

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD

ALLAHABAD, THIS THE 7th DAY OF October, 2002

ORIGINAL APPLICATION NUMBER 1468 of 2000

QUORUM:

HON'BLE MR. S. DAYAL, (MEMBER (A))

HON'BLE MR. A.K.BHATNAGAR, MEMBER (J)

N. Balasubraminium .....Applicant

Versus

Union of India and others .....Respondents

O R D E R

Hon'ble Mr. S. Dayal, Member (A)

This application under section 19 of A.T. Act, 1985 seeks the setting aside of charge memo of Government of India, Ministry of Defence No.13011/14/viz-ii/2000 dated 04.10.2000 alongwith Annexure. A further direction to the respondents is sought for not with holding promotion of the applicant on the post of Superintending Engineer on the basis of a belated chargesheet.

2. The applicant was appointed as Assistant Executive Engineer, a Civilian, Class-I Gazetted Officer, Group 'A' on 29th October 1974 after selection by Union Public Service Commission. He was promoted as Executive Engineer in March, 1984. He is serving as Garrison Engineer, Air Force, Izzatnagar, Bareilly w.e.f.30.10.1999. The applicant while working as Garrison Engineer (Factory), Maliyaram, Sikanderabad from 01.05.1986 to 13.05.1988 executed a contract C.A.No.CE(P)Fy./MDK/07 of 1986-87. The respondents,

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after 12 years , have issued a charge memo with regard to aforesaid contract. It is alleged in the charged memo that the applicant had failed to exercise proper control over the Engineer Incharge K.S. Grewal, a Superintendent,, Grade-I, which resulted in over issuance of stores. The applicant sent a reply dated 24.11.2000 to the charge memo. This has led to the filing of this O.A.

3. The argument of Shri N. Balasubraminium, applicant in person and Shri Chandika Prasad, brief holder of Shri R.C. Joshi, counsel for respondents have been heard. We have considered the pleadings on record and the submission made before us.

4. The applicant has basically made three submissions. The first is that the responsibility for issuing stores was that of Engineer Incharge and not of Garrison Engineer. Secondly, the delay of 12 years vitiates the issuance of chargesheet and is contrary to the law laid-down by the Courts. Lastly, no chargesheet has been given to Engineer Incharge or his successor, who was equally responsible for the delinquency with which the applicant has been charged.

5. As regards the first submission, the applicant has filed a photocopy of table 'F' of regulations for the Military Engineering Services and has stressed that the regulations do not specify any specific duty of the Garrison Engineer in issuing stores to the Contractors. He has drawn attention to letter of Engineer-in-Chief, Army Headquarters No 41917/E2(W.P.C.) dated 26.10.92 by which Garrison Engineers could nominate Engineer Incharge, Superintendent/Supervisor, grade-I/II for specific Project/Sub-Projects through office order. The applicant claims that he had done so by nominating Superintendent Grade-I and the Superintendent Grade-I in officiating capacity was responsible for all the functions assigned to the permanent incumbent.

6. We have considered the above contention but we find that Annexure which has Appendix 'A' showing the proposal to modify the provisions contained in R.M.P.S. which contains the issuing of Schedule 'B' Stores and I & P as the duties of Garrison Engineer was not put into effect and was notified for getting reactions of those concerned. Again the duties of Garrison Engineer in Table 'F' (Annexure-4) contained the item of over issue of store to Contractors as Item No.451. Annexure A-5 shows that Schedule 'B' materials are those which are to be supplied by the Government. We find that provision show that the direct responsibility for supply of material, its storage and its return is with the Engineer Incharge and the responsibility of the Garrison Engineer is mainly supervisory.

7. The Articles of charge show that the applicant had been charged with failure to exercise proper control over issue of Schedule 'B' stores resulting in over issue and the minus sum of Rs.60.39 Lakhs on the work of provision of wall cladding annexes and flooring to building No.2 when the final bill was prepared. It has been further stated in statement of imputation that the amount of final bill, as worked out by the applicant relating to over issue of Schedule 'B' stores, was minus Rs. 15.22 Lakhs. However, technical check and audit check resulted in the final bill of minus Rs. 60.39 lakhs. The applicant has stated that the final bill was prepared in the year 1999 which was 10 years after the finalization of the bill. This has not been denied by the respondents. They have mentioned that the work was cancelled with effect from 20.5.1991 under the letter of Chief Engineer Hqrs. dated 13.5.1991 as the Contractor has failed to complete the work and balance work was got executed at the risk

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and cost of the Contractor. Therefore, the final bill was delayed.

8. It is clear from the averments that the applicant functioned as Garrison Engineer (Factory) B.M.P.No. 4, Maliyaram, Sikenderabad from 1.5.1986 to 13.5.1988. The respondents have mentioned that the work was got executed at the risk and cost of the Contractor vide letter dated 20.2.1991 after termination of contract w.e.f. 20.5.1991 by a letter dated 13.5.1991. The reason for termination of contract was that the Contractor had failed to complete the work. There is a discrepancy between the applicant's averment regarding completion of work in question and the respondents' version of completion of the said work. While the applicant has mentioned that the work was completed in 1989, the respondents have mentioned that the work was completed much later as the unfinished part was awarded to another Contractor at the risk and cost of the original Contractor in Feb. 1991. The final bill was prepared as per the version of the respondents in the Counter Reply in 1994-95 and the applicant was served a charge sheet after 4.10.2000.. The gap between 1988 and 94-95 is more than six years. Therefore, there must have been other Garrison Engineers who handled the work besides the applicants. The applicant has claimed in his Rejoinder Affidavit that 14,679 Kg. of material was issued by him while 3,369 Kg. of material was issued by his successor. Therefore, it cannot be said that the applicant alone was responsible for all issuance of material in the said contract. The respondents, in their reply, have

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stated that the applicant was responsible for delayed payment of final bill as he showed lack of supervision, command and control over the contract due to which the contract could not be completed within the specified period. The Article-I of the charge, as contained in Annexure-I to the memo dated 04.10.2000 reads as under:-

"MES-136648 Shri N. Balasubramani, E.E., while functioning as GE (Fy)BMP No.4, Mailaram during the period from 01 may 1986 to 13th May 1988, committed various lapses in that, while executing the work 'Provn of Wall Cladding Annexes and flooring to Building No.2' under CA No.CE(P) Fy/MDK/07 of 1986-87, he failed to exercise proper control over issue of Schedule 'B' stores which resulted in overissues of stores which ultimately resulted in large minus sum of Rs.60.39/-Lakhs.

By the above said act, Shri N.Balasubramanian, EE exhibited lack of devotion to duty and acted in a manner unbecoming of Govt. Servant thereby violating the provisions of Rule 3(i)(ii) & (iii) of CCS (Conduct), Rules, 1964."

9. The charge is squarely for over issuance of material and not for delay in execution of contract. The respondents have not shown as to how the applicant was responsible for over issuance of material in order to afford him an opportunity to defend himself and the pleadings of the respondents in this O.A. show that they have mixed up the charge of dates with the charge of over issuance of material in coming to a conclusion that it was a major lapse amounting to misconduct under Rule 3(i)(ii) & (iii) of Conduct Rules 1964.

10. The applicant denied the charge and mentioned that Superintendent BR-I was appointed as Engineer Incharge as no AGE for the work was provided to his Division and issue of stores was the responsibility of Engineer Incharge. He also mentioned that the final bill was finalised after 11 years of completion of work and the recovery appears excessive because the calculation of the amount has been made at double the market rate prevailing in 1999 when the final bill was given its last shape. The applicant has

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drawn attention to the order of Engineer-in-Chief dated 26.10.92 (Annexure A-3) in which timely procurement, issue of Schedule 'B' stores and I & P as well as disposal of surplus stores of completion of work have been shown to the responsibility of Garrison Engineer. The applicant stated that Table 'F' of regulations for the Military Engineering Services do not specify the issue of stores to the contractor as duty of the Garrison Engineer. On the other hand, IAFW-2249, which contains the general conditions of the contract, shows that issuing stores and maintaining proper control are the responsibilities of Engineer Incharge. It is to Engineer Incharge that Contractor gives phased programme of his requirement with regard to delivery of materials. On completion of work, the Contractor was required to deliver the surplus materials to the Engineer Incharge and the surplus material was to be credited to the Contractor by the Engineer Incharge at rates not exceeding those at which the materials were originally issued to him after taking into consideration any deterioration or damage to the materials while in the custody of the Contractor. If on completion or on closure of work, Contractors fails to return surplus materials out of those supplied by the Govt., then in addition to any other liability which the Contractor might incur, the Engineer Incharge may, by a written notice to the Contractor, require him to pay within a fortnight from the receipt of the notice for such unreturned and surplus material at double the prevailing market rate as decided by Garrison Engineer. If the Contractor disputed the market rate, he could represent the matter to CWE within 7 days.

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11. The respondents, on the other hand, have mentioned that letter dated 26.10.92 (Annexure-3 to the O.A.) has not been issued so far. They have drawn attention to para 43(a) and (d) of RMES in which the duties of a Garrison Engineer are mentioned as follows:

"43 (a) the efficient execution of all original works and the maintenance in proper repair and working order of all buildings, furniture, machinery roads and lands committed to his charge whether military or civil;

(d) Complying with the prescribed procedure in connection with the letting of contracts and supply of stores and ensuring prompt payment of bills".

12. They have also mentioned that para 199 of RMES stipulates that the technical control of all works in respect of Army/ Navy, Air Force and Ordnance Factory is vested in the Engineer-in-Chief and exercised through Chief Engineer and the Engineer Executive. It is also stated that technical control ensures that all payments to Contractors and employees correctly represents the services rendered in accordance with the contract or other agreements under which these services have been rendered and the accounts are correctly kept and the expenditure correctly allocated in accordance with these regulations. They have also stated that Garrison Engineer administers and, in case of term contracts, direct the contracts as given in IAFW-2249. However, the same IAFW-2249 gives the definition of Engineer Incharge and lays down that the Engineer Incharge means the Assistant Garrison Engineer or the Superintendent Grade-I appointed by the Garrison Engineer to supervise the work or part of the work. The respondents have not denied the contention of the applicant regarding the responsibility of the Engineer Incharge as can be seen from Annexure-9 to the counter reply filed by the respondents.

13. It is clear from the pleadings that the contention of the applicant that the direct responsibility for issuance of stores lay with the Engineer Incharge and the Garrison Engineer along with C.W.E., Chief Engineers and Engineers-in-Chief was responsible for supervision of the work of subordinates in their capacity as higher officials in so far as the question of issuance of stores was concerned. It is also clear that issuance of surplus stores was not an unusual phenomenon and procedure was laid down for dealing with the matter of issuance of surplus stores in the instructions circulated by the department on completion of work. As stated earlier, the question of completion of work is itself a disputed matter. While the applicant has claimed that the work was completed in 1989, the respondents have claimed that the work was completed and final bill was prepared around 1994-95. The respondents have further stated that the lapses, which were committed by the applicant came to their notice in 1995 while checking the final bill of the said contract. They have also stated that the Contractor has gone for arbitration and the award has been in his favour but the department has filed a case to set aside the award in the appropriate court of Sikenderabad and the matter is sub-judice.

14. A perusal of the Article of Charge shows that the applicant had been charged with failure to exercise proper

control over issue of Schedule 'B' stores which resulted in over issue of stores. We find from the Commissioner, Works Engineer, Sikanderabad had written to Chief Engineer, Pune that the Board of Officers found Sri S.Kannan as well as the applicant as responsible for over issuance of stores (Annexure-2 to RA) yet the memo of charges has been issued only to the applicant. The memo of charges has been issued for over issue of surplus Schedule 'B' stores and other stores. The memorandum of charges does not make it clear that as to how in a situation where the work was incomplete and <sup>there were other +</sup> ~~the name of~~ Garrison Engineers besides the applicant who handled the work and how in that situation could the applicant be solely held responsible for over issuance of stores. It is also on record that the issuance of stores was direct responsibility of AGE or Superintendent Grade-I. As stated earlier, the memorandum of charges does not make it clear as to what was the lapse in exercising control over issuing of Schedule 'B' stores. The respondents have, in para 7 of the counter reply, stated that the Garrison Engineer is empowered to check over issue of Schedule 'B' stores as well as stores not included in Schedule 'B'. They have also mentioned that the delay has been caused due to non-completion of the contract by the Contractor. In this situation, it is not very clear as to how the over issue of Schedule 'B' stores would constitute misconduct. A bland statement that the amount of final bill worked out to minus Rs.60.39 lakhs does not show that the applicant committed

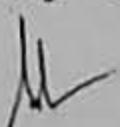
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misconduct especially when the bill was finalised much later than the year in which the applicant left charge of the post of Garrison Engineer, Maliaram, Sikenderabad.

15. The applicant has raised the issue of delay in holding departmental enquiry against him. The applicant's stay as Garrison Engineer, Maliaram, Sikenderabad was from 1.5.86 to 13.5.88. The charge of over issuance of stores relates to that period. The enquiry is being initiated in the year 2000 as the charge has been issued on 4.10.2000. The applicant has relied on the judgement of Apex Court in the State of A.P. Vs. N.Radhakrishnan (1998) 4 SCC 154 which lays down as follows :-

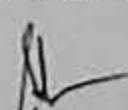
"Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings."

In that case, there was delay in issuance of charge-sheet as well as conducting disciplinary proceedings without any fault being attributable to the respondents. In this case before us also, the applicant was not to blame for delay of more than 12 years in issuing memorandum of charges. The applicant had left the charge of Garrison Engineer, Maliaram in May 1988. The applicant has also relied on the judgement of the Apex Court in State of Madhya Pradesh Vs. Bani Singh and Another (1991) SCC L&S 638. In that case also the initiation of disciplinary proceedings after 12 years without any satisfactory explanation for inordinate delay was held to be bad in law.



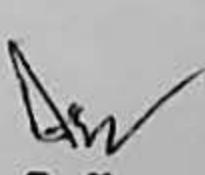
16. In the case before us, the respondents have tried to reduce the period of delay to five years by stating that the scrutiny of final bill was made between 1994 and 1996 and it led to the discovery of over issue of stores. However, the work was of the year 1986-87 and was claimed by the applicant to have been completed in 1989 although the respondents disputed this fact and stated that an order was passed for completing the work at the risk and cost of the Contractor in 1991. Before the passage of such an order, the respondents would have taken stock of the work done by the earlier Contractor and would have come to know the real status of the work. In this situation, delaying the issuance of charge-sheet till October 2000 is not explained satisfactorily.

17. The respondents have not denied that they have taken no action against the Engineer-in-charge as well as the successor of the applicant who was considered responsible by the Board of Enquiry for over issuance of stores. The Engineer-in-charge, who would have been the main official responsible for over issuance, could not be proceeded against due to delay in initiating the proceedings. Letting off the successors of the applicant and in particular his immediate successor Shri S. Kannan who has been promoted to the next higher grade and singling out the applicant for adverse action is not bonafide on part of the respondents.

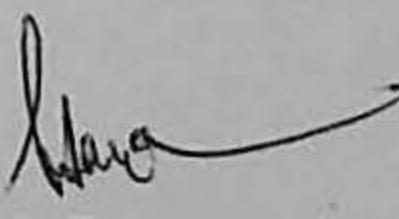


18. The applicant has shown that a DPC for promotion from the post of Executive Engineer to Superintending Engineer was to be convened and charge memo was issued at the time when the applicant was to be considered for promotion to the rank of Superintending Engineer. In a panel prepared on 16.3.2001, a number of Executive Engineers were empanelled for the post of Superintending Engineer. Another DPC was held after the filing of the O.A. in which all the 36 persons were said to be junior to the applicant. It is, thus, clear that the issuance of charge-sheet was timed to be on the eve of the consideration of the applicant for promotion. Thus, besides the delay in issuance of charge-sheet, the timing of charge-sheet shows that it was issued at the time so that it would result in withholding the promotion of the applicant.

19. Therefore, in any view of the matter, the charge-sheet given to the applicant cannot be sustained. The memorandum of charge dated 4.10.2000 is, therefore, set aside. The respondents are directed to open the sealed cover recommendations of the DPC and consider the case of promotion of the applicant from the date of promotion of his juniors on the basis of the sealed cover recommendations of the Departmental Promotion Committee.



J.M.



A.M.