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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 100 of 1986

H.K. Sachdeva	Petitioner
	Versus	
Union of India & others	Respondents.

Hon'ble Justice A. Banerji, Chairman (J).
Hon'ble A. Johri, Member (A).

(Delivered by Hon. A. Johri, A.M.)

By this writ petition, received on transfer from the High Court of Judicature at Allahabad under Section 29 of the Administrative Tribunals Act, 1985, the petitioner, who has retired from the Military Engineering Service (MES) on 28.2.1975 as an Executive Engineer (EE) holding appointment at Bamrauli, Allahabad, has requested for quashing of the charge-sheet dated 28.6.1976 (Annexure '1'), the order imposing the penalty dated 12.5.1981 (Annexure '3'), the order refusing to re-open his disciplinary case dated 22.7.1985 (Annexure '9'), and for issue of a direction asking the respondents to re-open and re-consider the disciplinary proceedings against the petitioner initiated on basis of the charge-sheet dated 28.6.1976.

2. Briefly the case of the petitioner is that while working as Garrison Engineer (GE) at Bamrauli he had invited tenders for resurfacing and extension of some run way works on the Air-field. This contract was spread over a very large and extensive area. The petitioner was assisted by one Assistant Garrison Engineer (AGE) and some subordinates. According to him, the actual work on air-field was to be looked after by his subordinates. According to the petitioner, in terms of the conditions of the contract, etc.

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and the regulations and departmental rules the Assistant Engineer (AE) and other staff/^{who}were looking after the work were responsible to see that the Contractor prepared the product in the proportion as directed and that the materials collected for use against which 75 percent (%) of the price was payable to the Contractor were measured/estimated properly and appropriate certificate had to be submitted to GE along with Contractor's bills for making payments. In terms of this procedure as and when stone aggregate were supplied by the Contractor 75% of the price had to be paid to him on the certificate and report made by AE. The Contractor failed to stick to the time scheduled[✓] and, therefore, ultimately on the report of the petitioner the contract was cancelled by the Chief Engineer (CE) by a notice dated 6.6.1974. Before termination of the contract it was suspected that the Contractor had been over paid for the materials supplied by him and accordingly certain investigations had to be made into the matter and, therefore, on termination of the contract the Contractor was directed to report to GE for detailed measurements of the executed works and left over stores. Simultaneously, an enquiry was also instituted by the Commander Works Engineer (CWE). The petitioner all[✓]eges that CWE had no authority to have an enquiry conducted as the entire work was under the control of CE. The petitioner was not included in the Board of Officers, but his juniors were included. The Board of Officers did not call the Contractor when the measurements were taken nor any measurements were recorded in the Measurement Book and the petitioner was also not called to help them and the Board of Officers arrived at a lump sum figure for different items. When the petitioner retired on 28.2.1975 there was no charge or grievance against him, though the report of the Board of Officers had been sent

by CWE, Allahabad on 15.10.1974 to CE. When the new Contractor started work and the materials were handed over to him it was also found by the Superintendent B/R that the quantities of material handed over to him were in excess of the quantities that were left over by the previous Contractor, as reported by the Board of Officers. Even on the appointment of the second Board of Officers these measurements were not properly recorded, though the terms of reference of the second Board were to verify the payments made to the Contractor and to submit report regarding any over payments. The second Board of Officers submitted their report, though they had taken no measurements nor recorded any measurements in the work completed book. Their findings were that there has been an over payment of Rs.5.32 lakhs to the Contractor. On the submission of this report a court of enquiry was set up on 31.12.1974 and after retirement of the petitioner he was served with a charge-sheet on 28.6.1976 and an enquiry was held in which the petitioner participated. The petitioner has raised objections before the Commissioner for enquiry in regard to the illegality in constitution of the court of enquiry and the fact that some relevant officers had not been made parties in the disciplinary proceedings and the proceedings were beyond time, i.e. pertained to a period beyond four years from the date of retirement of the petitioner. But these objections were not accepted and the Commissioner submitted his report on which a penalty of reduction of the pension by 25% was imposed after the petitioner's representation against the show-cause notice had been rejected. The petitioner's appeal was also rejected on 12.5.1981. Aggrieved by this order the petitioner filed a Writ Petition No.10324 of 1981 before the High Court of Judicature at Allahabad, which was dismissed on 21.10.1983 holding that the petitioner was

responsible for the over payments and that the enquiry was not barred by time. The SLP filed by the petitioner, against the decision of the Allahabad High Court, before the Supreme Court was also dismissed on 6.8.1984. The petitioner has further alleged that the concerned Contractor went into arbitration and the Arbitrator awarded a further sum of Rs.97,600.95 P. taking it as under paid to the Contractor over and above the payments already made to him. This award was accepted by the Union of India and was made a rule of the court. On learning of this award the petitioner represented to the respondents on 25.9.1984 and prayed that in view of the arbitration award the grounds on the basis of which a punishment of 25% cut in his pension was imposed on the petitioner no longer survived. On his representations ^{34 being} ~~were~~ rejected, he was advised that no ground has been found for re-opening his case. It is in this back-ground that the present petition has been made.

3. In their reply the respondents have said that the petitioner, who was working as a GE, was fully responsible for the proper execution of the work in accordance with the contract agreement and it was his duty to ensure that his subordinates were discharging their duties properly and their lapses should have been brought to the knowledge of CWE, Allahabad. Since he had not done this, he had to shoulder the responsibility for the lapses. The respondents have further said that the payments for the work done and materials received at the site had to be made according to the progress of work and not according to the facility of the Contractor. No advance payments could be made for works which had not been executed and, therefore, the petitioner should have not made payments to the Contractor when they were not due. There is also no rule in the contract agreement that excess payments are

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to be adjusted in the final bill. GE had to give personal certificate that he is satisfied fully that no over-payments have been made and, therefore, the petitioner, who was GE, is fully responsible for such over payments and the penalty imposed on him is fully justified. According to the respondents, CWE, Allahabad, being an Administrative Officer for the area, was fully entitled to order a Board of Officers for conducting any enquiry in the area under his own choice. On the cancellation of the contract on 6.7.1974 a Board of Officers had to be convened for recording the complete/ incomplete items of work. The Chief Engineer was only the accepting officer of the said contract but the actual work was done under the administrative control of CWE, Allahabad. It was not considered necessary to coopt the petitioner^{er} because it was felt the keeping him away would maintain the impartial recording of the measurements of the work. The second Board was convened for assessing the over payments, if any, made by the petitioner against the various running payments while the first Board was convened to assess the complete/incomplete items of work and left over material and stores. Departmental action against the petitioner was taken in accordance with the regulations. According to the respondents, the Arbitrator had awarded a sum of Rs.1.33 Lakhs in favour of the work for recovery purposes. The Government had also considered the cost of retrievable stores lying at the site resulting in the Contractor have to pay Rs.97,600.95 P.

32/ 4. We have heard the learned counsel for the parties. On behalf of the petitioner, the learned counsel made the contention that the integrity of the petitioner was not being doubted and that he was only held responsible for making certain payments resulting in over payment and thus he was charged for lack of devotion to duty. Since

this charge pre-supposes over payments to the Contractor, while in the arbitration case no such over payments have been claimed by the respondents, The charge is not on solid grounds and it gets demolished. The further contention was raised by the learned counsel that under Rule 29-A of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 the President is vested with the power to review any order passed under rules when new material or evidence, which could not be produced or was not available at the time of passing of the order under review and which has the effect of changing the nature of the case, comes to his notice. In the petitioner's case inspite of his detailed representation/review no reason has been given in the impugned order (Annexure '9') while rejecting his representation. Moreover, Rule 9 of the Central Civil Services (Pension) Rules, 1972 provides that there should be a grave misconduct or negligence on the part of the pensioner which evidently has not been proved by the Arbitration award to which the Government was party and which was also not available to the President before June, 1976 when the charge-sheet was given to the petitioner and this alone should be sufficient ground for the President to exercise powers under Rule 29-A of CCS(CC&A) Rules and review its own orders imposing the punishment on the petitioner.

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5. Annexure '9' to the petition is the order dated 22.7.1985 wherein the petitioner was informed in respect of his letters of 25.9.1984, 31.12.1984 and 1.1.1985 in regard to the disciplinary case that the matter had been examined and it was regretted that there was no ground for reopening the case and for revision of the penalty already imposed on him. In Writ Petition No. 10324 of 1984 the Allahabad High Court had considered the petitioner's claims that he

was not responsible for the over-payments made to the Contractor and that the initiation of disciplinary proceedings ~~xx~~ against the petitioner were barred by time according to Rule 9 of CCS (Pension) Rules, 1972. The Allahabad High Court had held that the petitioner was responsible for the over payments and that the events which ultimately form the basis of the charge-sheet against the petitioner indicated that the disciplinary proceedings initiated against him were within time, i.e. within four years of the occurrence of the event. Therefore, both these contentions were rejected and the writ petition was dismissed by the Allahabad High Court. By this petition now the petitioner is only praying that his review application, submitted after the Arbitrator's award has become available, should be considered under Rule 29-A of CCS (CC&A) Rules, 1965. The grounds for this prayer are that the subsequent developments, viz. the decision of the Central Government in not claiming the over-payments from the Contractor in the arbitration proceedings and its acceptance of the award completely negate the charges levelled against him and that the Arbitrator had found that the Contractor was actually under paid and was also entitled to the retrievable stores and since the award given by the Arbitrator has completely changed the complexion of the matter, the penalty imposed against the petitioner has become unlawful. He has also said in the grounds that the impugned order is not a speaking order and thus it becomes arbitrary.

6. As far as the prayer for setting aside the charge-sheet and the orders imposing penalty are concerned, we feel that no illegality has been pointed out in the manner in which the whole proceedings were conducted and, therefore, they are not vitiated by the ^{vice of} ~~illegality~~ and we will, therefore, not like to interfere with the

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conclusion that have been arrived at after proper enquiry on the basis of documents and records available at the appropriate time. Therefore, this prayer of the petitioner cannot be accepted. As far as his prayer for reopening his case and re-considering the disciplinary proceedings are concerned, the petitioner is now confining his request to a review being carried out of the order imposing the penalty of the cut of 25% in his pension under Rule 29-A. The order, which is impugned as Annexure '9' to the petition, dated 22.7.1985 does not indicate that under Rule 29-A of the Rules the review application submitted by the petitioner has been considered by the President, who imposed the punishment by the order dated 12.5.1981. The applications submitted by the petitioner on 1.1.1985 and earlier also do not appear to have been made seeking a review of the orders under Rule 29-A of the Rules.

7. Rule 29-A of CCS(CC&A) Rules, 1965 lays down that "the President may, at any time, either on his own motion or otherwise, review any order passed under these rules, when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come, or has been brought, to his notice". As already observed above the order of punishment was issued in 1981 and the Arbitrator's award was given in March, 1983 and, therefore, it is evident that the relevant material and the facts of the award on which the petitioner is now seeking a review were not available to the President when he imposed the punishment of cut of 25% in the pension. There is no doubt that for pecuniary loss suffered by the Government a pensioner can be imposed a cut in the pension, but if the circumstances of the case indicate that in the totality of the situation no such loss

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had actually been suffered, the penalty of a cut of sizable portion of the pension for acts of misconduct which may have been committed by the pensioner, may also be on the excessive side. While we may not yield to spasmodic sentiment or to vague and unregulated benevolence, a discretion exercised and subordinated to the principles of necessity of the effect of order on the social life cannot be completely ignored. The pensioner being a recipient of a meagre pension in these days of economic hardship and inflation even the slight deduction in his emoluments is likely to effect his circumstances and life adversely. Taking these factors into consideration we feel that the petitioner's request for re-consideration of the order imposing the punishment in view of the developments in the arbitration case does merit and needs sympathetic consideration.

8. In the above view, we direct that in case the petitioner prefers a proper review application against the impugned order imposing punishment within a period of months from now, the respondents will, under Rule 29-7 CCS(CC&A) Rules, 1965, reconsider the matter and take decision according to rules and law within two months after submission of the review application. The order is therefore, allowed in part. We make no order as to costs.

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MEMBER (A).

Chairman

CHAIRMAN (A)

Dated: ^{Jan.} November 2nd, 1989.

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