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**Central Administrative Tribunal  
Principal Bench, New Delhi.**

**OA-2349/2004**

New Delhi this the 27<sup>th</sup> day of September, 2006

**Hon'ble Mr. Justice B. Panigrahi, Chairman**  
**Hon'ble Mrs. Chitra Chopra, Member(A)**

Sh. R.B. Piple,  
S/o late Sh. Chiranjil Lal,  
R/o B-3/28, Janakpuri,  
New Delhi-58.

Applicant

(through Sh. L.R. Khatana, Advocate)

Versus

1. Union of India through  
Secretary to the Govt. of India,  
Department of Telecommunications,  
Ministry of Communications and Information  
Technology, Sanchar Bhavan,  
New Delhi-1.
2. Union Public Service Commission  
(through its Secretary)  
Dholpur House, Shahjahan Road,  
New Delhi.

Respondents

(through Mrs. Nidhi Bisaria, proxy for Sh. V.K. Rao, Advocate)

**O R D E R**

**Hon'ble Mrs. Chitra Chopra, Member(A)**

By this OA, the applicant (Sh. R.B. Piple) assails impugned order dated 28.10.2003 (Annexure-A4) imposing penalty of reduction of pay by two stages in the time scale of pay till his retirement, with further direction that he will not earn increments of pay during such period of reduction. He is

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aggrieved because of the illegal, arbitrary and discriminatory initiation of disciplinary proceedings and imposition of major penalty on him whereas no action was initiated against the other similarly situated officials. He is also aggrieved by the initiation of DE proceedings after 7 years of the alleged incident, which had taken place in 1991-92 as well as the note of disagreement recorded on the basis of surmises and conjectures.

2. The factual background of the case is briefly as under:

The applicant is working as Assistant Director General (IC-I) in the Department of Telecommunications, Government of India. At the relevant point of time i.e. in the years 1991-92, the period to which the alleged incident related, in respect of which the impugned disciplinary proceedings were initiated, the applicant was working as Divisional Engineer (DE for short) (Cable Construction/North) in the Mahanagar Telephone Nigam Ltd., Delhi (MTNL for short).

In the MTNL the work of laying underground cables is done by the Cable Construction Unit. For each area there is a Deputy General Manager (DGM). Under each DGM there are 4 or 5 Divisional Engineers and under each Divisional Engineer there are Cable Construction Officers (COCs) and under each COC there are 3 or 4 Junior Telecom Officers (JTOs). The COCs are the unit officers in charge of getting the works done through the JTOs under their respective charge and the DE is the overall controlling officer. When a stage of work is completed, the JTO offers the work for acceptance testing to the Acceptance Testing Organisation of the Department, which is an independent technical wing specially responsible for the acceptance and

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testing of the work. The bills submitted by the contractor are checked by the COC and passed for payment. An entry in regard to the bills is also made in the measurement book (MB for short), which is also countersigned by the DE as per the departmental practice. As per departmental norms 10% work done is checked by the DE and a certificate to that effect is endorsed on the bill but there is no instruction or prescribed procedure/practice that the DE will make entries to this effect in the MB. The JTO has 100% responsibility of getting the work executed and the COC has the 100% supervisory responsibility of checking the work execution whereas the DE has been assigned only 10% responsibility of supervising/checking.

3. In the present case the Project Estimate No. 4572 was sanctioned by the Planning Wing for laying down underground cables in the Rohini Exchange area. The said Project Estimate was divided into five detailed estimates. The first four were executed by the Division under the other DE (Shri M.R. Bharti) and the COCs and JTOs under him whereas the fifth and last detailed estimate was executed by the Division under the applicant. The entire work of this Project Estimate was executed through the three departmental approved contractors. In respect of the work executed by the Division under the applicant, the A/T procedure was duly followed and as per prescribed procedure he carried out the 10% test check and duly recorded a certificate to that effect on the relevant bills as per procedure and practice followed by all the DEs in the MTNL.

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4. It is alleged that in a subsequent inspection of the work by a vigilance team on 9.4.1992 and 10.4.1992, it was revealed that the work of cabling had not been done as per prescribed norms. However, it is the contention of the applicant that he was not associated with the said vigilance inspection at any stage. On the basis of the alleged inspection the excess payment allegedly made to the contractors was recovered in respect of the entire work assigned to the three contractors as the work was held to be defective/deficient.

5. In regard to the recoveries made from the bills of the contractors, it is stated that a deduction of Rs. 2,29,249/- was made from the bills of M/s Geeta Construction, out of which an amount of Rs. 56,289/- pertained to the work executed by the said contractor under the charge of Sh. M.R. Bharti, the other DE. It has been further submitted that on the basis of the vigilance inspection, the department issued a chargesheet under Rule 16 of the CCS(CCA) Rules, 1965 vide letter dated 16.7.1993 to Shri Jakhoo Ram, COC, who was the Unit Officer directly responsible for the supervision of the work execution in the division under the applicant and he was ultimately given a minor penalty of withholding of increment of pay for a period of two years without cumulative effect. Sh. Subhash Chand, JTO, who was also directly responsible for getting the work executed from the contractor was subsequently awarded a penalty of reduction by one increment in the time scale with cumulative effect. As far as Sh. M.R. Bharti, the other DE concerned, no disciplinary action was taken against either him or the other

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officers in his Division. Action was taken only against the JTOs, some of whom were exonerated and three of them were given censure.

6. After more than seven years of alleged incident the applicant was served chargesheet on 29.9.1999. The following article of charge was framed against him:-

"That the said Shri R.B. Piple, while functioning as DE (CCN), MTNL, New Delhi, during the period 1991-92, in deliberate violation of the specific instructions laid down in the Measurement Books, and in connivance with his subordinates and the contractors, M/s. H.S. Construction Co. and M/s Geeta Constructions, failed to test check the work of laying of distribution cable in Rohini Telephone Exchange area, and passed for payment the bills of the said contractors containing false claims for trenching of rocky soil and provision of hume pipes, which would have caused undue pecuniary advantage of Rs. 5,17,328/- to the said contractors and corresponding loss to the MTNL had it not been for recoveries ordered subsequently when the fraud came to light; and he further failed to take all possible steps to ensure the integrity and devotion to duty of his subordinates who were under his control and authority.

Thus, by the above acts, the said Shri R.B. Piple committed grave misconduct, failed to maintain absolute integrity and devotion to duty, and acted in a manner unbecoming of a Government servant, thereby contravening Rule 3(1)(i),(ii) and (iii) of the CCS (Conduct) Rules, 1964, in addition to Rule 3(2)(i) ibid "

7. The applicant submitted his defence and denied the charges. On the basis of the analysis of the evidence led during the inquiry and the written briefs submitted by the prosecution and the defence, the Inquiry Officer returned the finding that the charge against the applicant was not proved. However, the Disciplinary Authority recorded a note of disagreement dated 17.06.2002(Annex.A-2), which as contended by learned counsel for applicant, is not based on any evidence, neither did he consider the

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pleas taken in the representation and finally the applicant was imposed a major penalty of reduction of pay by two stages in the time scale of pay till his retirement with further direction that he will not earn increments of pay during such period of reduction. He has also mentioned that subsequently the alleged excess payment deducted from the contractors, namely, M/s Geeta Construction and Vichitra Construction have been refunded with interest and the arbitration proceedings in respect of the third contractor are stated to be underway.

8. Learned counsel for applicant has cited the following rulings in support of his contention:-

- (i) **Tata Engineering & Locomotive Co. Ltd.** (2001(10)SCC 530)
- (ii) **P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board** (2005(6) Scale 450)
- (iii) **K. Raghuram Babu Vs. Railway Protection Force, SCR, Secunderabad** (2001(2)SCT 765)
- (iv) **Sachidanand Singh Vs. U.O.I. & Ors.** (1989(10)ATC 565)
- (v) **Sengara Singh and Others Vs. State of Punjab and Others** (1983(4) SCC 225)
- (vi) **Inspector Umrao Singh Vs. U.O.I. & Ors.** (2003(3)ATJ 336)
- (vii) **Than Singh Vs. U.O.I. and Others** (2003(3)ATJ 42)

9. In the counter-affidavit, learned counsel for the respondents has made the following submission:-

- (i) Gross misconduct has been committed by the applicant and after the inquiry although the charges were proved to be grave in nature, a lenient view has been taken by imposing the penalty of only reduction of

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pay of the applicant by two stages in the time scale of pay till his retirement.

(ii) The order passed by the respondents is in accordance with rules and no discriminatory or unjust treatment has been given to the applicant, as alleged.

(iii) The procedure was not followed properly by the applicant resulting in deliberate violation of the specific instructions laid down in the MB resulting in the issuance of the chargesheet to the applicant.

(iv) Averments made by the applicant in respect of the other similarly placed officials has no bearing in this case as he has referred to the work executed in other division.

Learned counsel vehemently submitted that the penalty has been imposed after considering all the facts and circumstances and the report of the inquiry officer.

10. We have heard the rival contentions of both the parties and carefully perused the material placed on record.

11. The main questions that need to be addressed are:-

(a) Whether the applicant has in fact been a victim of discriminatory treatment by the department?

(b) Whether he has in fact violated the instructions of recording test check in the MB?

12. It is apparent from the facts that while some of the other officials were not even proceeded against, the others were let off with censure or were

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exonerated. It is undisputed that the work of laying underground cables in the Rohini Exchange area was being executed by two Divisional Engineers, viz. Sh. M.R. Bharti and the applicant. It is also undisputed that the vigilance team conducted inspection of the entire work, which was found defective and deficient and on the basis of which the recoveries were allegedly made from the contractors.

13. As brought out in the facts, most of the other officials were served chargesheets in 1993-94 whereas the applicant was given chargesheet only in 1999 i.e. after 7-8 years of the incident.

14. It is true that every inquiry is based on facts and circumstances relevant to a particular case, but it is equally true that in a case like the instant one where two DEs are working under the same senior supervisory officer, namely, DGM, the other officer Sh. M.R. Bharti is not proceeded against although he executed 4<sup>th</sup>/5<sup>th</sup> of the work in this project whereas the applicant was responsible for only 1/5<sup>th</sup> of the work. In this view of the matter, we are inclined to come to the conclusion that not only has the applicant been discriminated against, but he has also been the victim of undue delay in issue of chargesheet. In the matter of discrimination, it has been held by the Hon'ble Apex Court in **Tata Engineering & Locomotive Co. Ltd. Vs. Jitendra Pd. Singh and Another** (2001(10SCC 530) as under:

"The applicants three in number have been punished on almost identical charges, found guilty of misconduct in connection with the same incident. One of them punished with one month's suspension and another reinstated pursuant to court's order. In such circumstances, notwithstanding that they were found guilty in separate proceedings, singling out the third one for punishment



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of dismissal rightly held by High Court as amounting to denial of justice."

From the facts narrated above it transpires that for the cabling work under the same Project – some officials have been exonerated and some have been let off with censure, while others like applicant have been awarded major penalty, giving rise to apparent indication of discrimination.

15. On the point of delay also, Hon'ble Supreme Court in **P.V. Mahadevan Vs. M.D. Tamil Nadu Housing Board** (2005(6) Scale 450) while quashing the charge memo, held as follows:-

"Delay and laches in initiation of departmental proceedings. Appellant was working as Superintending Engineer in the Tamil Nadu Housing Board. Charge memo issued against him in the year 2000 for the alleged irregularities in issuing a sale deed in 1990. No explanation was offered by the Housing Board for the inordinate delay in initiating proceedings against appellant. It was stated in counter affidavit for the first time that irregularity during the year 1990 came to light in the audit report for the second half of 1994-1995. Respondent's stand is not convincing and is only an after thought to give some explanation for the delay. Whether charge memo issued against appellant is liable to be quashed. The appeal was allowed."

16. Coming now to the inquiry report, we find that both parts of the charges have not been found proved by the Inquiry Officer, after considering the written statement of the prosecution and examining the witnesses. It would be relevant to quote the findings of the Inquiry Officer:-

"The first element of charge is that Charged Officer failed to test check the measurements recorded in the Measurement Books. Prosecution has argued that as per instructions noted in the Measurement Book, Charged Officer was required to test check at least 10% of the measurements recorded. **As rightly pointed out by Charged Officer in his defence brief, there are no instructions to the effect that the DET should sign such**

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measurements in the Measurement Book. On the bills Exs.S-7 to S-14, Charged Officer has certified that he had carried out necessary physical check of not less than 10%. As regards the allegation that Charged Officer connived with his subordinates and contractors, no evidence has been lead to support the charge. It has been pleaded by Charged Officer that the bills of the contractor were passed by the COC and not by him. This claim of Charged Officer has been supported by SW-7, SW-8 and SW-9 also. In so far as taking possible steps when fraud came to light, it is noted from deposition of SW-9 (Successor DET) that it was Charged Officer who had given direction to COC VI(N) to re-check the entire work executed by the Contractors in Rohini Area on the pattern it was checked by the vigilance team.

On the basis of oral and documentary evidence adduced before me during inquiry and in view of the reasons given hereinabove, the charges against Shri R.B. Piple are not proved."

17. The crucial finding is in fact in respect of signing the measurement in the MB. Although the chargesheet states that the applicant has deliberately violated the specific instructions laid down in the MB, but no such instructions were apparently produced by the prosecution in the inquiry, as a result of which the Inquiry Officer gave the above finding.

18. We also find that the main plank on which the disagreement note has been recorded is the relevant instruction in the MB, but no such rule or instruction has been either flagged or submitted by the respondents even during the hearing of the case.


19. In view of the above discussion and looking to the facts and circumstances of the case and the fact that the allegations against the applicant could not be proved, we are of the view that the penalty imposed on

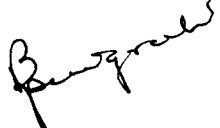
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the applicant cannot be sustained. Therefore, the O.A. is allowed.

Impugned order is set aside. No costs.

  
(Chitra Chopra)  
Member(A)

  
(B. Panigrahi)  
Chairman

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