

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD**

(THIS THE 16th DAY OF December, 2010)

Hon'ble Dr.K.B.S. Rajan, Member (J)
Hon'ble Mr. S. N. Shukla, Member (A)

Original Application No.1643 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

Ahmad Zaman Khan, Son of (late) Hakim Uddin Khan, Aged about 50 years, resident of 150/77A, Muir Road, Rajapur, Allahabad, presently Posted as Senior Accounts Officer, Central Organization for Railway Electrification, Allahabad.

..... Applicant

Present for Applicant : Shri.V.R.Dwivedi, Advocate

Versus

1. Union of India, Notice to be served Upon Railway Board, Ministry of Railways Rail Bhawan, New Delhi (The Appellate Authority also)
2. General Manager, Central Organization for Railway Electrification, Nawab Yusuf Road, Allahabad- 211 001 (The Disciplinary Authority)

..... Respondents


Present for Respondents : Smt. Anita Srivastava, Advocate

ORDER

(Delivered by Hon. Dr. K.B.S. Rajan, Member-J)

A Memorandum of charge was issued to the applicant on standard Form No.11 vide a memo dated 15/16.7.2002. The

Memorandum reads as under:-



ज्ञापन

श्री ए० जेड० खान, पूर्व सहायक लेखाधिकारी, र० वि०/रांची, वर्तमान में सहायक लेखाधिकारी, कोर/इलाहाबाद को एतद्वारा सूचित किया जाता है कि निम्न हस्ताक्षरी क्षरा उनके विरुद्ध रेल सेवक (अनुशासन और अपील) नियम, 1968 के नियम 11 के अन्तर्गत कार्रवाई करने की प्रस्थापना की गई है। दुर्व्यवहार या अवचार के लक्षणों का एक विवरण संलग्न है, जिस पर उपयुक्त कार्रवाई करने की प्रस्थापना है।

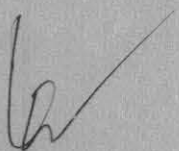
Sri A. Z. Khan, the then AAO/RE/RNC, now/AAO/CORE/Allahabad is hereby informed that the Railway Electrification propose to take action against him under Rule 11 of the Railway Servants (Discipline & Appeal) Rules, 1968. The statement of imputations of misconduct/misbehaviour on which action is proposed to be taken is enclosed.

2. श्री ए० जेड० खान, सहायक लेखाधिकारी, कोर/इलाहाबाद को एतद्वारा यह अवसर दिया जाता है कि इस प्रस्थापना के विरुद्ध वह जो भी अभ्यावेदन देना चाहे, वे दें। अभ्यावेदन यदि देना हो, निम्न हस्ताक्षरी को वित्त सलाहकार एवं मुख्य लेखाधिकारी/कोर के माध्यम से इस तरह प्रस्तुत किया जाना चाहिए ताकि वह इस ज्ञापन की प्राप्ति के 10 दिन के भीतर उक्त महाप्रबन्धक के पास पहुंच जाए।

Sri A.Z.Khan, AAO/CORE/Allahabad is hereby given an opportunity to make such representation as he wishes to make against the proposal. The representation, if any, should be submitted to the undersigned, through FA&CAO/CORE/Allahabad within 10 days

3. यदि श्री ए० जेड० खान, सहायक लेखाधिकारी, कोर/इलाहाबाद पैरा 2 में विनिर्दिष्ट अवधि के भीतर अभ्यावेदन प्रस्तुत नहीं करते तो यह मान लिया जायेगा कि उन्हें कोई अभ्यावेदन नहीं देना है और श्री ए० जेड० खान के विरुद्ध एक पक्षीय आदेश पारित किए जा सकेंगे।

If Sri A.Z.Khan, AAO/CORE/Allahabad fails to submit his representation within the period specified in Para 2, it will be presumed that he has no representation to make and orders will be liable to be passed against him ex-parte.



4. श्री ए० जेड० खान, सहायक लेखाधिकारी, कोर/इलाहाबाद
इस ज्ञापन की पावती दें।

*The receipt of this memorandum should be
acknowledged by Sri A. Z. Khan,
AAO/CORE/Allahabad.*

संलग्नक : अनुलग्नक -1
Encl : Annexure -1

Sd/-
अशोक कुमार चोपड़ा
A.K.Chopra
महाप्रबन्धक
General Manager

श्री ए.जेड.खान,
सहायक लेखाधिकारी/कोर/इलाहाबाद
द्वारा : वि०स० एवं मु० लेखाधिकारी/कोर/इलाहाबाद

2. The applicant filed his representation dated 16.10.2002 explaining the circumstances under which he had to complete the tender process. The respondents vide order dated 4.6.2003 passed impugned order (Annexure A-I) imposing a penalty of with-holding of increment for a period of six months by not raising his pay from Rs.10,000-10,250 falling due on 1.8.2003 in the revised scale of pay Rs.7500-12000 without any cumulative effect on future increment and seniority. Appeal preferred by the applicant dated 26.4.2004 was dismissed by the Appellate Authority vide Annexure A-II order dated 27.10.2005.


3. It is the aforesaid penalty order and appellate order that are under challenge in this O.A. The main grounds of attack are that the orders impugned have been passed in derogation of the provisions of statutory rules and on irrelevant consideration and

omission of relevant considerations and thus the orders are perverse.

4. Respondents have contested the OA. According to them the applicant while working as Assistant Accounts Officer Railway Electrification, Ranchi during the year 1996-97 committed irregularities as Finance Member of Tender Committee. He evaluated a tender by inflating the Railways vetted rates which caused maximum loss of public money. He also recommended single tender at higher rate without checking the reasonability of rates. The applicant was issued with a charge sheet and no regular inquiry was called for in this case. As it is only when the Disciplinary Authority decides to hold the inquiry into charges that full fledged inquiry could be pressed into service. The applicant was granted necessary opportunity to prove his innocence. The applicant did not submit any documents required by him.

5. The respondents have also relied upon the following cases in support of their orders passed only.

- a. *Kuldeep Singh Vs. Commissioner of Police & Ors. (1999) 2 SCC 10, in para 10*
- b. *Damoh Panna agar RRB Vs. Munna Lal in Civil Appeal No.8258 of 2004*
- c. *Dr. Anil Kumar Vs. Union of India 1998 9 SCC 47*
B.C. Chaturvedi Vs. Union of India (1995) 6 SCC page 749
- d. *Government of Tamil Nadu & Ors. Vs. S. Vel Raj 1997 (2) AISLJ 32*
- e. *Government of Tamil Nadu Vs. N. Ramamurthy AIR 1997 SC 3571*



- f. *Government of Tamil Nadu & Anr. Vs. A. Rajapandian AIR 1995 SC 561.*
- g. *R.S.Saini Vs. State of Punjab and Others JTI 1999 (6) SC 507*
- h. *Bank of India Vs. Digala Suryanarayanan 1995 (5) Supreme Court Cases, Page 762.*
- i. *Shri Parma Nanda Vs. State of Haryana & Ors. SLP (Civil) No.6998 of 1988*

6. As regards the allegation that principles of natural justice have been violated the respondents have relied upon the following decisions:


(R Vs. Secretary of State exparte Mughal (1973) 3 AIIR 796

(Chairman, Board of mining Exam. V. Rmjee AIR 1977 SC 965)

(Bholanath Vs. Management of DTU SLR(1971) 2 Delhi 240)

7. The applicant has filed his Rejoinder reiterating the contentions raised in the OA.

8. Counsel for the applicant after succinctly narrating the entire facts of the case submitted that the area for work executed was naxallite affected area and people were totally afraid of even visiting that place much less carrying out the job of installation of cables. The situation warranted action on war footing basis and it became inevitable to award the work to one of the offerees. While working out the comparison between the approved rate and the rates quoted by the participants to the tender, as the approved rates belonged to a period which was substantially anterior to the current date in question, certain updating was to be made to arrive



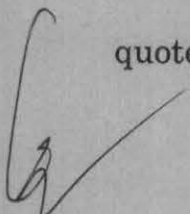
at the probable approved rates. It is after calculating such approved rates that the tenders approved. The counsel further argued that there has been an inordinate delay over seven years in the issue of charge sheet which itself has prejudiced the applicant and in support of his contention the counsel referred to the decisions of the Apex Court in the case of State of M.P. vs Bani Singh. The counsel also relied upon the decision of the Apex court in the case of *B.R.Singh reported in 1989 (4) SCC 710*.

9. Respondents counsel has submitted that the penalty imposed was the minimum and after affording the procedure laid down.

10. After the case was heard, the order was reserved but liberty was also granted to the parties to file written arguments. The applicant in his written argument has added the Minutes of the tender committee meeting held on 31.1.1996. The updated case was arrived at by the tender committee holding as under:-

"On going through the Railway's estimated cost vis-à-vis LPR computed for the purpose of comparison to justify the reasonableness rate it is noticed that the same has not been prepared by updating the figure properly. Updated LPR is recasted for comparison".

11. The rates so updated was at a standard incremental value of 10% per annum and it is thereafter that the figure arrived at was Rs.6.95 lkhs and the tender awarded was for Rs. 7.09 lakhs, which was after certain discount and which was the lowest amongst those quoted.




12. In the written argument it was also indicated that of all the 3 Bidders the one that was selected was the lowest and it was after taking into account the urgent need and the sensitivity of the place, the decision of the tender committee meeting was taken which is fully justified.

13. In the written submissions the respondents have concised the contentions made in the counter with the decisions already cited above.

14. Arguments were heard, documents and written documents were perused. The decision by the tender committee is not by a single person (but a joint decision) as could be seen from the minutes of the meeting. The lowest tender only had been taken into consideration and the reasonableness has been ascertained. The urgency involved in the work has not been denied by the respondents. The explanation of the respondents is that the applicant being a senior accounts officer ought to have taken into account the prevailing rates elsewhere and in so far as the present case is concerned, the applicant ought to have taken into account the rate in respect of a nearby place Ranchi and the applicant has failed in his attempt in this regard.

15. The above contention of the respondents cannot be accepted in toto. The circumstances under which a contract has to be got executed varies from place to place. Consideration of quotations received has to take into account various aspects including the



urgency, Allotment of work under normal circumstance differs from that under certain critical circumstances. The rates under these two situations cannot be expected to be identical or comparable. Thus, there is always a difference between 'gulping' and 'cuddling', former being in the fastest action and latter as slowest. In a place where the security of citizens is at stake due to naxallite activities, even securing persons to have the work executed may not be that easy as submitted by the counsel for the applicant. Under these circumstances there may not be much of options or choice. In the instant case three tenders were received and the lowest is chosen and it is only to ascertain the reasonableness that comparison took place in which as the rates were found to be slightly old updating was to take place. This has been done by the tender committee and not by the applicant alone. If at all, the decision could be an only an error of judgment or at best negligence.

16. In the *Union of India and others vs J. Ahmed (1979) 2 SCC 286*) it has been held that there may be negligence in performance of duty but the same would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. On the above ruling, the applicant had sought for dropping of the penalty proceedings. The Apex Court has held as under:-

"The inhibitions in the Conduct Rules clearly provide that an act or omission contrary thereto so as to run counter to the expected code of conduct would certainly constitute

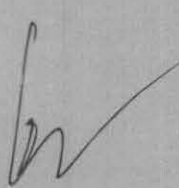
misconduct. Some other act or omission may as well constitute misconduct. Allegations in the various charges do not specify any act or omission in derogation of or contrary to Conduct Rules save the general Rule 3 prescribing devotion to duty. It is, however, difficult to believe that lack of efficiency, failure to attain the highest standard of administrative ability while holding a high post would themselves constitute misconduct. If it is so, every officer rated average would be guilty of misconduct. Charges in this case as stated earlier clearly indicate lack of efficiency, lack of foresight and indecisiveness as serious lapses on the part of the respondent. These deficiencies in personal character or personal ability would not constitute misconduct for the purpose of disciplinary proceedings.

10. It would be appropriate at this stage to ascertain what generally constitutes misconduct, especially in the context of disciplinary proceedings entailing penalty.

11. Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see *Pierce v. Foster*). A disregard of an essential condition of the contract of service may constitute misconduct [see *Laws v. London Chronicle (Indicator Newspapers)*]]. This view was adopted in *Shardaprasad Onkarprasad Tiwari v. Divisional Superintendent, Central Railway, Nagpur Division, Nagpur*, and *Satubha K. Vaghela v. Moosa Raza*. The High Court has noted the definition of misconduct in *Stroud's Judicial Dictionary* which runs as under:

"Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct."

In industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct but in *Utkal Machinery Ltd. v. Workmen, Miss Shanti Patnaik* in the absence of standing orders governing the employee's undertaking, unsatisfactory work was treated as misconduct in the context of discharge being assailed as punitive. In *S. Govinda Menon v. Union of India* the manner in which a member of the service discharged his quasi judicial function disclosing abuse of power was treated as constituting misconduct for initiating disciplinary proceedings. A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences the same may amount to misconduct as was held by




this Court in P.H. Kalyani v. Air France, Calcutta wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct. It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high."

(Emphasis supplied)

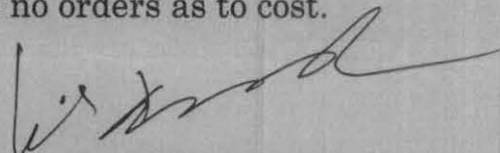
17. Thus, a mere negligence without mens-rea cannot form misconduct. As such the decision by the Disciplinary Authority does not appear to be appropriate.

18. In view of the above, the O.A. is **allowed**. The impugned orders at Annexure A-1 and A-2 (Order dated 04-06-2003) and 26-04-2004) are hereby quashed and set aside. The respondents are directed to pass suitable orders, releasing the withheld increment to the applicant.

19. Under the circumstances, there shall be no orders as to cost.



(S.N. Shukla)
Member (A)



(Dr. K.B.S. Rajan)
Member (J)