

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA.No.176/91

New Delhi -this the 12th day of January 1996

Hon'ble Shri N.V. Krishnan, Vice Chairman (A)
Hon'ble Dr. A. Vedavalli, Member (J)

R.K. Rajora,
S/o Lt. Shrik Har Dayal,
R/o 5741/81, Regharpura,
Karobagh, New Delhi 110 005.

...Applicant

(By Advocate: Shri M.K. Gupta)

VERSUS

UNION OF INDIA, THROUGH

1. The Secretary,
Ministry of Supplies,
Department of Supply,
Nirman Bhawan, New Delhi.
2. The Director General of Supplies
and Disposals,
Jeevantara Building,
Parliament Street,
New Delhi 110 001.Respondents

(By Advocate: None)

O R D E R

(By Hon'ble Dr. A Vedavalli, Member (J))

The facts briefly are that the applicant Shri R.K. Rajora was working as an Assistant Inspecting Officer (AIO) in the Office of the Directorate General of Supplies and Disposals (DGS&D). The DGS&D floated a tender enquiry for procuring 8 tonnes Mobile crane mounted on tractor in November/December 1984. M/s Custom Hydraulic was one of the tenderers who quoted their tender. As the said firm was not registered with DGS&D at that time and was also not a past supplier of that item, the applicant visited the firm's premises for inspection and made enquiries as required under the instructions dated 1.1.85. The

A

(2)

last visit was on 25.1.85 and on being asked by the Director of Inspection to give the capacity report on that date, he submitted his report on the same day. This was approved by the Deputy Director, Inspection and also the Director, Inspection. The DGS&D thereafter issued an advance acceptance of tender on M/s Hydramech Engineering Private Limited though the tender was submitted by M/s Customs Hydraulic and the capacity report was also submitted for Customs Hydraulic (vide Annexure A1, A2 and A3). Though a complaint was made by M/s Escorts, one of the tenderers, was noted by the Director of Inspection Shri G.L. Garg and by the Deputy Director, Inspection, the formal acceptance of tender was also issued to M/s Hydramech by 2nd respondent.

2. The applicant received a memo dated 4.3.85 from the Director of Inspection (vide Annexure A4) and gave his reply on 10.4.85 (vide Annexure A-5). Not satisfied with his explanation, a memorandum was issued to him on 24.10.86 (Annexure A6) initiating disciplinary proceedings against him. The list of charges, the statement of imputation, the list of witnesses and the list of documents to be produced were enclosed. In these proceedings, the second respondent (DGS&D, New Delhi) imposed a penalty of compulsory retirement from service on 9.8.89 (vide Annexure A-12). An appeal against the said order of penalty was submitted to the President of India on 23.11.89 with an application for condonation of delay

AV

(3)

(vide Annexure A-13 and A-14) and the appeal was rejected by the President of India on 17.9.90 (vide Annexure A-15).

3. The applicant has filed the present OA against the following orders:-

- (i) Memorandum No. 13012/17/85-VIG dated 24.10.86 whereby the applicant was given a charge sheet.
- (ii) Memorandum No.C-13012/17/85-VIG dated 9.9.89, whereby a major penalty of compulsory retirement has been imposed.
- (iii) Memorandum No.C-13012/17/85-VIG dated 17.9.90 whereby the appellate authority has rejected the applicant's appeal.

4. The statement of Articles of Charge dated 24.10.86 framed against the applicant (vide Annexure A-6) is as under:-

"Shri R.K. Rajora, ATO while functioning in that capacity in the Office of Director of Inspection, NI Circle, New Delhi during the month of January '85 committed a grave misconduct in as much as that he recommended M/s Custom Hydraulics, New Delhi as agents of M/s Hydramech Engineers Pvt. Ltd. New Delhi (Manufacturers) as capable to manufacture 8 tonne Mobile crane mounted on tractor against DGS&D New Delhi T/E No.ST-4/218/0259/19.9.84/24 and also Hydraulift 15000 hydraulic self loader complete with truck body etc. against T/E No.ST-4/106/0085/ 23.11.84/24, by suppressing and misrepresenting the facts regarding the plant and machinery manufacturing experience past performance etc. Shri Rajora thereby undue favour to the firm.

Shri Rajora by his aforesaid acts of commission and omission, failed to maintain absolute integrity, devotion to duty and conducted himself in a manner which is unbecoming of a Government servant. He thereby contravened Rule-3 of CCS(Conduct) Rules, 1964 and rendered himself liable for disciplinary action."

(4)

5. The enquiry officer in his report dated 28.11.88 (vide Annexure A-10) split the charges against the applicant into three components, namely:

"(a) that he suppressed and Misrepresented facts regarding plants and machinery;


(b) manufacturing experience; and

(c) past experience etc. of M/s Hydramech Engineers, an associate of M/s Customs/Hydraulics, New Delhi, and thereby showed undue favour to the firm."

6. The enquiry officer after examining several witnesses and documents etc. gave the findings that all the three components of the charge have been proved. On receipt of the enquiry report, the applicant submitted a representation dated 7.6.89 (vide Annexure A-11) to the disciplinary authority stating inter alia that the findings of the enquiry officer are erroneous. He prayed that he may be exonerated from the charge against him.

7. The main grounds raised by the applicant in this OA are as follows:-


(a) The procedure adopted by the enquiry officer is contrary to natural justice since the testimony of witnesses favourable to the applicant including the testimony of SW-1 and the applicant himself have been ignored and suppressed and his findings are based on no evidence and are perverse.

- (b) There is a complete non application of mind by the disciplinary authority in issuing the charge sheet dated 24.10.86 and there is no warrant or justification for the same.
- (c) The disciplinary authority's action is unlawful. He ignored the representation made by the applicant and acted without proper application of mind.
- (d) The disciplinary authority acted in a malafide way.
- (e) Penalty of compulsory retirement is arbitrary, excessive and disproportionate to the charge;
- (f) The appellate authority in rejecting the appeal against the order of compulsory retirement passed by the disciplinary authority acted without application of mind as all the contentions raised in the appeal have not been dealt with. The appellate order is also non-speaking. The UPSCs advise is also illegal. 

(E)

- (9) That entire disciplinary proceedings are illegal, unjust, unwarranted and violative of principles of natural justice and also against the settled principles of service law.

8. The applicant prayed for the following reliefs:-

- (i) To quash the charge sheet memo dated 24.10.86, memo dated 9.8.89 whereby a major penalty of compulsory retirement was imposed on the applicant as well as the memo dated 17.9.90 rejecting the appeal, which are patently illegal and untenable;
- (ii) to direct the respondents to restore the applicant to his post which he had been holding on 9.8.89 with all consequential benefits.
- (iii) to direct the respondents to give the applicant arrears of pay, increments, along with interests, due promotion and all other benefits of which, he has been deprived because of the imposition of the impugned penalty, on the basis as though the said penalty was never imposed on him; 

(7)

(iv) to award cost in favour of the applicant.

9. The respondent No.1 (Union of India through the Secretary, Ministry of Supplies) and Respondent No.2 (Director General of Supplies and Disposals, New Delhi) have filed their reply.

10. The applicant filed his rejoinder to the reply filed by the Respondents No.1 & 2.

11. When the matter came up for hearing the learned counsel for the applicant Shri M.K. Gupta alone was present. No one appeared for the respondents No.1 & 2 although called twice. Therefore, we are disposing of this application after hearing the learned counsel for the applicant alone and on perusal of the pleadings and the documents placed on record. 11. The respondents in their reply have admitted inter alia that the Firm M/s Custom Hydraulic offered to supply the item concerned which is sold and serviced by their associates M/s Hydramech Engineers as per Clause 18 of their quotation (Vide Annexure R-1). They stipulated that the order may be issued on M/s Hydramech Engineers. As both the firms were neither registered with the DGS&D nor were their past suppliers, a capacity report was called for and the applicant was deputed to verify and submit the report regarding the capacity/experience of both the firms.

12. The applicant gave the capacity report on 25.01.85 after visiting the firm's premises (vide Annexure A-3). In the said report the applicant gave certain details as to the instruments, personnel, testing arrangement etc. and reported that "M/s Hydramech Engineering Private Limited are adequately equipped with the necessary plants and machinery and have the technical knowhow and sufficient experience for manufacturing the item under consideration." The applicant gave his final recommendation that "the firm are therefore considered capable to manufacture 8 tonnes mobile crane mounted on tractor."

13. The said capacity report was approved by the Dy. Director and the Director of Inspection on the basis of the details furnished therein and sent the report to Purchase Directorate on 24.01.85. Based on this report the Purchased Directorate placed order on M/s Hydramech Engineers. Thereafter, certain representations were received regarding the capacity of the said firm to manufacture the items in question. Therefore, the aforementioned officers namely the Dy Director and Director (Inspection) inspected the firm on 16.2.85 and further verified the matter on 18.02.85 in the Office of the firm. Verification revealed that the plant as well as the machinery and the factory premises mentioned in the capacity report prepared by the applicant did not belong to M/s Hydramech Engineers but to another firm M/s Beekay Udyog and were being used by M/s Hydramech on lease basis.

A

161

(9)

Therefore, the impugned disciplinary proceedings were initiated for the suppression/mis-representation of facts.

14. Further, the respondents in their parawise reply have raised a plea that the O.A. is barred by limitation. However, they have not explained as to how this plea is maintainable. Be that as it may, since the last impugned order i.e. the Appellate Authority's order rejecting the applicant's appeal is dated 17.09.90 and the O.A. is filed on 18.01.91, we find that the application is within time and the aforesaid plea of the respondents is not sustainable.

15. On merits the respondents have submitted that the penalty of compulsory retirement was imposed by the disciplinary authority on the applicant after conclusion of disciplinary proceedings which led to the establishment of the charges framed against him and that the averments to the contrary are not tenable. The said authority considered all the relevant points raised in the representation of the applicant dt 7.06.89 (Annexure A-11) and gave detailed and well-reasoned penalty order after rejecting the said representation. They have further contended that the chargesheet was issued with sufficient justification and is not vague. The findings of the Enquiry Officer regarding suppression and mis-representation of facts as to the past experience and manufacturing experience of the firms M/s Hydramech were submitted to be correct and solid by

162

15

(10)

the respondents. They have also supported the order of the Appellate Authority as being well-reasoned and proper. It was also contended that the allegations against the U.P.S.C.'s advice being illegal is baseless.

16. The respondents have submitted that the reliefs claimed by the applicant are not admissible and prayed for the dismissal of the application.

17. The applicant in his rejoinder has denied the contents of the reply filed by the respondents and has reiterated the grounds raised and the submissions made in his application and prayed that the O.A. may be allowed.

18. Now we take the first impugned order, namely, memo of charges against the applicant dt 24.10.86 including the articles of charge (Vide A-6) which has been reproduced at Para 3 Supra, for consideration.

19. The applicant contended that there is a non-application of mind on the part of the disciplinary authority in issuing the aforesaid chargesheet and that there was no warrant or justifiable cause for issue of such a chargesheet against him.


A

20. The above contention was refuted by the respondents in their counter. They have submitted that the chargesheet is fully justified and supported by facts.

21. On perusal of the said Memo with its Annexures containing statement of articles of charge against the applicant, the statement of imputation of misconduct or misbehaviour, list of documents, and list of witnesses, it is quite clear that it is not vitiated by any ambiguity or apparent errors etc. The statement of imputations justify the framing of such a charge. We, therefore, find that the aforesaid Memo by itself is not invalid. Hence, we do not find the aforesaid plea of the applicant tenable in law.

22. Another contention putforward by the applicant is that the enquiry report dt 28.11.88 (Vide Annexure A-10) is to be quashed since the procedure adopted by the enquiry Officer, inter alia, is contrary to the rules of natural justice and law and his findings are based on no evidence, perverse, biased, malafide and are without application of mind. It is also alleged that substantive evidence and material produced by the applicant was omitted by the enquiry officer in his report and he was selective in choosing the evidence.

23. The above contentions have been refuted by the respondents in their counter as noted earlier.



24. We have perused the aforesaid enquiry report carefully. It is seen that the chargesheet against the applicant was split up by the enquiry Officer into three components as already noted at Para (4) Supra.

25. The said report indicates that regarding each component of the chargesheet, the evidence adduced by the prosecution as well as the Charged Officer i.e. the applicant was recorded and considered in detail. On an assessment of the evidence, findings on each component of the charge were given by the enquiry Officer after setting out of the reasons thereafter.

26. Re charge 1 (a) i.e. with reference to suppression and mis-representation of facts regarding plant and machinery, the enquiry officer came to the conclusion that plants and machinery did not belong to M/s Hydromech Engineers. Moreover, a "lease agreement" regarding a portion of a shed between the said firm and M/s B.K. Udyog was entered into on 25.01.85 i.e. the day the applicant visited the premises of the firm and furnished the capacity report and that there was no enforceable agreement between the firms regarding the use of plant and machinery of M/s B.K. Udyog by M/s Hydromech Engineers. The Enquiry Officer came to the conclusion that the Charged Officer has given an incorrect picture of M/s Hydromech Engineers regarding plant and machinery. He gave the finding that the above component of charge is proved. ' 27. Re the charge 1 (b), i.e., Suppression

M

and mis-representation of facts with reference to the manufacturing experience, the enquiry Officer on an assessment of evidence adduced by witnesses including Shri M.S. Bhatia, Director of M/s Hydramech Engineers who stated in the cross-examination that "prior to the order from DGS&D dt 28.02.85 we confirm that we have not manufactured and supplied any crane of this capacity", came to the conclusion that the remark of the Charged Officer i.e. the applicant that "M/s Hydramech have sufficient experience for manufacturing the items under consideration" is not factually correct and held the charge to be proved.

28. Re charge 1 (c), i.e., a suppression of mis-representation of facts with reference to past experience etc., the Charged Officer's remarks regarding the same given in the Capacity Report were examined by the Enquiry Officer and on an assessment of the evidence given by the concerned witnesses he came to conclusion that M/s Hydramech did not have any past experience regarding the manufacture of the crane, The contention of the charged officer that his recommendation is only an opinion and the same was accepted by the Superior officers i.e. the Dy Director and Director (Inspection) and has thus become their report, has not been considered to be tenable by the enquiry officer. He observed that this does not absolve the charged Officer from his responsibility for incorrect projection of the firm not based on objective analysis of actual facts. The Charged Officer was required to give a true and fair picture in his capacity report based on critical analysis of


AV

all the facts available to him but he has failed to do so. Hence this charge also was held to be proved by the enquiry officer.

29. As we see, the Charged Officer i.e. the applicant has been given a fair and reasonable opportunity of being heard and the enquiry officer after a detailed consideration of the material evidence before him including the submissions made by the applicant and his witness, has given his findings on each component of charge supported by reason in his report. Hence there is no apparent illegality, infirmity or violation of principles of natural justice. We, therefore, find that the pleas raised by the applicant regarding the enquiry report are unjustified in the eye of law.

30. The second impugned order is the impugned dated 9.9.89 (vide Annexure A-12) whereby a major penalty of compulsory retirement was imposed on the applicant by the disciplinary authority.

31. The main grounds on which the above order is challenged by the applicant in a nutshell are :

- (a) The order is unlawful.
 - (b) The representation made by the applicant against the findings of the enquiry Officers report was ignored.
 - (c) Non-application of mind by the disciplinary authority.
 - (d) Malafide action of the said authority and
- 

- (e) The penalty of compulsory retirement is arbitrary, excessive and disproportionate to the charge.

32. We have considered the aforesaid order of the disciplinary authority carefully. We have noticed that the said authority in fact had considered the representation of the applicant dt 7.6.89 (Vide Annexure A-11) which is stated to have been forwarded to the controlling authority on 20.06.89, challenging the findings of the Enquiry Officer in his report dated 28.11.88. He had dealt with the arguments raised by the applicant and given findings that the same are not tenable for the reasons given in the order ad seriatim and having regard to the facts mentioned therein agreed that the findings of the Enquiry Officer that the charges against the applicant are established. He came to the conclusion that the penalty of compulsory retirement from service be imposed on the applicant and ordered accordingly.

33. Re finding (ii) of facts reached by the disciplinary authority agreeing with the Enquiry Officer that the applicants had suppressed and mis-represented the facts regarding plant and machinery, past experience and manufacturing experience of the firm M/s Hydramech apparently is based on the factual position and we do not find anything perverse, arbitrary or illegal in the said finding.

34. Re finding No.(ii) that the capacity report was approved by the Senior Officers but the applicant alone is responsible for the accuracy or otherwise of the facts, we notice that this finding is given with reference to to the arguments of the applicant that the capacity report furnished by him contained an expression of opinion for which he cannot be punished because, if that were not so, even his Officers who approved the report would have been chargesheeted. We are satisfied that this conclusion of the disciplinary authority is not perverse. Merely because a particular recommendation or opinion requires approval by a higher or superior authority, the Officer who is giving a recommendation based on his own report is not absolved from his responsibility for ensuring factual accuracy of the contents of his report. In view of the above, we do not find anything wrong in the aforesaid finding of the disciplinary authority as to the responsibility of the applicant regarding factual accuracy of his report.

35. Finding No.(iii) of the disciplinary authority regarding the non-consideration of the defence documents produced by the applicant during the enquiry is that those documents relate to the supply of 10 tonnes of mobile crane supplied by M/s Hydramech to Municipal Power house, Amritsar in June, 1986. This supply is not relevant either for assessment of capability of the firm or for reckoning their past performance and manufacturing experience in January, 1985, the events of which are the subject matter of the enquiry.

36. In our view, inter alia of the fact that the capacity report in question is dated 25.01.85, the advance AT on M/s Hydramech is stated to have been issued on 5.2.85, the said firm being unregistered/untried with DGS&D and no evidence apparently has been adduced to establish the supply of atleast 8 tonne mobile crane to any other organisation or department etc prior to the submission of the aforesaid capacity report, we do not find anything wrong in the above finding of the disciplinary authority.

37. Finding No.(iv) of the disciplinary authority, briefly is that the arguments of the applicant justifying non-supply of the crane against the DGS&D order for reasons such as non-extension of delivery period etc is not relevant since the subject of enquiry relates to a period prior to the date of the order of the firm. The pertinent issue it is stated is that in January 1985, the firm M/s Hydramech was not equipped with plant and machinery and had no past experience or manufacturing experience to their credit as reported by the applicant Shri Rajora.

38. On the material placed before us we do not find anything untenable in the aforesaid finding.

39. The applicant has not been able to prove satisfactorily the grounds of unlawfulness, ignoring of representation, malafides, non-application of mind and arbitrary/disproportionate and excessive nature of the

dx

penalty imposed on him. Hence we are of the view that the above grounds against the aforesaid order of the disciplinary authority are unsustainable.

40. The first impugned order dated 17.9.90 (Vide Annexure A-15) is passed by the Appellate Authority rejecting the appeal filed by the applicant dt 23.11.89 (Vide Annexure A-14) against the penalty order dt 9.8.89 passed by the disciplinary authority (Vide Annexure A-12).

41. The said order of the Appellate authority is challenged by the applicant on the ground that though the said order looks like a speaking order it is not so since all the contentions raised by him in the appeal have not been dealt with in the order and hence the said order passed by the Appellate Authority without application of mind is, therefore, illegal and is liable to be quashed. The U.P.S.C.'s advice dated 20.7.90 which is enclosed with the said order and was accepted by the appellate authority is also challenged stating that it is illegal.

42. The respondents in their counter have supported the appellate authority's order has having been passed after duly dealing with the material and substantial aspects of the applicants appeal.

43. We have carefully considered the aforesaid order of the Appellate Authority along with UPSC's advice. When the appellate authority had decided to accept the advice of the UPSC, which is in

A

detail, it is not necessary for that authority to pass any further speaking order. It has affirmed the advice given by the UPSC. No illegality in the advice of the UPSC was also pin-pointed by the applicant.

44. In view of the above we find that the aforementioned grounds raised by the applicant in Para No. 31 (Supra) are untenable in law and fact. The learned counsel for the applicant during his arguments cited some authorities including A.I.R 1979 S.C. 1022 ^{and} 1993 (25) ATC 117 to support his contentions.

45. In Union of India versus J. Ahmed (AIR 1979 (SC) 1022, it has been held by the Hon'ble Supreme Court inter alia (at pages 1026 to 1027) that failure to attain high standard of efficiency in performance of duty, permitting an ^{the} inference of negligence would not constitute misconduct nor for the purposes of Rule-3 of the Conduct Rules, as would indicate lack of devotion to duty."

46. In K.G. Samnotra versus Union of India (1993 (25) ATC 117), it was observed by this Tribunal inter alia (at para 29) that:

".....there is no finding of grave misconduct or negligence on the part of the applicant. It was not a one-man show and it is hard to believe that the applicant has misled his superior officers in the matter of purchasing the medicine in question. When there was a hierarchy of officers who are involved in processing the case of purchase of the medicine in question, it would be unfair and unjust to fix the responsibility solely on the applicant, assuming that the purchase ought not to have been made at that relevant point of time. Assuming that there was an

My

error of judgment on the part of the applicant, he cannot be held guilty of gross or grave misconduct or negligence."

47. However, the scope of extent of Tribunal's jurisdiction regarding disciplinary matters and punishment is well settled in Union of India versus Parmananda (AIR 1989 (SC) 1185), wherein, it was held by the Hon'ble Supreme Court thus:-

"....."

27. We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

48. Our views and findings in the preceding paras are given in the light of the aforesaid well-settled legal position and our attention has not been drawn to any new proposition of law in support of the contentions raised by the applicant.

49. In view of the foregoing discussion we find that the applicant has failed to establish and prove any of the grounds which have been raised in the

[Signature]

(21)

present application challenging the three impugned orders in this case. Hence the application is devoid of any merit and is dismissed. No costs.

A. Vedavalli
12-1-96

(Dr A. Vedavalli)

Member (J)

N.V. Krishnan
12-1-96

(N.V. Krishnan)

Vice Chairman (A)

/kam/