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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.56/1991

Hon'ble Shri J.P. Sharma, Member (J)
Hon'ble Shri P.T.Thiruvengadam, Member(A)

New Delhi, this 21st day of February, 1995

Shri B.S. Venkatesh
C-2, CRR Flats
Maharani Bagh, New Delhi-110 065 .. Applicant

By Shri K.N. Bahuguna, Advocate

versus

Union of India, through

1. Director General
Council of Scientific & Industrial Research
Anusandhan Bhavan, Rafi Marg
New Delhi-110 001
2. Indian National Scientific
Documentation Centre
14, Satsang Vihar Marg, N.Delhi-110 067
3. Director
Central Road Research Institute
Delhi-Mathura Road
New Delhi-110 020 .. Respondents

By Shri A.K. Sikri with Shri V.K.Rao, Advocates

ORDER (oral)

Shri J.P. Sharma, Member(J)

The applicant was working as Executive Engineer in the Indian National Scientific Documentation Centre (INSDOC in short). There was certain work relating to erection and commissioning of lifts in the INSDOC for which a contract was given. The applicant as Executive Engineer alongwith Shri S.K. Sharma, Civil Engineer had to carry out inspection, measurement and recommend payment after completion of the required degree of work as stipulated in the agreement with the contractor. It was alleged against the applicant that in spite of the work having not been completed, payments have been made in excess to the contractor and a memo dated 16.12.87 with article of charge was served upon him to the effect that he had committed

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misconduct inasmuch as that he recorded a wrong certificate regarding completion of work of supply, erection and commissioning of lifts No.1,2 and 3 in the INSDOC building resulting in unauthorised payment to the contractor. As such, he had contravened Rule 3(1)(i) and (ii) of the CCS(Conduct) Rules, 1964 as made applicable to the CSIR employees. Alongwith the Article of Charge, imputation of misconduct, necessary evidence and the documents relied upon were also supplied as Annexures.

2. The applicant denied the charge and an enquiry was conducted under CCS(CCA) Rules, 1965 by Shri R.S. Goyal, Inquiry Officer and Commissioner for Departmental Enquiry. The Enquiry Officer gave full opportunity to the applicant, recorded evidence produced before him and thereafter submitted his report on 20.6.88. It was held that the charge framed against the applicant is established because of the reasons given in the report. The disciplinary authority agreeing with the report of the enquiry officer passed the impugned order dated 21.3.89 and for the reasons therein imposed a penalty of compulsorily retiring the applicant with full pensionary benefit with effect from the date of the order. The applicant preferred an appeal to the appellate authority, who after considering the appeal passed an order on 6.12.89 by taking a lenient view and modified the penalty to that of reduction to a lower post of Civil Engineer in the grade of Rs.2000-3500 from the present grade of Rs.2200-4000 till his superannuation on 31.10.91. His basic pay was fixed @ Rs.3500/- in the scale of Rs.2000-3500/-. The appellate order further says that the period from the date of compulsory retirement till the date of his joining duty will be treated as dies non.

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3. The applicant thereafter filed the present application challenging the aforesaid orders of punishment and prayed for the grant of reliefs that the applicant be reinstated to the post of Executive Engineer and thereafter he may be given all consequential benefits such as promotion etc. This application was filed on 5.12.90 before the applicant's superannuation.

4. At the outset, we note that the applicant was functioning as Executive Engineer against a work charged post in INSDOC and had been repatriated to his cadre position of Assistant Executive Engineer in scale of Rs.2200-4000, prior to the issue of punishment orders. Hence, the issue of reinstatement as Executive Engineer was not correctly pressed.

5. The main ground advanced by the learned counsel for the applicant was that second bill for payment to the contractor was certified in March, 1984 only to the extent to which the work had been complete and the payment was only upto the stage of work at that point of time and not for full work. The applicant has recorded that the work was in progress and accordingly holding him responsible for non-payment is without any basis.

6. The learned counsel for the respondents drew attention to the inquiry report. In the assessment of evidence, the terms and conditions for release of payment have been reproduced. These are as under:

"(i) 80% of the value of material against delivery of material and verification of the material from the list supplied by the contractor as mentioned in item of material and payment after executing a bond

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on non-judicial and embossed stamp paper as per proforma described in the general conditions of contract.

(ii) 90% of the total value of work after deduction of (i) above after erection and satisfactory performance.

(iii) 95% of the total value of work after deducting of (i) & (ii) above after getting the certificate of fitness from the lift inspector and the date of completion will be considered from the date of getting the certificate of fitness from the Lift Inspector.

(iv) 100% after deduction of (i) to (iii) above after 12 months trouble free service and satisfactory performance."

7. It is admitted that the first payment order for the supply of material to the tune of 80% of the value of material had already been made in March, 1983. The second bill was paid in March, 1984 and this bill included further payment for not only lift 1 but also lifts 2 and 3. The contract covered all the three bills. With regard to lift 2 and 3 some further payment over and above 80% of the value of the material had been authorised.

8. It is the case of the respondents that the second bill should not have been forwarded particularly when documentary evidence clearly confirms that the erection and commissioning of the second lift was incomplete by March 1984 and erection work of lift 3 had commenced in April 1986. Even the charged officer had indicated to the Chief Engineer on 1.4.1986 that the contractor had not completed the work of the second lift and the third lift erection work was yet to be taken up. It was thus held that in the above situation no further payment was admissible to the contractor for the lifts 2 & 3 over and above 80% cost of the supply of material already paid by March, 1983. In the circumstances, we find that there was evidence in establishing the charge and accordingly we do not propose to interfere with the punishment order. At this stage, the

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learned counsel for the applicant referred to the appellate order dated 6.12.89, the operative portion of which reads as under:

"The points raised by Shri Venkatesh in his appeal do not contain any substance. The misconduct committed is very serious warranting severe penalty. However, in view of his long service, I take a lenient view and modify the penalty of compulsory retirement to that of reduction to a lower post of Civil Engineer in the grade of Rs.2000-3500 from his present grade of Rs.200-4000 till his superannuation on 31st October, 1991. He will draw a basic pay of Rs.3500/- p.m. in the lower grade of Rs.2000-3500. The period from the date of compulsory retirement till the date of his joining duty will be treated as dies non".

9. While no arguments were advanced challenging the appellate order as illegal, it is argued that the intention of the appellate authority was to take a lenient view. However in the process of passing a revised order, the case of the applicant has suffered. In lieu of the disciplinary authority's order for compulsory retirement with full pensionary benefit effective from 21.3.89, the appellate order had resulted in the pension being calculated on last salary of Rs.3500/- per month. It is the case of the applicant that on the earlier occasion, his pension had been based on the last salary of Rs.3750/- in the higher scale. As regards qualifying service to be taken into account for reckoning the pension, there was some advantage by virtue of appellate order. But this advantage was getting lost by the lower value of the last pay drawn.

10. There is force in the submission that the intention of the appellate authority was to issue an order in favour of the applicant. In the absence of complete details we are not able to appreciate whether the appellate order had ultimately resulted in monetary gain on long term basis. In the interest of justice, we direct the appellate

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authority to check the final implication from the point of view of the applicant and if the appellate order is adversely affecting the applicant, the appellate authority should now pass a modified order by deleting the provision regarding dies non. The modification order should be passed within a period of 3 months from the date of receipt of this order by the respondents. In case no modification is called for, a speaking order should be passed in favour of the applicant bringing out as to how there is no financial loss after the passing of the appellate order dated 6.12.89.

11. The OA is disposed off as per the direction above. No costs.

P. J. Thiruvengadam

(P.T.Thiruvengadam)
Member (A)
21.2.1995

J.P. Sharma

(J.P. Sharma)
Member (J)
21.2.1995

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