



Central Administrative Tribunal Principal Bench, New Delhi

O.A. No. 1043/2020

This the 24th day of March, 2021

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A K Bishnoi, Member (A)**

Sh. Ameesh Aggarwal,
S/o Sh. Suman Kumar Aggarwal,
Aged about 35 yrs.,
Deputy Controller of Accounts,
CBIC, M/o Finance, DGACR Building,
IP Estate, New Delhi – 110002

...Applicant

(Through Mr. Parthiv K. Goswami with Mr. Rahul Pratap,
Advocates)

Versus

1. Union of India through,
Secretary/Cadre Controlling Authority,
Department of Expenditure,
Ministry of Finance,
North Block, Delhi.
2. Ms. Suman Bala
Joint Controller General of Accounts (Vigilance),
Office of the Controller General of Accounts,
Mahalekha Nyantrak Bhawan, E-Block,
INA, New Delhi – 110063
3. Ms. Madhu Sharma
Deputy Controller of Accounts,
Ministry of Chemical & Fertilisers,
Shastri Bhawan, New Delhi.



4. Shri Ajay Kumar Srivastava,
Inquiry Officer,
306, Pratakar Apartments,
Vasundhara, Sector 5, Ghaziabad.
...Respondents

(Through Ms. Geetanjali Sharma, Advocate for R-1 to 3)

O R D E R (Oral)

Justice L. Narasimha Reddy:

The applicant is an officer of Indian Civil & Accounts Service (ICAS), of 2010 Batch. He was posted as Assistant Controller of Accounts (ACA) in the CPWD in the year 2013 and was entrusted with the preparation of the Nirman Lekha Project, Phase-I. The 3rd respondent is an ICAS Officer of 2011 Batch. She was also posted as ACA in the same organization in June, 2013. A team of the officers that comprised of the applicant, the 3rd respondent and several others are said to have submitted the Nirman Lekha Project Report in Phase-I. Concurrence was accorded for the Phase-I, by the Office of the Director General, CPWD. It is stated that the applicant was transferred to the Ministry of Finance in the year 2014.

2. The applicant contends that the 3rd respondent remained in the same Ministry and she was entrusted with the preparation of Nirman Lekha Project, Phase-II, and that was



approved on 18.12.2014. Thereafter, the 3rd respondent was transferred to the Office of the Controller General of Accounts (CGA). It is alleged that the CGA got a special audit into the Nirman Lekha Project through a team of officers, which comprised of the 3rd respondent also, and that the 3rd respondent has deliberately filed a malicious Audit Report dated 19.12.2019, pointing out alleged irregularities in Nirman Lekha Project Phase-1 Report,. On the basis of the said Audit Report, the applicant was issued a Charge Memo dated 22.03.2019.

3. The applicant filed this OA, challenging the Charge Memo dated 22.03.2019. It is stated that the very basis for initiation of the disciplinary proceedings was the Audit Report submitted by the 3rd respondent, and in view of the fact that she was associated with the Nirman Lekha Project, Phase-I; she ought not to have participated in the audit, at all. The applicant submits that in case any irregularities were noticed in the Phase-I of the Project, the 3rd respondent was equally responsible, but the respondents have not chosen to initiate any proceedings against her. Various other contentions are also urged.



4. A detailed counter affidavit is filed on behalf of the respondents No. 1 to 3. They raised an objection as to the maintainability of the OA. They submit that the impugned Charge Memo was issued on the basis of the Audit Report, and the truth or otherwise of the allegations against the applicant can be decided only in the proposed inquiry. The contentions urged by the applicant are denied.

5. We heard Mr. Parthiv K. Goswami assisted by Mr. Rahul Pratap, learned counsel for the applicant and Ms. Geetanjali Sharma, learned counsel for the respondents No.1 to 3. There is no representation for the other respondent.

6. The challenge in this OA is to the Charge Memo dated 22.03.2019. It was in relation to the role played by the applicant in Phase-I of the Nirman Lekha Project. The Articles of Charge reads as under:-

“Statement of Articles of Charge framed against Sh. Ameesh Aggarwal, Dy. Controller of Accounts, CBIC, Ministry of Finance, New delhi.

Article I

That the said Sh. Ameesh Aggarwal while functioning as Assistant Controller of Accounts in M/o Urban Development during the period from 2012 to 2014 had issued sanction order for payment amounting to Rs. 1,66,33,150/- to M/s Corporate



Infotech Private Ltd . for supplying 107 numbers of servers for CPWD Divisions without obtaining the approval of the Competent Authority in gross violation of General Financial Rules, 2005.

2. Thus by his recklessness in issuing sanction order for payment of Rs. 1,66,33,150/- to M/s Corporate Infotech Private Ltd. for supplying 107 numbers of servers for CPWD Divisions without obtaining financial sanction/approval of the Competent Authority, Sh. Ameesh Aggarwal has violated Rule 22 and 137 of General Financial Rules, 2005 and the Delegation of Financial Power Rules, 1976.

By his above acts, Sh. Ameesh Aggarwal has shown lack of devotion to duty, and acted in a manner unbecoming of a Government servant and thereby has contravened Rule 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964.

Article II

That the said Sh. Ameesh Aggarwal while functioning as Assistant Controller of Accounts in the M/o Urban Development during the period from 2012 to 2014 had issued sanction order for payment amounting to Rs. 2,43,59,732/- to M/s Corporate Infotech Private Ltd. for supplying 206 numbers of software for CPWD Divisions without obtaining the approval of the Competent Authority and before the receipt of invoice/bill from the firm, in gross violation of General Financial Rules, 2005.

2. Thus by his recklessness in issuing sanction order for payment of Rs. 2,43,59,732/- to M/s Corporate Infotech Private Ltd. for supplying software for CPWD Divisions without obtaining the financial approval of the Competent Authority and issuing sanction order for payment without the receipt of bill/invoice from the firm, Sh. Ameesh Aggarwal has violated Rule 22 and 137 of General Financial Rules, 2005 and Delegation of Financial Power Rules, 1978.



By his above acts, Sh. Ameesh Aggarwal has shown lack of devotion to duty and acted in a manner unbecoming of a Government servant and thereby has contravened Rule 3(1) (ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964.

Article-III

That the said Sh. Ameesh Aggarwal, while functioning as Assistant Controller of Accounts in the M/o Urban Development during the period from 2012 to 2014 had issued sanction orders for payment amounting to Rs. 90,45,845/- to M/s AVR Technology (M/s J.R. Infosys, N.Delhi) for supplying 148 numbers of 3KVA online UPS for CPWD Division without obtaining the financial approval of the Competent Authority in gross violation of General Financial Rules, 2005.

2. Thus by his recklessness in issuing sanction order for payment of Rs. 90,45,845/- for supply of 148 online UPS without obtaining financial sanction/approval of the Competent Authority, Sh. Ameesh Aggarwal has violated Rule 22 and 137 of General Financial Rules, 2005 and Delegation of Financial Power Rules, 1978.

By his above acts, Sh. Ameesh Aggarwal has shown lack of devotion to duty and acted in a manner unbecoming of a Government servant and thereby has contravened Rule 3(1) (ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964.”

7. In the ordinary course, the truth or otherwise of the charges can be ascertained only in the contemplated inquiry. In the instant case, however, there are some peculiar circumstances.



8. In respect of every article of charge, the following paragraph is incorporated in the imputation:-

"That Finance Division, Ministry of Urban Development vide note dated 07.01.2014 gave their consent for implementation of Nirman Lekha Project in principle subject to fulfillment of the conditions mentioned at para 7 of their note. Thereafter Secretary (UD) had given administrative approval for the project relating to implementation of Nirman Lekha on estimated/tentative cost in 160 CPWD. The said Administrative approval given by the Secretary (UD) cannot be construed as financial approval/sanction."

9. The next paragraph, which relates to the alleged irregularity, reads as under:-

"That financial approval/sanction of the Competent Authority is obtained only after completion of tendering process i.e. inviting tenders, receiving tenders, evaluating/comparing tenders, recommendations Tendering Evaluation Committee name of the firm/agency who has been awarded the work and amount of the work/items to be purchased/procured for awarding work order."

10. In case, any irregularity had taken place in relation to the Project, which was finalized in the year 2014, the action was supposed to be initiated shortly thereafter or at least when the next audit took place. The reason for issuing the Charge Memo in the year 2019, i.e. 5 years after the approval of the Project, is mentioned in the counter affidavit.

11. The applicant specifically pleaded in Para 4.14 of the O.A. that though a private complaint was filed on 12.06.2014,



alleging certain irregularities against some officials of the Ministry of Urban Development, at the relevant period, and that nothing was mentioned against him. In Para 4.16 of the O.A., it is stated that the 3rd respondent was the officer, who presented the Project in Phase-I to the Ministry and got approval for successful implementation, and she continued in Phase-II also. In Para 4.19, he alleged that the 3rd respondent headed the Audit team, and that she pointed out the so-called irregularities in the Project, ignoring the fact that she was part of it. The relevant parts in the Audit Report are also extracted.

12. In the counter affidavit, the respondents, *inter alia*, stated as under:

"4.14 That in regard of Para 4.14, it is submitted that several Complaints were received alleging various financial irregularities that had taken place in the O/o Chief Controller of Accounts, Ministry of Housing & Urban Affairs. Copies of these complaints were also forwarded to the Office of Respondent No. 2 through Chief Vigilance Officer, Ministry of Housing & Urban Affairs, Central Vigilance Commission and also from Chief Vigilance Officer, Department of Expenditure including irregularities committed in various procurements."

xxx xxx xxx

4.19 That in regard of Para 4.19, it is submitted that Respondent No. 3 was Team leader of the audit which was constituted with the approval of the then Controller General of Accounts



to conduct an Audit to review payments made by Pay & Accounts Offices for the period 2012-15 in respect of the erstwhile M/o Urban Development. In compliance of the orders, Respondent No. 3 conducted the audit.

4.20 xxx xxx xxx

That it is also submitted that the said Preliminary Enquiry was instituted against the Applicant & four other Officers before the joining of Respondent No. 2 in O/o Controller General of Accounts as Joint Controller General of Accounts (Vigilance) and as such Respondent No. 2 has no role in the Preliminary Enquiry conducted by the Preliminary Enquiry Officer.

That it is submitted that on the basis of Preliminary Inquiry Report, the Competent Authority took the decision for initiating disciplinary action against the Applicant and others and it was also conveyed vide the Deptt of Expenditure OM No. C-18018/02/2014-Vig. Dated 21.07.2017 which has been issued with the approval of Finance Secretary/Secretary (Exp.), CVO, O/o CGA will also assist Department of Expenditure to process cases of Group 'A' Officers. Copy of Deptt. Expenditure OM No. C-18018/02/2014-Vig. Dated 21.07.2017 is annexed hereto and marked as Annexure-R/6.

xxx xxx xxx

4.21 *That the contents of Para 4.21 are matter of record. However, anything contrary thereto are denied in toto.*

Moreover, it is submitted that as regards of issue of Memorandum under Preliminary Inquiry, it was within the jurisdiction of the Preliminary Enquiry Officer. Preliminary Enquiry was carried out in accordance with the guidelines laid down in



Vigilance Manual issued by Central Vigilance Commission."

From a perusal of the paragraphs extracted above, it is clear that the sole basis for issuance of the impugned Charge Memo is the Audit Report, submitted by a Committee, headed by the 3rd respondent.

13. It was already mentioned that the 3rd respondent was associated with the preparation of the Nirman Lekha Project, Phase-I, along with the applicant. It is also matter of record that she continued in the organization even at the stage of Phase-II, whereas the applicant was transferred to a different Ministry.

14. It may be true that the 3rd respondent became part of the establishment of the CGA, and she was assigned the duty of Heading the team, to conduct Special Audit or inquiry into Phase-I of the Project. In all fairness, she ought to have excused herself from doing it, in view of the fact that she was associated with it. The 2nd aspect is that in case any irregularities were pointed out in respect of Phase-I of the Project, the 3rd respondent was equally responsible and the disciplinary proceedings ought to have initiated against her also. It is a clear



case of impropriety, bias and violation of an important facet of principles of natural justice.

15. By no means, we propose to make any pronouncement upon the allegations, or as to the occurrence of the irregularity in the process. The matter can certainly be inquired into, by a team of the officers, of which the 3rd respondent is not a member. Depending upon the outcome of such an audit or inquiry, proceedings can certainly be initiated. The report submitted by a committee headed by the 3rd respondent, needs to be ignored and kept aside.

16. We, therefore, allow the O.A. and set aside the impugned Charge Memo dated 22.03.2019. It is left open to the respondents to conduct a special audit or inspection into the Nirman Lekha Project, Phase-I, through a team of officers, of which the 3rd respondent is not a member, and to take further steps depending upon the recommendations that may be made by the team, so constituted.

There shall be no order as to costs.

(A K Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/lg/jyoti/