finalising the work of :-

- (i) A/R & M/O Aerodrome Colony at Baroda;
- (ii) A/R & M/O Office and Technical building at Baroda and
- (iii) M/R to the office of Soil Conservation Research Centre at Vasad. The applicant, therefore, failed to

maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Government Servant and thereby contravened Rule 3 (i), (ii) & (iii) of CCS (Conduct)Rules, 1964. The applicant pleaded not guilty of the charges and Shri M.K.Dixit, Commissioner of Departmental enquiry was appointed as Enquiry Officer. After adopting the procedure prescribed, the Enquiry Officer submitted the report with his findings holding that the acceptance of money by the applicant has been established but the motive and demand of the said money could not be established on the basis of evidence. The Enquiry Officer also observed that the applicant is not guilty of the charge of bribe but of an act unbecoming of a Government Servant. The Enquiry Officer submitted the report to the disciplinary authority i.e Director General of Works, C.P.W.D., New Delhi who partially agreed with the findings of the Enquiry Officer regarding the acceptance of money by the applicant but regarding motive and demand, the disciplinary authority has given its reason and held that it is also established and imposed a penalty of removal from service by the order dated 9th March, 1988.

2. The applicant submitted an appeal which was decided by the order dated 27th February, 1990 and the finding of the disciplinary authority and Enquiry Officer, however, was upheld but the ~~contents of establishment~~ quantum of punishment

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was modified from removal from service to compulsory retirement. Aggrieved by the same, the applicant has filed the present Application, for the grant of reliefs that the impugned order of punishment be quashed and the applicant be reinstated in the service and be declared him promoted as Executive Engineer from the date when he could have been promoted had he not been removed from service or compulsorily retired with all benefits of all arrears of pay.

3. We heard the learned counsel for the applicant who has also got the file of the co-delinquent Shri S. Gopalan and said Gopalan filed O.A. ~~.....~~ which was allowed by Central Administrative Tribunal, Madras and the case was remitted to the department. The departmental enquiry was again held against the applicant and the Commissioner of Department enquiries by the order dated 2nd November, 1993 given the finding that the charge against the said Junior Engineer Shri Gopalan is not proved. It is said that in view of the above facts, the charge against the said Junior Engineer was also the same. The finding of the enquiry officer in the present case as well as of the disciplinary authority and appellate authority imposing the punishment on that finding cannot be sustained. We have gone through the original file and we find that the case of Junior Engineer Shri Gopalan is materially different

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from that of the applicant Shri J.S.Mittal, who was Assistant Engineer at that relevant point of time. The charge against Shri Gopalan was that on 20.6.1982 he demanded a sum of Rs. 200/- and accepted on 25th August, 1982 from Shri Ganda Lal Chhottey Lal Khalasi Contractor of Baroda in the matter of finalising the work of M/R to office and residential quarters for Soil Conservation Research Centre at Vasad during 1980-91.

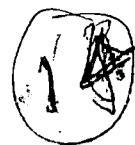
4. In the present case the charge against Assistant Engineer Shri J.S.Mittal as quoted above is in respect of the finalisation of the work of Aerodrome Colony at Baroda, Office and Technical Building at Baroda including the office of Soil Conservation Research Centre at Vasad. It was the third work of construction which was common to Shri Gopalan Junior Engineer and the applicant Assistant Engineer. The observation in the report exonerating Shri Gopalan by the Commissioner of Departmental Enquiries in his report dated 2.11.1993, places more blame on the Assistant Engineer than on Junior Engineer. Even in that report the fact recovery of the amount of Rs. 200/- from the office drawer of the Junior Engineer has been established beyond doubt and it has also been established that the Junior Engineer had handled the currency notes in some way or the other resulting in the sodium carbonate solution turning pink but these facts were not considered as facts establishing the acceptance of the bribe by the Junior Engineer Shri Gopalan and giving the benefit of ^{not} non-appearance of the Panch witness Shri Joshi for giving testimony. Thus the case of Junior Engineer Shri Gopalan

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materially differs on the point of reaching conclusion and cannot help the case of the applicant Shri J.S.Mittal, Assistant Engineer.

4. We have also considered the judgement of the Central Administrative Tribunal, Madras Bench which quashed the impugned order of punishment passed against Shri Gopalan, Junior Engineer on certain grounds and remanded the case on the basis that due opportunities has not been afforded to the delinquent employee Junior Engineer Shri S.Gopalan. Those grounds are not available in the present case. The judgement of Central Administrative Tribunal, Madras Bench in the case of Shri Gopalan therefore, is a judgement relevant to the charge raised before that Bench against punishment order passed by the disciplinary authority on the basis of the finding of the enquiry officer. The punishment in the case of J.S.Mittal, Assistant Engineer is by different order and the appellate authority has also passed a different order. Thus the grounds taken before the C.A.T., Madras Bench and the reasons given in the judgement cannot apply to the case of the applicant as a precedent as all the points raised in the present case ^{are} to be considered on their merits with respect to the circumstances appearing and the appreciation of evidence done by the enquiry officer.

5. The scope of judicial review in case where the proceedings of the departmental enquiry are challenged is limited. The



judicial review cannot extend to appreciation of evidence afresh as an appellate authority over the disciplinary or appellate authority of the department. In the recent decision of the court of Govt. of Tamil Nadu Vs. A.Rajapandayan reported in Judgement Today 1994 Volume-VII page 492. The Hon'ble Supreme Court of India has considered a similar point where the order of the disciplinary authority as well as of appellate authority imposing the penalty on the respondent A. Rajapandayan was interfered by Madras High Court and the punishment was quashed by re-appreciating the evidence holding that the conclusion drawn against the respondents of the case do not justify the conclusion of holding of guilt and imposition of punishment against him. The Hon'ble Supreme Court of India held that the Tribunal or court cannot re-appreciate the evidence and is not open to judge the evidence if the appreciation by the Enquiry Officer is passed accepted by disciplinary authority on the basis of admissible evidence. Thus, we have to see whether the conclusion drawn by the Enquiry Officer in the circumstances of the case are justified or not. In another case of State Bank of India vs. Samandar Kishore Addow reported in 1994 (27 ATC) Page 149 referring to the Constitution Bench Judgement of Managing Director, ECIL Hyderabad Vs. B.Karunakar (1993, 25 ATC) page 704, the Hon'ble Supreme Court of India held that

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appreciation of evidence afresh is not permissible on judicial review. In this reported case the High Court held that there was no evidence, this conclusion of High Court was unjustified in view of the admissible evidence available on record.

6. Now coming to the case in hand, we have gone through the findings of the Enquiry Officer and the evidence adduced before Enquiry Officer. There was a recovery of money from the drawer of the applicant Shri J.S.Mittal, Assistant Engineer coupled with the making of a phenolphthalein of taking hand wash of the applicant which turned into pink going to show that the applicant has come in touch with the phenolphthalein powder. The applicant has given an explanation of shaking hands with the Contractor leading to conclusion that the Contractor has smeared his hands with the phenolphthalein powder and falsely implicated him by a trap witness. His explanation afforded by the applicant that the recovery of Rs. 150/- from the drawer has been in the circumstances that the room and the drawer were unlocked and persons other than the applicant has access to the room. If on the basis of the above finding given by the Enquiry Officer then cannot said to be on the basis of no evidence or that the conclusion drawn was not justified.

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7. The appellate authority though agrees with this finding but has given further reasons in its order disagreeing with the findings of the Enquiry Officer regarding non-demand of bribe by the applicant. Reasons are as following :-

"According to the report submitted by the Inquiring Authority all the three final bills prepared by the Assistant Engineer were in minus showing that no money was due to the contractor, rather the contractor had to refund money to the Government and thus there was no chance for Shri J.S.Mittal, Assistant Engineer for making the demand. On examination of documents of the case, I find that substantial amounts were due to the contractor in the accounts of all the three works. No proposal for releasing amounts shown withheld in the Running Bill Payments made earlier were considered by Shri J.S. Mittal, Assistant Engineer while submitting the final bills of the cited works. For the work 'A/R and M/O to Aerodrome Colony' the final bill shows that a sum of Rs. 267/- was kept withheld "towards extension of time of contract case" and a sum of Rs. 700/- was proposed towards "Penal recovery for cement." For the work of 'A/R and M/O to office and technical building', the final bill shows that a sum of Rs. 1430/- was kept withheld towards "extension of time of contract case". Further,

the final bill did not contain any proposal about release of Rs. 2000/- that had been shown in the earlier bill as "withheld to ards rectification of defects and non-execution of agreement item etc.". For the third work cited in the charge-sheet also, the final bill shows that a sum of Rs. 54/- was shown "withheld for want of sanction of extension of time (nor applied by the contractor)",; this bill did not contain any proposal for release of Rs. 1,000/- that had been withheld in the earlier bill for "non-execution of agreement item". Besides, the Security Deposits in respect of the three works could also have become repayable to the contractor, after the final bills of the works-in-question had been settled. Thus, in August, 1982, not only the amount of Security Deposit, but also substantial part of the amounts that had been kept withheld on various accounts could have become due to the contractor provided Shri J.S.Mittal, A.E. processed the final bill. If Shri J.S.Mittal, A.E. was harsh to the contractor and did not tolerate his lapses then he could have on his own, after giving reasonable time to the contractor for applying for extension of time, submitted proposal to his superiors for levying compensation on the contractor for delay in completion of works as per the provisions of the agreement executed between the Department and the contractor. Instead, Shri J.S.Mittal, A.E. proposed withholding substantial sum of money for finalization of extension of time of contract cases and also failed to give proposals for release of the amount

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that was withheld in the earlier bills due to reasons such as rectification of defects and non-execution of agreement items, and which sums could have been released to the contractor had the cases been properly processed by him. No person would like to pay anything to any official unless a demand has been made either through expression or through action. Withholding of the amounts coupled with the nature of the relationship between the contractor and the departmental officer and the transaction of the money from the contractor to the departmental officer as indicated by the trap laid by C.B.I. establishes the 'Demand'.

8. The learned counsel for the applicant vehemently argued that in the case giving reasons of disagreement, the applicant should have been given a show cause notice and to submit his explanation regarding the aforesaid reasons given by the disciplinary authority. In the facts and circumstances of the case the disciplinary authority has also partly agreed with the finding of the enquiring authority. It is only on certain appreciation of evidence which disciplinary authority has given of his own and the applicant had already been furnished a copy of the order of punishment along with a copy of Enquiry Officer's report and the matter has been considered by the appellate authority by the order dated 27.2.1990. The applicant, therefore, had a full right of expression and in fact he had expressed in the detailed appeal he filed against the punishment order. The appellate

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authority concurred with the Enquiry Officer to the same extent as the disciplinary authority and accepted the reasoning of the disciplinary authority holding that "Had Shri J.S. Mittal processed the final bill properly not only the amount of Security Deposit but also substantial parts of the amount that has been kept withheld on various points, would have become due to the contractor".

9. In view of this the appellate authority on behalf of the President accepted the findings of acceptance of bribe by the applicant from the contractor in connection with the finalization of the three works in question. Not only this appellate authority is applying its mind and punishment of reduced the/ removal from service and modified that to that of compulsory retirement and the appeal was partly accepted.

10. Learned Counsel for the applicant also argued that when the disciplinary authority has partly disagreed with the enquiry officer's finding regarding the acceptance of bribe, a show cause notice should have been given to the applicant. In the case of Managing Director, ECIL Hyderabad Vs. B. Karunakar reported in J.T. , 1993 Volume-VI Page-1 in para 13 the Supreme Court of India for non-supply of the enquiry officer's report observed as follows:-

¶Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already

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secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to shortcuts. Since it is the Courts/Tribunals which will apply their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made difference to the result in the case that it should set aside the order of punishment".

The relevant passage is quoted above.

11. In the present case as already observed earlier the applicant has taken all these points in the appeal and all of them have been considered by the appellate authority in quite detail and even the order of punishment has been modified. Thus, the observation made by the disciplinary authority of a disagreement with the report of the Enquiry Officer would not help the applicant to set aside the impugned order of punishment passed by the appellate authority.

12. 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.

(B.K.SINGH)
MEMBER(A)

(J.P.SHARMA)
MEMBER(J)

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