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**Central Administrative Tribunal  
Principal Bench**

OA No.1089/2004

New Delhi this the 3<sup>rd</sup> day of July, 2006.

**Hon'ble Mr. Shanker Raju, Member (J)**  
**Hon'ble Mrs. Chitra Chopra, Member (A)**

Shri Krishan Gopal Chopra,  
S/o late Shri B.N. Chopra,  
R/o DK-2/16, Shalimar Bagh,  
Delhi-110085.

-Applicant

(By Senior Counsel Shri G.D. Gupta with Shri S.K. Sinha, Advocate)

**-Versus-**

1. Union of India through  
the Secretary to the Govt. of India,  
Ministry of Communication & Information  
Technology, Department of Telecommunication,  
Sanchar Bhawan, 20 Ashoka Road,  
New Delhi-110001 & Others

-Respondents

(By Advocate Ms. Nidhi Bisaria, proxy for Shri V.K. Rao, Advocate)

1. To be referred to the Reporters or not? *yes*
2. To be circulated to outlying Benches or not? *yes.*

*S. Raju*  
(Shanker Raju)  
Member (J)

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Ministry of Communication & Information  
Technology, Department of Telecommunication,  
Sanchar Bhawan, 20 Ashoka Road,  
New Delhi-110001.
2. The Chief General Manager (Telephones),  
Mahanagar Telephone Nigam Limited,  
Khurshid Lal Bhavan, Janpath,  
New Delhi-110050.
3. The Member (Services),  
Telecommunication Centre,  
Ministry of Communication &  
Information Technology,  
Department of Telecommunication,  
West Block No.I, Wing 2,  
Ground Floor, R.K. Puram,  
New Delhi-110066.
4. The Assistant Director General (VM-IV),  
Ministry of Communication &  
Information Technology,  
Department of Telecommunication,  
West Block No.I, Wing 2,  
Ground Floor, R.K. Puram,  
New Delhi-110066.



5. The Secretary,  
Union Public Service Commission,  
Dholpur House, Shahjahan Road,  
New Delhi-110011.

-Respondents

(By Advocate Ms. Nidhi Bisaria, proxy for Shri V.K. Rao, Advocate)

***ORDER (ORAL)***

***Mr. Shanker Raju, Hon'ble Member (J):***

By virtue of this OA applicant seeks setting aside of chargesheet dated 7.6.1992, imposing upon him major punishment dated 3.6.2000 as well as appellate order dated 7.6.2002, affirming the punishment.

2. Applicant, who superannuated on 31.5.2002, while holding the post of Assistant Engineer (Cable), has been charged with the following alleged misconduct in disciplinary proceedings, instituted under Rule 14 of the CCS (CCA) Rules, 1965:

**"Annexure-I**

Statement of article of charges framed against  
Sh. K.G.Chopra, AE (Cables), Jor Bagh, (GO-  
10532) now working as AE FRS & Record)  
Shakti Nagar Exchange, Delhi.

That the said Sh. K.G.Chopra while working as AE (Cable), Jor Bagh in the year 1989-90 committed an act of gross negligence and misconduct in as much as he allotted the work of estimate No.18515 D(b)/88-89 and 20265 D(b)/89-90 for replacement of under ground cable to M/s Geeta Construction Co. on 6.9.89 and again allotted the work of the same estimate to M/s Vichitra Construction Co. on 3.1.90 after the rates were revised by AGM(SP) on 1.12.89.





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By the aforesaid act, the said Sh. K.G.Chopra, AE has thus failed to maintain absolute integrity and devotion to duty and behaved in a manner unbecoming of a Govt. servant in violation of Rule 3(1) (i) (ii) & (iii) of CCS (Conduct) Rules, 1964.”

3. An enquiry proceeded with examination of witnesses and with the following conclusions, the charge against applicant has been held proved by the Enquiry Officer (EO):

“9.0 CONCLUSIONS AND FINDINGS:-

After assessment and analysis of oral and Documentary evidence produced by the P.O. and the C.O. including their written briefs as discussed in paragraphs 8(i) to 8(viii), it is concluded that Shri K.G.Chopra was careless i.e. not fully sincere and devoted in performing his duties. He failed to keep strict watch over the work and conduct of his subordinate staff, particularly about his Office Assistant and JTO. His own integrity has come under the shadow of doubt for signing the Work Order dated 3.1.90 and passing the bills for payment furnished by M/s. Vichitra Construction Pvt. Ltd. on the enhanced rates, though the firm was not issued the Work Order or allotted the work. It may be true as per explanation & physical appearance of Sh. Chopra that during the time of happening he was running under mental tension on account of some family disputes but at the same time he was not expected to sign the work order and to pass the bills for payment. The C.O. himself has admitted very clearly that the work was allotted to M/s. Geeta Construction Co. and also carried out and completed by it. The act of keeping the original copies of work orders prepared in favour of M/s. Vichitra Construction Co. by Sh. Chopra with him and not making over the same to the Disc. Authority shows that the officer was fully aware about the said episode & misconduct on his part and tried to conceal the

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facts from the notice of the Disc. Authority or his higher officer.

Thus, the allegations leveled against the C.O., Shri K.G.Chopra as narrated in Annexure-I & II of the charge sheet stand correct and established. Therefore, the charge against Shri Chopra for committing the said mis-conduct i.e. for failing to maintain absolute integrity, devotion to duty and acting in a manner unbecoming of a Govt. servant violating the Rule 3 (1) (i), (ii) & (iii) of CCS (Conduct) 1 Rules, 1964 IS PROVED.

Sd/-  
(PRATAP SINGH)  
INQUIRING  
AUTHORITY

& Div. Engineer  
(D.I.)  
MTNL, TAX Bldg. Annexe,  
New Delhi-110050."

4. On representation against the finding, the disciplinary authority (DA) imposed a major punishment of reduction of pay of applicant by two stages in the time scale of pay till retirement on attaining the age of superannuation with loss of increments. On appeal, the punishment was affirmed by the appellate authority, giving rise to the present OA.

5. Shri G.D. Gupta, learned Senior Counsel appearing for applicant has multifold challenge to the impugned orders. It is stated that the chargesheet issued to applicant on 7.6.1996 is on a cause of action which had arisen on 6.9.1989, i.e., after seven years. The delay in issuing the chargesheet is inordinate, unexplained and has greatly prejudiced applicant in the enquiry.

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6. Learned Senior Counsel further contends that whereas the charge levelled against applicant is of re-allotment of the work contract to M/s Vichitra Construction, yet the EO travelled beyond the scope of enquiry and established the charge of keeping the original copy of work of M/s Vichitra Construction with him and not divulged it to the competent authority. The EO has also proved concealment of fact against applicant and also allotment of work which is a different charge levelled against applicant, against which no reasonable opportunity to show cause has been accorded.

7. Shri Gupta has also assailed punishment on the ground that the punishment, which has taken effect till the age of superannuation of applicant, is not legal, as pensionary benefits of applicant have been adversely affected, which would amount to double jeopardy.

8. Lastly, it is contended that the appellate order does not conform to Rule 27 of the CCS (CCA) Rules, 1965 and the contentions of applicant have not been discussed by passing a speaking order.

9. On the other hand, learned proxy counsel Ms. Nidhi Bisaria appearing for respondents vehemently opposed the contentions and stated that there is no procedural infirmity in the orders passed by the respondents and applicant on his misconduct has been appropriately punished.

10. However, as regards the question of delay in issuing the chargesheet and the charge which has been proved, though not

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levelled against applicant, was specifically raised, has not been effectively and specifically rebutted in the counter-reply filed by respondents.

11. On careful consideration of the rival contentions of the parties, we find that whereas the charge levelled against applicant was alleged irregularities committed in the year 1989, yet in the chargesheet issued on 7.6.1996 there is no satisfactory explanation as to inordinate delay of seven years in issuance of the chargesheet.

12. It is trite law that mere delay in issuing the chargesheet is not sufficient to vitiate it, yet when it is culpable, unexplained, inordinate and prejudices the delinquent employee in his effective defence, the same is liable to be set aside. The Apex Court recently in *M.V. Bijlani v. Union of India & Ors.*, 2006 (3) SLR 105, on the ground of delay in chargesheet, observed as under:

“17. In *State of Madhya Pradesh v. Bani Singh & Anr.*, JT 1990 (2) SC 54, this Court has clearly held:

“The irregularities which were the subject matter of the enquiry is said to have taken place between the year 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay

in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at the stage.”

18. The Appellate Authority totally ignored the evidence adduced before the disciplinary authority and in particular the evidence of Shri K.C.Sariya in favour of the appellant in this behalf. The Appellate Authority was required to apply its mind on the materials placed on records. It failed to take into consideration that the Disciplinary Authority purported to have relied upon the police report which was not proved.

19. It is really a matter of great surprise that a disciplinary proceeding was initiated five years after the appellant handed over charge. At that time he was admittedly not having possession of any documents. The Enquiry Officer furthermore took a period of seven years to complete that enquiry. The Appellate Authority also took seven years in disposing the appeal. Even then, the Appellate Authority did not go into the question as to whether the procedures laid down for holding the disciplinary proceedings had been followed or not. He did not go into the contentions of the appellant herein minutely. The memo of appeal filed before the appellant was very elaborate. He raised a number of contentions therein. The Enquiry Officer was charged with bias. He was also charged with unfair conduct. He was said to have committed a large number of irregularities in the departmental proceeding. The memo of appeal of the appellant was in about 65 typed pages. It was subdivided into five parts. He made all endeavours to deal with each and every findings of the Enquiry Officer and dealt with almost all the documents relied upon by the department. He also dealt with the deposition of the witness examined on behalf of the parties.”

13. If one has regard to the above, as there is no satisfactory explanation for inordinate delay in issuing the chargesheet in the reply

filed by respondents when this specific plea was not only taken before the departmental authorities but also in the present OA, is not rebutted, delay in issuing the chargesheet when unexplained is to vitiate the proceedings as well as the consequent orders. A delayed chargesheet not only deprives the concerned delinquent official to defend the charges but also non-procurement and non-availability of the material in defence to be used in effectively countering the allegations causes prejudice to the concerned.

14. We also find that whereas the charge against applicant is of re-allotment of work contract to M/s Vichitra Construction, which is a changed name of earlier M/s Geeta Construction, yet we find that though inadvertently the aforesaid order was issued as prepared by the subordinates of applicant, yet applicant who remained, due to accident, off duty from February 1991 to November 1991, immediately on joining duty on 6.2.1992 stopped payment and the payment was not disbursed to M/s Vichitra Construction. This clearly establishes his bonafide, yet in the findings recorded by the EO, whereas the charge is of re-allotment, the charge established was allotment of the work to M/s Vichitra Construction and while coming to the conclusion of guilt against applicant an extraneous charge which has not been levelled against him in the memorandum of keeping the original copy of the work order and concealing it from the DA stood proved. The aforesaid charge was agreed to by the DA and on the basis of which the punishment was imposed. Applicant who

has not been confronted with this part of the charge, which is *alien* to statement of imputation, has been prejudiced in defending the same and it has deprived him a reasonable opportunity, which is not in consonance with the principles of natural justice.

15. The Apex Court in *State of Assam v. M.K. Das*, 1971 (1) SCR 87, clearly ruled that the EO has no jurisdiction to travel beyond the scope of enquiry by recording a finding on an extraneous charge not levelled against the delinquent official and against which no reasonable opportunity has been accorded.

16. As regards appellate order, Rule 27 of the CCS (CCA) Rules, 1965 provides that when a major punishment is challenged before the appellate authority it is incumbent upon it to not only see the illegality of the procedure but also whether findings are warranted by evidence on record and also as to the adequacy of the punishment.

17. Recently, the Apex Court in *Narinder Mohan Arya v. United India Insurance Co. Ltd. and Ors.*, 2006 (3) SLR 92, on the role of the appellate authority, observed as under:

“33. An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part as regard the compliance of the requirements of law while exercising his jurisdiction under Rule 37 of the Rules.

34. In *Apparel Export Promotion Council v. A.K.Chopra*, 1999 (1) SCC 759 which has

heavily been relied upon by Mr. Gupta, this court stated:

“The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities.”

35. The appellate authority, therefore, could not ignore to exercise the said power.


36. The order of the appellate authority demonstrates total non-application of mind. The appellate authority, when the rules require application of mind on several factors and serious contentions have been raised, was bound to assign reasons so as enable the writ court to ascertain as to whether he had applied his mind to the relevant factors which the statute requires him to do. The expression ‘consider’ is of some significance. In the content of the rules, the appellate authority was required to see as to whether (i) the procedure laid down in the rules was complied with; (ii) the Enquiry Officer was justified in arriving at the finding that the delinquent officer was guilty of the misconduct alleged against him; and (iii) whether penalty imposed by the disciplinary authority was excessive.”

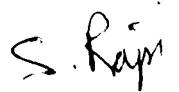
18. If one has regard to the above and in the context of the order passed by the appellate authority in the present case, the appellate authority consulted the Union Public Service Commission (UPSC) and without dealing with the contentions of applicant merely on the observations made by the UPSC by a bald order, which shows non-application of mind, rejected the appeal. It is incumbent in appeal upon the appellate authority, when scope of judicial review in a disciplinary proceeding is limited by the court, to apply its mind on

several factors and various contentions raised. Reasons are essence of an order. It satisfies two fold purposes, firstly transparency creeps into an order passed by the quasi-judicial authority and secondly in the wake of reasons in a judicial review not only the person challenging the order but the court is also assisted in adjudging the validity of the order. Non-speaking order is a *sine qua non* of non-application of mind.

19. Another infirmity, which vitiates the order, is that though applicant was to superannuate on 31.5.2002 and his last nine months average pay is determinable of his qualifying service for fixation of pension. By reducing pay of applicant in the time scale till the date of retirement on superannuation his pensionary benefits have been adversely affected. This, in a way, is a double edged weapon or double jeopardy against applicant, which cannot be countenanced.

20. In the result, for the foregoing reasons, OA is allowed. Impugned orders are set aside. Respondents are directed to restore to applicant his reduced pay with arrears and accordingly re-determine the pension and other ancillary benefits and disburse the same to him with arrears, within a period of two months from the date of receipt of a copy of this order. No costs.

  
(Chitra Chopra)  
Member (A)

  
(Shanker Raju)  
Member (J)

‘San.’