

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH**

Original Application No. 905 of 2004

....., this the 29th day of August 2006

C O R A M :

**HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MR. A.K. SINGH, ADMINISTRATIVE MEMBER**

Jamuna Singh Chauhan,
S/o. Late Ram Singh,
R/o. C/702, G.T.B. Nagar Colony,
Allahabad, Kareilly.

... Applicant.

(By Advocate Mr. K.P. Singh)

v e r s u s

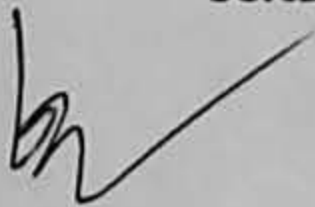
1. Union of India through
Secretary Ministry of Defence,
New Delhi.
2. Under Secretary Vigilance II,
Ministry of Defence, Sena Bhawan,
New Delhi.
3. D.B. Singh,
Superintending Engineer,
Enquiry Officer, CWE Works (I)
Director General of Naval Project,
Vishakhapatnam - 530 001

... Respondents.

(By Advocate Mr. P. Krishna)

**O R D E R
HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER**

Judicial Review of Disciplinary proceedings has been circumscribed with
certain prescribed parameters and it is within such a limited area that the review



can take place. Before plunging into the facts of the case, in order to have the definite scope of judicial review, reference can be made to a very recent judgment citing two earlier decisions, of the Apex Court, in the case of **Govt. of A.P. v. Mohd. Nasrullah Khan**, (2006) 2 SCC 373. In the said decision, the observations of the Apex Court are as under:-

12. We may now notice a few decisions of this Court on this aspect avoiding multiplicity. In **Union of India v. Parma Nanda**, K. Jagannatha Shetty, J., speaking for the Bench, observed at para 27 as under:

"27. We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the inquiry officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the inquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

13. Again, the same principle has been reiterated by this Court in **B.C. Chaturvedi v. Union of India**. K. Ramaswamy, J., speaking for the Court, observed at SCC p.759, para 12 as under:

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court."

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When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as Appellate Authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

(Emphasis supplied)

2. Thus, The question involved in this case is whether there is any flaw in the decision making process in the disciplinary proceedings held against the applicant or whether the findings are so perverse that no reasonable person would have ever reached such a conclusion.

3. Now the facts of the case as given in the O.A.




- (a) The applicant while working as Surveyor of Works in 1998 was proceeded against in connection with an alleged misconduct stated to have been committed in 1992 when the applicant was functioning as Assistant Surveyor of Works at Directorate General, Naval Project (DGNP for short), Vishakhapatnam. The charge was that when the applicant, in dealing with some tenders, issued the acceptance order, which resulted in a loss of Rs 8,61,586/- to the DGNP (V) which means that the applicant has failed to protect the interests of the Organization in which he was working and that the applicant, abusing his official position as a public servant had failed to maintain integrity, and failed to exercise powers delegated to him with due care and proper caution.
- (b) The applicant denied the charges and inquiry was commenced. The inquiry officer submitted his report in December, 2000 and a copy of the same was made available to the applicant in January, 2001. The findings of the inquiry authority in the said inquiry report are that the charges against the applicant stood proved. While so rendering the findings, the inquiry officer had also observed as under:-

"Important findings incidental to the inquiry.

During the process of Inquiry, I, as IO found from the evidence produced before me that, for the criminal conspiracy, certain Naval Officers of DGNP Visakhapatnam are more responsible than the CO as brought out in paras 9(c) and 10(b) above. Hence, I bring out following to give as complete a picture of the case as was brought out before me to enable the Disciplinary authority in dispensing equitable and natural justice.

- (i) Giving of unjustified reasonability of rates by Naval authorities. The CO in his Defence, had brought out that in this case only Naval authorities had the power to give reasonability of rates and that the Naval authorities had given reasonability for procurement of items at rates three times of estimated rates. I, as IO found during inquiry that




this is true based on evidence produced before me. Cdr. SSK Reddy, as SO I MGTOC gave the unjustified reasonability of rates.

- (ii) The CWE (E) 1, i.e Cdr RBS Gaur had signed acceptance letter for placing order for procurement of items of equipment of exorbitant rates based on Note '8' put up by CO. The responsibility of Cdr. RBS Gaur is much more than that of the CO in the Acceptance of exorbitant rates. Cdr RBS Gaur was the officer who functioned as CWE during the entire process of scrutiny of bids and their acceptance, whereas, the CO was present only during the process of acceptance. Therefore, if CO was aware of exorbitant rates, at the time of signing of acceptance letter, Cdr RBS Gaur was more aware than the CO.

- (c) The applicant had given his representation against the inquiry report. He had brought the fact of his having gone on sanctioned leave from 09th November, ~~1992~~¹⁹⁹² to 6th December, ~~2002~~¹⁹⁹², during which period the entire transaction save issue of final approval letter had taken place and all that he had done was, pursuant to the certification by the authorities about the technical viability and the reasonableness of rates and acceptance by the competent authority i.e. the CWE (E) of the lowest tender as recommended SO1 MGTOC, that the final acceptance letter was prepared by him and it is the very same CWE who had initially approved the acceptance^{that} had signed the acceptance letter. Thus, nothing more than issue of such acceptance letter at that stage of the case could be done by the CO and that the remarks of the Inquiry Officer as "Important Findings" would go to prove that the contention before the Inquiry authority in this regard by the applicant had been fully

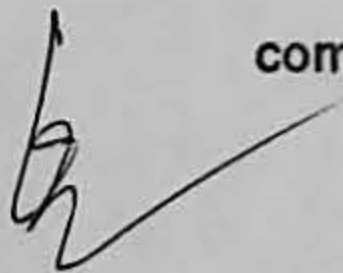
accepted.

- (d) The Disciplinary Authority has held, vide impugned order dated 15th November, 2001 "the President has reached a conclusion that Shri J.S. Chauhan, SW cannot be absolved of the blame for displaying unusual haste in placing the Accepting Letter to the CWE for getting the higher rates accepted and also for his failure to exercise the powers delegated to him with due care; thereby causing wrongful loss to the State of the tune of Rs 8.6 Lakhs."
- (e) The applicant had preferred a revision petition but the same having not initially been disposed of, he had to file OA No. 239/2002 which was decided on 17th December, 2002 by which the revisional authority was directed to dispose of the revision petition filed by the applicant. It was in the wake of this order that the revision application of the applicant was dismissed vide impugned order dated 27th February, 2003. The Revisional Authority has held, *Nonetheless, it is a matter of record that Shri Chauhan displayed unusual haste in placing the Acceptance letter to the CWE for getting the higher rates accepted and also he did not exercise powers delegated to him with due care and thereby Shri Chauhan failed to protect the interest of the organization*
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in which he was serving, contributing thereby to wrongful loss to the exchequer to the tune of Rs 8.6 lakhs". The applicant has thus assailed the order of the Disciplinary Authority and the Revisional Authority.

4. The grounds taken by the applicant are as under:

- (a) Delay in issuance of charge sheet (i.e. alleged incident having occurred in 1992, charge sheet was issued only in 1998 i.e after the lapse of six years).
- (b) When the applicant demanded the copies of documents, only a few relied upon documents were made available to him.
- (c) The applicant was in no way responsible for the loss stated in the Charge Sheet.
- (d) The Inquiry authority has rightly held that the CWE was responsible who was aware of the entire issue right from the beginning, while the applicant, though was in scene initially, was away on sanctioned leave till the recommendation of the Technical Viability and as to the rates were communicated by the Naval Authorities.



(e) In all the inquiry was not in accordance with the provisions of CCS (CC&A) Rules, 1965.

(f) the Order of the Disciplinary authority and the Revisional authority suffer from legal infirmity inasmuch as these did not take into account the contentions raised by the applicant before them.

5. Respondents have contested the OA and their contentions are as under:-

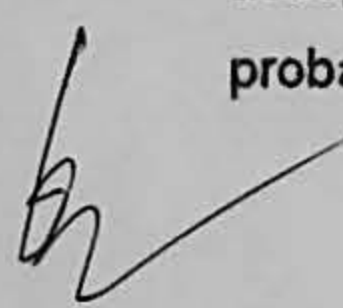
(a) the Documents demanded (except two, which were not available) have all been handed over to the applicant as otherwise he would not have participated in the inquiry.

(b) Though earlier on leave, the applicant ought to have scrutinized the relevant documents and it is the responsibility of the applicant, ~~he~~^{she} being the ASW, to apprise the Accepting Officer about the huge variation from the original bids and the revised bids.

(c) The CO has failed to exercise powers as A.S.W as per MES Regulations and thus shown negligence in accepting abnormally high rates

(d) The applicant has shown unseemly hurry in putting up the case to his superior for acceptance.

(e) The inquiry officer has found that undue haste of the applicant in getting acceptance in spite of his awareness of high rates as preponderance of probability for holding the charges proved.



6. Arguments were ^{heard} and documents perused. Though opportunity was given to the parties to file written arguments the same were not forthcoming and hence the decision is made on the basis of arguments made and the pleadings.

7. Two important points to be considered while analyzing the Inquiry Report are as under:-

(a) The Inquiry authority accepts the fact of the applicant being on leave for 26 days; confirms that after the receipt of the revised tenders, the work commenced only during the period of leave of the applicant and all the stages had been crossed, except the ultimate stage of only issue of formal acceptance, before the applicant joined duty after his leave; appreciates the contention that all that was left was only issue of formal accepting letter; holds good the further contention that for approving the rates, it is only the Naval Authority which is competent to do so; also accepts the contention that it is the two Naval authorities i.e. Cdr. SSK Reddy and Cdr. RBS Gaur that are responsible for the ultimate decision. Yet he renders his findings that the applicant's charges stand proved. In fact the *"Important findings incidental to the Inquiry"* acted as anti dote to the findings of the Inquiry Officer against the applicant.

(b) The charge as stated above is to the effect that the applicant had failed to maintain integrity, abused his official position, lacked devotion to duty and had failed to protect the interest of the organization. To elaborate the charges, in the statement of imputations, details were given. Therein after narrating the sequence of events nothing has been mentioned about "undue haste" as rendered as findings by the inquiry authority. When the charge sheet does not reflect "undue haste" in preparing the accepting

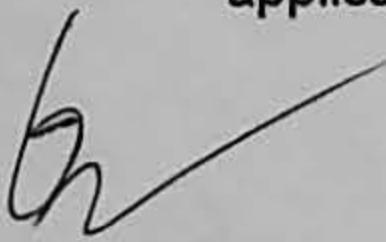
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letter nor does the statement of imputation, there is no chance for the applicant to meet the same. If the finding of the inquiry authority is in respect of an aspect about which no opportunity has been given to the applicant and if the said finding has been accepted by the Disciplinary authority and if the Revisional authority also specifies as to the said finding (i.e. undue haste) the entire proceedings get vitiated.

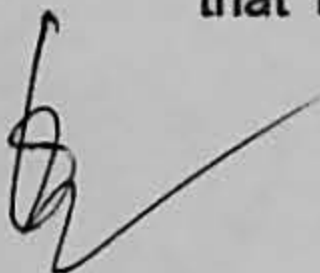
In view of (a) and (b) above, the finding of the Inquiry Authority against the applicant cannot but be stamped as *perverse*.

8. The disciplinary authority, while endorsing the views of the Inquiry Authority, ought to have applied his mind also in respect of the Important findings, whereby he has shifted the responsibility for loss to the exchequer upon the two Naval Authorities. A perusal of the said Important Findings would go to show that the applicant could not have done any thing much in regard to the decision and all that he was to do was to formalize the decision by preparing the letter of acceptance, which again was signed by the very same Naval Authority which accepted the rate.

9. The revisional authority has held that the important findings incidental to the inquiry had been considered while deciding the extent of penalty to be imposed upon the applicant. In fact as the same goes to the root of the issue to pin point the person who was actually responsible for the loss to the exchequer, the same ought to have been considered a stage earlier, as to whether the applicant was responsible for the loss. A look at the sequence of events at this



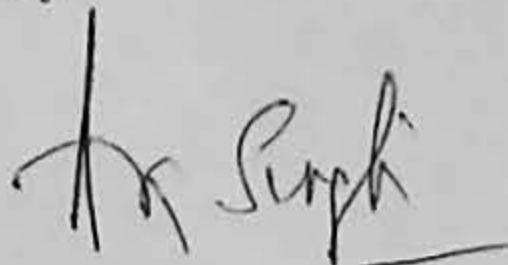
stage would also be appropriate (It is made clear that by referring to the same, no re-appreciation of evidence can be said to have taken place). Note dated 20th November, 1992 was prepared by officiating ASW who, after giving the comparative figures of various tenderers, refers to the lowest quotation as 14.79 lakhs plus and also states that the "cost indicated in the tender is Rs 15 lakhs." This note was put up to the CWE who was in the know of things right from the tendering for both Fixtures as well as Accessories, for both of which, the cost of tender was Rs 15 lakhs. This is the main mistake and the same was not located by CWE. The SO (MGTOC) who was also equally in the scene right from the beginning also did not bother to look into the same and on the basis of the revised quotation, without calling for the previous quotation approved the technical violability and also the rate, vide order dated 26th November, 1992. Had the file been further processed within a reasonable time of say a week, by first week of December, 1992, even the acceptance by the CWE of the recommendations of the SO (MGTOC) followed by issue of acceptance letter would have taken place well before the applicant had joined duty after leave. A presumption can, however, be drawn that the DDG (E) had been "considering the matter" from the time the file was submitted to him by the SO (MGTOC) on 26-11-1992 till 10th November, 1992 whereafter the file was returned to MGTOC followed by reference to CWE and lastly ASW, i.e. the applicant. The stage when the file came to the applicant was after all action has been taken. Any one in the place of the applicant would have presumed, as the applicant had done, that the case had been considered at all level and the the rates have been



accepted only after careful consideration. Thus, when the state of affair stands as such, and when the I.O's findings shifts the responsibility upon the Naval Authority, imposition of penalty, which has directly and proximately resulted in the reduction of monetary benefit to the applicant by way of pay for a limited period as well as pension for a recurring period and also reduction in other terminal benefits, which are based upon the last pay drawn and indirectly or as a consequence also affected the career prospects of the applicant to the higher post, is illegal.

10. In view of the above, the **OA succeeds**. The penalty order dated 15-11-2001 and Revision order dated 27-02-2003 are hereby quashed and set aside. Consequently, the applicant is entitled to have the pay of Rs 12,925/- in the scale of Rs 10000 – 15000, as drawn by him prior to imposition of penalty intact without any truncation. Further, in view of the quashing of the penalty orders, he is entitled to have the benefit of opening of the sealed cover in respect of his further promotion to the post of Superintendent Surveyor of Works and if according to the recommendations of the DPC he is found fit, for further promotion as SSW from the date his juniors were promoted, but with notional fixation of pay as per the rules and as the applicant has now superannuated, his pension and other terminal benefits shall also be fixed accordingly.

11. Costs easy.



A.K. SINGH
ADMINISTRATIVE MEMBER



K B S RAJAN
JUDICIAL MEMBER