

**Central Administrative Tribunal
Principal Bench**

OA No. 2229/2004

New Delhi, this 13th day of December, 2005

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**Hon'ble Mr. V.K. Majotra, Vice Chairman (A)
Hon'ble Mrs. Meera Chhibber, Member (J)**

Shri N.K. Sarin,
Junior Engineer,
C.P.W.D.,
C/o Office of Executive Engineer,
Construction Division No. XII,
CPWD, I.P. Bhawan,
New Delhi. ...Applicant

(By Advocate: Shri Naresh Kaushik)

-Versus-

Union of India through

1. Secretary,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.
2. C.P.W.D. through its
Director General (Works),
Nirman Bhawan,
New Delhi.
3. Chief Engineer (NDZ) III,
C.P.W.D., Sewa Bhawan,
R.K. Puram, New Delhi.
4. Superintending Engineer,
C.P.W.D., Delhi Central,
IVth Floor, C-Wing,
I.P. Bhawan,
New Delhi. ...Respondents

(By Advocate: Shri Rajeev Bansal)



ORDER

By Mr. V.K. Majotra, Vice Chairman (A):

In disciplinary proceedings initiated against the applicant under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 [for short CCS(CCA) Rules], applicant was charged for issuing 89 bags of cement to the work on 1.4.1997 within 24 hours of receipt of the cement without obtaining in writing permission from the Assistant Engineer In-charge. It is also alleged that he did not obtain signatures of the contractor for receiving 89 bags of cement. Out of 89 bags of cement of Superplus Jaypee brand, 82 bags of cement were alleged to have been pilfered by the applicant. Earlier on, applicant had filed an OA No. 3104/2003 against the orders passed by the disciplinary authority, among others, on the ground that the disciplinary authority had proceeded to pass the final orders without supplying the second stage advice of the C.V.C. In view of the fact that the revisional authority was seized with the matter, he was directed vide order dated 7.5.2004, by which aforesaid O.A. was disposed of, to grant an opportunity of hearing to the applicant and thereafter pass an appropriate order dealing with the contentions raised by the applicant for the purpose of revising the order. The disciplinary authority imposed the penalty of reduction by three stages in the time scale of pay of Rs. 5000-8000 for a period three years from 1.1.2003 with a further direction that the applicant would not earn increment of pay during the period of reduction and that on expiry of this period, the reduction will not have the effect of postponing his future increments of pay. The appellate authority upheld the penalty imposed by the disciplinary authority. However,

the revisional authority vide its orders dated 30.08.2004 (Annexure 3) in pursuance of Tribunal's aforesaid directions, reduced the penalty to "reduction of pay by three stages for three years without cumulative effect and not adversely affecting his pension" with the direction that he will not earn increment of pay during the period of such reduction. It was clarified that penalty shall take effect from 1.1.2003 and dues, if any, payable to the applicant, due to revision of the disciplinary authority's order, be paid to the applicant. By virtue of this O.A., applicant has challenged this punishment.

2. It has been admitted by the applicant that second stage advice of CVC was provided to him whereafter the disciplinary authority passed the punishment order.

3. Learned counsel of the applicant made the following contentions:-

- i) The enquiry officer exonerated the applicant of the charges alleged against him. However, the disciplinary authority proceeded to hold the charge proved against him without considering the reasoning adopted by the enquiry officer for exonerating him.
- ii) Vigilance Team had inspected the site at first from around 12.00 noon to 3.20 p.m. and had found, by random checking, that the issue of the cement from the Central Store and its brand were correct. The Vigilance Team visited again at around 5.00 p.m. and recorded the Inspection Note in the absence of the applicant on the basis of which the disciplinary authority found the charge

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proved against the applicant. 82 bags of branded cement had been used in the meanwhile and the empty cement bags had been taken away by the contractor and were not available on the spot.

iii) It is a case of 'no evidence' and non-application of mind by the authorities.

4. No other grounds were explored at the time of arguments before us.

5. Learned counsel of the respondents submitted that although the enquiry officer had exonerated the applicant from the charges, the disciplinary authority disagreed with the findings of the enquiry officer and provided the enquiry report along with his tentative reasons for disagreement to the applicant, enabling him to make representation on the points of disagreement. The applicant made his representation against the disagreement note and then the Disciplinary Authority came to his conclusions holding the charge of pilferage of the cement by the applicant proved and awarded the punishment, which was later on reduced by the revisional authority. Learned counsel contended that there is no illegality in the procedure adopted by the disciplinary authority. In his right, the disciplinary authority could have disagreed with the enquiry report and after providing an opportunity to the applicant, as above, come to his own conclusions and findings.

6. Learned counsel of the respondents then stated that as the Superintending Engineer was not satisfied with the first Inspection Note, being incomplete and defective, the Executive Engineer

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(Vigilance) was sent again and on verification a fresh Inspection Note was prepared which indicated issuance of 89 bags of Superplus Jaypee cement on 1.4.1997. At the time of inspection, 55 bags including empty cement bags were found at site at different places. Out of these 55 bags, 7 bags were of Superplus Jaypee brand and 48 bags of DLF Premium brand. The applicant was not able to give any explanation for the presence of 48 bags including empty cement bags of DLF Premium and about the absence of 82 bags of Superplus Jaypee brand at site. The applicant had signed this Inspection Note. Therefore, it cannot be said that the applicant was absent when the inspection was carried out.

7. Learned counsel for respondents further stated that the revisional authority has passed detailed and speaking orders with full application of mind and accepting the reasoning of the disciplinary authority for disagreement with the enquiry report.

8. We have considered the respective contentions of the parties as also the material on record.

9. Annexure-7 dated 31.05.2002 is the disagreement note of the disciplinary authority with the findings of the enquiry officer. The disciplinary authority has given his reasoning for disagreeing with the findings of the enquiry officer. He has recorded, on the basis of the prosecution document (P3), that during the inspection carried out by the Executive Engineer (Vigilance) out of 89 bags of Superplus Jaypee brand cement, issued at the work, only 7 bags of Superplus Jaypee brand cement bags were found at site. As such, 82 bag of Superplus Jaypee brand cement, issued by the Central Stores and

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received at site, were missing from the site and no plausible explanation was offered by the applicant for that. The disciplinary authority in the disagreement note further stated that the contractor had received the cement and signed the Cement Register in token thereof. The Enquiry Officer had stated that some DLF Premium brand cement was procured through local purchases and was brought to site on 14.3.1997 and consumed before 31.3.1997. The disciplinary authority recorded that Enquiry Officer's statement would not explain the shortage of 82 bags of Superplus Jaypee brand cement, not found at site by the Vigilance Team, though issued on the same day. The applicant is stated to have signed the Inspection Note indicating the availability at site of only 7 Superplus Jaypee brand cement bags on 1.4.1997 as against 89 bags of cement issued on the same day. It is also stated that the applicant had signed the Inspection Note without any reservations. There is no material before us indicating that applicant had been coerced in any manner to sign the Inspection Note for shortage of 82 bags of Superplus Jaypee brand cement.

10. The trite law, on the action to be taken by the disciplinary authority in the event of disagreeing with the enquiry officer, is that he has to record reasons for disagreeing with the findings of the enquiry officer and Courts cannot interfere unless the findings of the disciplinary authority are unreasonable. The disciplinary authority is not bound by the enquiry report. After providing the enquiry report and a copy of his disagreement note to the delinquent, he has to take into consideration the representation thereagainst of the delinquent and come to his own conclusions on the basis of record. In his orders, it is not necessary for the disciplinary authority to counter all the



reasoning and findings of the enquiry officer. It is obligatory on his part to come to his own reasons and findings in the matter after differing with the enquiry officer's report and providing an opportunity to the applicant to represent thereagainst. For these views, we rely on the following:-

- i) **State of Rajasthan vs. M.C. Saxena**, 1998
SCC(L&S) 875;
- ii) **Yoginath D. Bagde vs. State of Maharashtra & Ors.**, 1999 (7) SCC 739; and
- iii) **Bank of India & Anr. vs. Degla Suryanarayna**, JT 1999 (4) SC 489.

11. Assertion made on behalf of the applicant that the second inspection was carried out during his absence and his signatures were obtained on the Inspection Note later on is immaterial, as the applicant had signed the Inspection Note himself. He could have refused to sign the Inspection Note. Thus, the contention of the respondents has to be believed that the Inspection Note was prepared in the presence of the applicant on the basis of which missing of 82 bags of cement of Superplus Jaypee brand brought at site on 31.03.1997 was established. Not only that the disciplinary authority has given his own good reasoning for holding the applicant guilty of the charges and punishing the applicant, the revisional authority has also passed detailed and reasoned orders. It is particularly borne out from the following paragraph of the revisional authority's orders:

"A surprise inspection of the cement store of the work as mentioned in the chargesheet was conducted by the Executive Engineer (Vig.)IV along with Assistant Engineer (Vig.)IV on 1.4.97 at 12.15

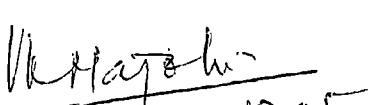


P.M. in the presence of Shri R.P. Singh, AE(C) and Shri N.K. Sarin, JE(C) in-charge of the work and representative of the contractor. As per cement register of the work, there was 'NIL' balance of cement on 30.3.1997 and 540 bags of 'Surplus Jaypee' brand cement were received on 31.3.1997 from the Central Stores, CPWD, New Delhi. Out of these 540 bags of cement, 89 bags were issued on 1.4.1997 and there were 451 bags of cement in the cement godown which tallied with the book balance. The register was signed by Shri N.K. Sarin, JE(C) for issuing 89 bags of cement, however, there were no signatures of the contractor or his representative in token of having received the supply of 89 bags of 'Surplus Jaypee' brand cement. As per the inspection note dated 1.4.1997 (prosecution document, Exb.P3), at the time of inspection, 55 bags including empty cement bags were found at site at different places. Out of these 55 bags, 7 bags were of make 'Surplus Jaypee' brand and 48 bags were of DLF Premium brand whereas the Executive Engineer, Central Store Division-I vide letter no. EE/CSD-I/cement/97-98/650, dated 25.4.1997 confirmed that 540 bags of cement issued to PWD, D-XI against gate pass No. 81,82&83 were of 'Surplus Jaypee' Brand. When the balance of cement in the store on 30.3.1997 there could be no DLF premium brand cement available on 1.4.1997 at site. The C.O. has not been able to give any satisfactory explanation for the presence of 48 bags including empty cement bags of DLF Premium brand and about the absence of 82 cement bags 'Surplus Jaypee' brand cement bags at site. As such it is clear that 82 bags of 'Surplus Jaypee' brand cement were not available at site of the work when surprise inspection on 1.4.1997 was carried out by the Vigilance Unit. Hence there was misappropriation of 82 bags of 'Surplus Jaypee' brand cement."

12. Having regard to the facts and circumstances of the case as also the discussion made above, we do not find any infirmity in the orders of the revisional authority and, as such, the Original Application is dismissed without any order as to costs.


(Meera Chhibber)
Member (J)

/na/


(V.K. Majotra) 13.12.05
Vice Chairman (A)