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CAT/7/1:

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 579/92 199
T.A. No.

DATE OF DECISION 1-10-97

Shri K.B.Kumar — Petitioner

Shri B.B.Raval — Advocate for the Petitioner(s)

Versus

UOI & Ors — Respondent

Shri V.S.R. Krishna — Advocate for the Respondent(s

CORAM

The Hon'ble Smt.Lakshmi Swaminathan, Member(J)

The Hon'ble Shri R.K.Ahooja,Member(A)

1. To be referred to the Reporter or not? Yes

2. Whether it needs to be circulated to other Benches of the Tribunal? X

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

O.A. 679/92

(23)

New Delhi this the Ist day of October, 1997

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri R.K. Ahooja, Member(A).

K.B. Kumar,
S/o late Shri Gokal Chand,
R/o C-4-A/36-C, Janakpuri,
New Delhi. ..Applicant.

By Advocate Shri B.B. Raval.

Versus

1. Union of India through
Secretary,
Ministry of Defence,
South Block,
New Delhi.

2. The Engineer-in-Chief,
Army Headquarters,
Kashmir House, DHQ, PO,
New Delhi.

3. The Garrison Engineer (Project) No.2,
Delhi Cantt. ..Respondents.

By Advocate Shri V.S. R. Krishna.

ORDER

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the penalty order of dismissal passed by the respondents dated 21.3.1991 and rejection of his revision petition by order dated 20.2.1992.

2. The brief facts of the case are that while the applicant was serving as Surveyor Assistant, Grade-I (hereinafter referred to as 'SA-I') in the office of Garrison Engineer (Project) - Respondent 3, a chargesheet had been issued to him on 12.7.1988. The common proceedings in terms of Rule 18 of the CCS (CCA) Rules, 1965 were ordered against seven officers, including

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the applicant. The charge related to the execution of a contract for provision of external water supply and sewerage disposal at Hissar Cantt. According to the applicant, though the issues involved were numerous, the allegation against him related to the issue of cement. The contract, in question was commenced on 15.12.1981 and was completed on 28.2.1984. At that time, the applicant was working as SA-I. The two articles of charge framed against the applicant were that while working as SA-I from August, 1980 onwards, he was responsible for proper technical check of RARs/final bills of the contract (CA No. CWE/PM-36/81-82). It was mentioned that he had technically checked 17th RAR and final bill of the above CA in which 300 bags of cement were issued under Schedule'B' as per USR No. E-485543 dated 17th February, 1983 and had been recovered from the contractor in the 16th RAR dated 23.2.1984 but the figure of 300 bags of cement was amended to 1300 bags of cement with relevant figures of amount of Rs.4,563.00 altered to Rs.19,973.00 and its recurring total from Rs.2,04,771.15 to Rs.2,19,974.15 in the Schedule 'B' recovery statement of the above CA thus giving back dated effect of issue of 1,000 bags of cement to the contractor. It was stated that the applicant also failed to exercise proper technical cheque to the cement store calculation register which has resulted in falsification of contractual documents and misappropriation of 1,000 bags of cement.

3. The second article of charge also deals with the same contract wherein it was alleged against the applicant that he had failed to exercise proper technical check thereby resulting in irregular payment of Rs.1,53,418.15 and, therefore, he has not maintained absolute integrity and devotion to duty on both counts which tantamounts to violation of the provisions of Rule 3(1)(i)

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and (ii) of the CCS (Conduct) Rules, 1964. The Inquiry Officer in his report dated 31.8.1990 came to a finding that Article-I was partly proved and Article-2 was not proved. Thus under these findings, the disciplinary authority passed the impugned order of penalty of dismissal from service.

4. The applicant submits that there was no evidence to support the findings of the Inquiry Officer which, he states,are based on conjectures and imagination. He has also submitted that the cement calculation register which was an important document was not supplied to the applicant despite repeated requests. Shri B.B. Raval, learned counsel, has contended that the applicant's duty required him to carry out the only technical check of the estimated quantity. He has also submitted that some of the documents by which the articles of charge framed were proposed to be sustained, namely, the cement site issue register and contract drawings were not supplied to the applicant. He has, therefore, submitted that the case is one of no evidence and the penalty should be quashed. He relies on the judgements of the Supreme Court in Bhagat Ram Vs. State of H.P. (AIR 1983 SC 454), Ranjit Thakore Vs. UOI (AIR 1987 SC 2386), Shanker Das Vs.Union of India (AIR 1985 SC 772), Union of India Vs. Parma Nanda (AIR 1989 SC 1185) and State of Punjab Vs.Bachhitar Singh (1990(3) SCC 585. The learned counsel has also submitted that the punishment of dismissal from service is disproporationate and in the circusmtances of the case since the principles of natural justice have been violated, the penalty should be quashed. He has also submitted that in the case of another employee who was proceeded against in the common proceedings along with the applicant, the Tribunal by order dated 15.2.1996 in Begh Raj Singh Vs. UOI & Ors.(O.A. 142/92) allowed the application and directed that he should be reinstated in service.

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5. The respondents have filed their reply in which they have controverted the above facts and arguments. We have also heard Shri V.S.R. Krishna, learned counsel for the respondents. They have submitted that the applicant being SA-I during the relevant period had failed to exercise proper technical check of the cement calculation and consumption of cement vis-a-vis the quantity of work done rendering falsification of documents and misappropriation of 1000 bags of cement in connivance with other dealing officials. They have also submitted that the copy of the contract drawing was held by the applicant who was then SA-I of Garrison Engineer (P), Hissar Cantt and cement calculation register was sent during the checking of RARs as well as final bills. They have explained that the cement issue register is not generally issued but the details of Schedule 'B' stores issued to the contractor are attached with every RAR as "USR statement". On our directions, they have also submitted the Annexure'B' documents which were shown to the applicant during the inquiry and the respondents have produced the relevant documents (copies of which are placed on record) for our perusal at the time of hearing the case. They have submitted that the applicant had been afforded an opportunity to defend his case and the inquiry has been held in accordance with the provisions of Rule 14 of the CCS (CCA) Rules. Since the competent authority had after examination of the inquiry report and evidence come to the conclusion that the applicant was guilty of the charge framed against him, the penalty of dismissal was imposed on him. They have submitted that the Tribunal ought not to sit as a court of appeal. Shri Krishna, learned counsel, has drawn our attention to the Article-1 of the charge against the applicant in which it had been alleged that the applicant had failed to exercise proper technical check of the cement store calculation register which

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has resulted in misappropriation of 1000 bags of cement. The learned counsel has submitted that from the documents on record, it is seen that the applicant had failed to exercise the technical check properly thereby causing loss to the respondents. He has referred to the Inquiry Officer's report in which he has submitted that the evidence produced by the parties has been properly analysed before punishment was imposed on the applicant. He has also submitted that the respondents denied the allegation that all the documents have not been supplied to the applicant and in case any document which had not been supplied, the applicant had failed to show how this has caused prejudice. He relies on the judgement of the Supreme Court in Orissa Mining Corporation and Anr. Vs. Ananda Chandra Prurty (JT 1996 (10) SC 71). He has drawn our attention to the reply of the respondents in which it has been stated that although it is true that no copy of the USR is sent to SA-1 for technical check,but a copy of the statement showing the details of USR, items, quantity of each item of stores issued to the contractor, amount of recovery, etc. and contractor called USR statement" is enclosed with every RAR. This is technically checked by SA-1 to see that the total consumption of cement corresponds to the quantity of work done and also to ensure that the statement is tallying with the one in the previous RAR. He submits that since the technical check is the responsibility of the SA-I under the MES Regulations, the applicant had to ensure that the document is complete. They have submitted that after analysing the evidence and the statements made by the applicant, the competent authority has come to the correct conslusion that SA-1 i.e. the applicant, has failed to properly exercise the technical check, as required in his capacity as SA-I. They have submitted that any variation in the USR statements in 16th and 17th RAR should have been noticed by SA-1 and hence the corrections cannot possibly be done without

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his connivance. According to them, the applicant should have brought out the discrepency of stores issued shown against the 16th and 17th RARs which he had failed to do. The learned counsel for the respondents relies on the judgement of the Hon'ble Supreme Court Union of India Vs. Parma Nanda (Supra) to show that the Tribunal ought not to interfere with the punishment as if it is exercising an appellate jurisidction. As in this case the applicant had been afforded reasonable opportunity of defending his case and the principles of natural justice have also been fully complied with, this O.A. should be dismissed as there are no grounds to interfere.

6. We have seen the rejoinder filed by the applicant in which he has more or less reiterated the stand taken in the application. Shri Raval's main contention is that the applicant had no means to check the cement bags issued and in any case the applicant was not required to check the quantities issued which was for the accounts unit to do and he had only to do the 'technical check', which he had done and, therefore, the punishment awarded to the applicant should be quashed.

7. We have carefully considered the records and the submissions made by the learned counsel for the parties. From the records, it cannot be stated that this is a case of no evidence. Therefore, the cases relied upon by the applicant cannot assist him. The Inquiry Officer in his report dealing with the applicant has referred to the evidence produced before him i.e. the relevant documents. The Inquiry officer in his report has recorded that the applicant has stated that the 16th and 17th RARs and final bills have been checked by him except Schedule'B' recovery statement which includes Exhibit S-1 because this was under the purview of checking by the Unit Account (UA)

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as per the relvant MES instructions. He has given details of the instructions in the report. The final bill after technical check by SA-1 in GE's office is to be checked by Surveyor of Works in CWE's office. Copy of this document, Stores Statement Cage III is placed at Annexure 12. The learned counsel for the applicant had placed great stress on this document in which he has emphasised that the applicant who was required to do technical check has specifically mentioned that he has done technical check in respect of Column. No. 4 only. When great emphasis has been placed by the applicant that as his duty required him only to conduct the technical check, why this had to be specifically mentioned in the document (Annexure A-12) that he had done technical check in respect of Column No. 4 only, has not been satisfactorily explained either in the application or at the time of lengthy arguments by the learned counsel. The Inquiry Officer has further noted that the applicant had argued that the amendments in question indicated only correction of documents and not falsification of documents. This point had also been analysed by the Inquiry Officer who came to the conclusion that the amendments in question had not at all bothered him which was a clear reflection on the way the technical check was carried out. The Inquiry Officer has stated that even though the statement of stores was to be checked by the UA the amount involved certainly cannot remain outside the purview of the CO. He came to the conclusion that the interpolation in the documents has been proved which had not bothered the applicant as he had already concluded that it was meant for corrections. Therefore, he has stated that applying the test of preponderance of probability his connivance in the matter cannot be ruled out and to this extent Article-1 of the charge was proved against the applicant.

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8. On perusal of the original records produced by the respondents, there is no doubt at all that there was an interpolation in the relevant RARs regarding the bags of cement from 300 to 1300 and also changes in the amounts as alleged in the chargesheet which are clearly visible at a glance. We are also satisfied that the relevant documents as per the MES Regulations as explained by the respondents have been given to the applicant. Shri B.B. Raval, learned counsel, has contended vehemently that the applicant was not to check the cement site register. Therefore, his contention that the relevant documents like the cement site issue register have not been given to the applicant and on that basis the penalty order should be quashed is without any merit, considering the fact that his own contentions show that non-supply of the cement site register has not caused any prejudice to him and other documents relied upon by the respondents have been given to him. In Orissa Mining Corporation (supra), the Supreme Court has held that in a disciplinary or a departmental inquiry, the question of burden of proof primarily depends upon the nature of the charges and the nature of explanation put forward by the delinquent officer and in case of violation of procedural provisions, it cannot automatically be said to vitiate the inquiry held or order passed, unless it is viewed that prejudice has been caused to the delinquent official when appropriate orders may be given to remedy the situation. It is settled principle of law that the Court and the Tribunal is not a fact finding body so long as there was preponderance of probability and, therefore, it should not interfere in a domestic inquiry (See N. Raj Rathinan Vs. State of Tamil Nadu(1997(1) SLJ 10). In the present case, from the materials placed on record, it cannot be stated that this is a case of no evidence or that the respondents have failed to comply with the principles of natural justice or that the

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applicant was not given reasonable opportunity to defend his case. In a catena of judgements (See Government of Tamil Nadu Vs. A. Raja Pandian(AIR 1995 SC 561), Upendra Singh Vs. Union of India (JT 1994 (1) SC 658), Union of India Vs. Parma Nanda (supra) and State of Tamil Nadu Vs. S. Subramaniam (JT 1996(2) SC 114), the Supreme Court has held that the Tribunal in exercising the power of judicial review has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the charged officer receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the Court or the Tribunal. We are unable to agree with the contentions of the applicant that as he had to only exercise 'technical check' nothing else was required from him, when it is not denied that the documents which had been amended/interpolated had been seen by him. It is relevant to note that Article-1 of the charge in terms states that the applicant had failed to exercise proper technical check to the cement store calculation register which has resulted in falsification of documents and misappropriation of 1000 bags of cement. The disciplinary authority while agreeing with the findings of the Inquiry Officer in the impugned order dated 21.3.1991 had come to the conclusion that Article 1 of the charge is proved, inasmuch as the applicant had connived in the interpolation/tampering of the documents showing issuance of 1300 bags in lieu of 300 bags of cement actually issued. In the facts and circumstances of the case, we are also unable to agree with the applicant's contention that the punishment imposed is disproportionate or uncalled for considering the nature of the charge proved, and, therefore, this plea is also rejected. We are also not impressed by the arguments advanced by Shri B.B.

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Raval, learned counsel, based on the judgement of the Tribunal in Begh Raj Singh's case (O.A. 142/92). That case was based on the evidence that was produced by the respondents against the applicant and will not apply to the facts in the instant case as each of the applicants has been dealt with separately by the competent authorities.

9. For the reasons given above, in the facts and circumstances of the present case and having regard to the settled principles of law for exercising the power of judicial review by the Courts/Tribunal in such matters, we find there is no legal justification to interfere in the impugned punishment order passed against the applicant. In the result we find no merit in the O.A. and it is dismissed. No order as to costs.

(R.K. Ahooja)
Member(A)

(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'