

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.1356 OF 2002
ALLAHABAD THIS THE 8TH DAY OF APRIL 2009

HON'BLE MR. JUSTICE A. K. YOG, MEMBER-J
HON'BLE MRS. MANJULIKA GAUTAM, MEMBER-A

P.K. Singh, Aged about 47 years,
A.D.R.M. Eastern Railway,
Samastipur, Bihar.

.....Applicant

By Advocate : Shri Vikash Budhwar

Versus

1. Union of India through the Secretary
Ministry of Railways, Rail Bhawan,
New Delhi.
2. Railway Board (Rail Bhawan),
New Delhi, through its Chairman.
3. Joint Secretary (Establishment)
(Railway Board), Rail Bhawan,
New Delhi.
4. General Manager, Indian Railways
Diesel Locomotive Works Varanasi.
5. Union Public Service Commission,
Dholpur House Shah Jahan Road,
New Delhi, through its Secretary.

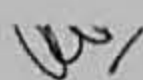
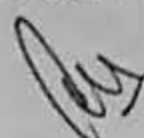
..... Respondents

By Advocate : Shri S. Chaturvedi
Shri A. K. Sinha

ORDER

HON'BLE MR. JUSTICE A. K. YOG, MEMBER-J

1. This OA relates to the year 2002. Heard Shri A. K. Sinha
Advocate and Shri Satish Dwivedi Advocate on behalf of the



respondents. Without referring to the orders passed from time to time existing, it will suffice to refer to orders dated 11.2.2009 and 7.3.2009 (appearing on the Order-Sheet 30+31 of this OA),-which read:-

(Order dated 11.02.2009)

"Shri V. Budhwar, counsel for the applicant has sent his illness slip for the day.

Adjourned.

List on 17.03.2009.

(Order dated 07.03.2009)

"Shri V. Budhwar, learned counsel for the applicant. Shri A.K. Sinha & Sri S.Tiwari brief holder of Sri S.Chaturvedi, learned counsel for the respondents.

At the request of respondents counsel case is adjourned to 8.4.2009. It is an old matter, no further adjournment shall be granted in this case".

Shri Vikash Budhwar has sent illness slip but we have proceeded to hear and decide the case with the assistance of the learned counsel for the respondents in view of the aforequoted order dated 7.3.2009 since no prejudice is caused to either party.

2. Applicant was posted as Deputy Chief Mechanical Engineer Machine and plant at Railway Workshop Jamalpur which happen to be the only manufacturing unit "Tower Car". According to the applicant due to immense extension of 'Electrification of Railway Tracks' as well as increased requirement of the maintenance of 'Electrical wires' (called over Head Equipment, i.e. OHE) of electrified tracks there was a huge demand of about 24 units of Tower Car per year (i.e.

By

more than four times the then normal production capacity of Jamalpur workshop), Keeping in view pressing demand and larger public interest, Railway Board Member Electrical issued instructions to General Manager Eastern Railway emphasizing upon the need to increase production. In order to achieve the target and match with the demand, work was successfully executed through two contracts for painting and electrical fitting of the tower cars (with a saving of approx. Rupees One Crore per annum at current costs) and these facts have been noted by the Inquiry-Officer in his report vide para 5.3 and .2.4. of his report dated 8.5.2000. Railway Servants Disciplinary Appeal rules 1968, called Rules 1968. The Applicant was served with charge sheet dated 23.5.1998/(Annexure-3/Compilation-II), filed his reply dated 8.6.1998 (Annexure-4/compilation-II), applicant lead evidence in defence, Statements were recorded and the applicant pleaded not guilty of the charges leveled against him. The enquiry Officer found that charges leveled against the Applicant were not proved beyond doubt. The 'Disciplinary Authority', however, proceeding on 'suggestion' probabilities and presumptions did not agree with the enquiry report and awarded penalty of 'reduction by two stages in the time scale of pay for a period of two years'.

3. Being aggrieved applicant filed appeal before Secretary, Ministry of Railways, (Railway Board), New Delhi being Appellate Authority, concurrence/Sanction of Union Public

Service Commission was also obtained vide letter dated 27.5.2002-Annexure A-1 to the OA. Appeal was rejected by means of order dated 17.6.2002/(para Annexure-1 to the OA).

4. Normally Tribunal/Court do not interfere with the order of punishment unless it is arbitrary and whimsical. In the instant case we find that the authorities appear to have acted with a pre-convince/pre-determined notion and unduly stretched 'evidence' beyond respectable limits.

5. We may refer to the following facts on record. Para 3.1.6 and 3.2 of the report of the commission dated 27.5.2002 reads:-

"In view of the aforesaid the Commission do not find any major procedural irregularity in award of work but as there was an existing schedule of rate for spray painting of bridges and girders by the Railways, the appellant could have adopted the unit rates for preparing estimates for sprays painting of tower cars. The DA has alleged that the appellant did not make any analysis of labour rate and material rate to prepare estimate for spray painting of tower cars. But the practice in the Jamalpur Railway Yard was not to analyze labour rate and material rate for spray painting work an aspect duly emphasized by the E.O. in his Report of inquiry. The Tender Committee also did not raise any objection when the estimate prepared by appellant for spray painting of tower cars were scrutinized by them. But with regard to the clauses in the contract for spray painting, there was no stipulation to ensure the quality of paint used by the contractor as there was no provision for pre-inspection of the paint used. But the Railways have also not produced any report by a committee of technical experts that the primer and paint used were of sub-standard quality or the two coats/three coats of paint to be applied on the towers cars were actually not applied. The Railways have also not indicated whether the schedule of rates for spray paintings or bridges and girder were substantially lower than the rates adopted by the appellant.

3.2 The Commission also observes that the charge against the appellant assumes a more serious character in respect of electrical work of the 12 tower cars. Even, no mention was made in the briefing note for Electrical Tender Committee that the contractors were required to submit rates as per material schedule and have not complied with important requirement. The past performance of the contractors were also not discussed. The electrical work was for wiring for light, fan, plug wiper motor and control circuit wiring of power pack. In this work the total estimated cost was Rs.17,70,00 (say Rs.17.70 lakh). The cost of material worked out to Rs.14,48,400/- say Rs.14.48 lakh. Annexure-1 of the electrical estimate No.N/TW/12 NOS 6th batch/mill dated 13.06.1994 prepared by the appellant shows that the estimates cost of almost all items was very much higher than the market rate of the items. To illustrate whereas Head Assembly light was available in the market at Rs.685/- per unit, the appellant had provided for Rs.3500/- per unit in the estimated. There were as many as 13 items in the electrical estimated and each of the item was provided for a rate much higher than the prevailing market rate. Moreover, the applicant being a engineer should have associated his counterpart in electrical engineering to prepare the estimate. There is no material in the case record to say definitely that he did so. But it is surprising that the Tender Committee did not also comment on this aspect even though there were technical engineering members in the Tender Committee."

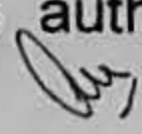
6. Aforequoted observations go to show that inadvertent infraction or over looking of some of 'the inconsequential facts' could not be the basis of holding the applicant guilty and applicant an escapegoat. There were several stages and other different authorities while 'Tenders' in question were processed and accepted.

7. In view of aforequoted observations in the report of Union Public Service Commission we one cannot appreciate that the applicant alone, if at all, was to store 'alleged blame'. There is

nothing to show that the applicant was 'solely and wholly' responsible for alleged-presumptive "failure to ensure transmission as well as for misleading the Railway Administration"

8. Coupled with it, findings of the 'Enquiry-report' have also not been specifically dealt with by Disciplinary Authority/Appellate Authority-while disagreeing with it.

9. It is true that disciplinary Authority is not bound by the report of the 'Enquiry-officer' but, at the same time, it is also true that Disciplinary-Authority should record reasons for not agreeing with it. The applicant had a limited role in awarding Contracts in question. He has specifically pleaded that he acted 'bonafide' and Department was gainer. Enhanced 100% quantity tender was agreed upon vide order dated 1.8.1994 and 12.8.1994 which were not objected to by other higher authorities. These aspects (including that the applicant had no ulterior motive, dealt by the enquiry officer) have been completely ignored. The applicant has submitted a detailed reply/representation/reply copy annexed alongwith compilation II (particularly page 323 to 350) which contained detailed explanation/grounds wherein he pleaded that-contracts were in the interest of the department, and given on the basis of evaluation by the tender committee which in turn had concurrence of the 'accepting authority'. According to the

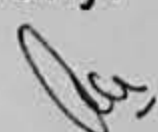


applicant the 'dis-agreement' of DA/Appellate Authority is-based on 'suggestions' and presumption and no specific finding 'relevant to the charges' or with reference to the facts of the instant case find place in the impugned orders. He also demonstrate that by out sources the contract work in time Railway was benefited.

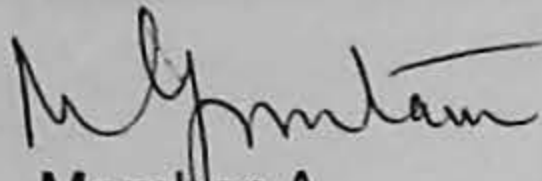
10. Learned counsel for the respondents Shri A. K. Sinha submitted that applicant has been promoted subsequent to the filing of OA and that due to the order of punishment the applicant is not made to suffer in future except nominal-financial loss reservations and do not agree with the Respondent's counsel. If impugned orders are allowed to stand/exist, the same shall prejudice the applicant.


11. The punishment awarded is with cumulative effect, which means that this punishment shall have recurring adverse consequence (as permanent stigma) during entire tenure of service of the Applicant.

12. In the result, we set aside the impugned orders dated 09.08.2001 and 17.06.2002 (Annexure 2 and 1 to the OA/compilation-I). OA stands allowed. The Applicant is entitled to all consequential benefits including payment of arrears, if any.



13. No Costs. Certified copy of this order shall be sent by Speed Post AD to the learned counsel for the applicant for information and follow up action (if Any).


Member-A


Member-J

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