

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. Q.A.587 of 1996

Present : Hon'ble Mr.D.Purkayasha, Judicial Member.

Hon'ble Mr.G.S.Maingi, Administrative Member.

R.K.DHARA

... Applicant
Vs.

1. Union of India through the General Manager, Eastern Railway, 17, N.S.Road, Calcutta - 1.
2. The Chairman, Railway Board, Rail Bhawan, New Delhi.
3. The General Manager, Eastern Railway, 17, N.S.Road, Calcutta - 1.
4. The Chief Personnel Officer, Eastern Railway, 17, N.S.Road, Calcutta - 1.

... Respondents

For the applicant : Mr.S.K.Dutta, counsel.
Mr.T.K.Biswas, counsel.

For the respondents: Mr.R.K.Der, counsel.

Heard on : 25.8.1999

Order on : 06.9.99

ORDER

G.S. Maingi, A.M.

The applicant is a Land Control Officer under the Eastern Railway. He has filed this application for quashing the entire DA proceedings and the order of penalty dated 27.11.1995. He has made a further prayer for a direction upon the respondents to dispose of his appeal with a speaking order.

2. The applicant was issued a memo of charge sheet dated 22.2.1990 which contained three articles of charges which are as under :

*Article-I

Shri R.K.Dhara while working as Divisional Engineer(4)/Howrah, acted in a manner quite unbecoming of a Railway servant in so far as he artificially split up single works into parts so as to bring the cost of each part within his financial power to dispose off, by which acts he contravened Rule 3.1(iii) of Railway Service Conduct Rule,66.

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Article-II

Shri R.K.Dhara while working as Divisional Engineer(4)/ Howrah, accepted a high rate for the work of cleaning of drain and in doing so acted fraudulently while justifying such high rate and thereby failed to maintain integrity and devotion to duty. By the above acts Shri Dhara contravened Rule 3.1(i) & (ii) of Railway Service Conduct Rule '66.

Article-III

Shri R.K.Dhara while working as Divisional Engineer(4)/ Eastern Railway/ Howrah, proposed and processed as a Tender Committee Member - a tender for the work of beautification of Ghuskara Railway Station. While doing so, he kept both the approving authority and the finance member of the Tender Committee in dark as to his intention to execute a predetermined quantity of a single item of work of supplying and fixing of glazed tiles in so far as all endeavours were made to conceal a fact that it was only a single item that was going to be operated against Schedule 'B' of the tender.

In doing so, a high rate was proposed and recommended subsequently causing loss to the Railways.

In this, Shri Dhara, acted in a motivated manner displaying lack of both integrity and devotion to duty which acts are violative of Rule 3.1(i) & (ii) of Railway Service Conduct Rules, 1966."

The applicant submitted his reply to the memo of charges and an inquiry officer was appointed who submitted his report on 30.9.1991. On completion of the formalities of imposition of penalty on the applicant, the appellate authority i.e. Railway Board decided to drop the charges relating to Article nos.1 and 3 and with regard to article no.2, the applicant was awarded the penalty of reduction in pay by two stages from Rs.4125/- to Rs.3875/- in the pay scale of Rs.3000-4500/- for a period of four years without cumulative effect and that would not adversely affect the pension of the applicant..

3. In this view of the matter, this order does not discuss the Articles of Charges no.1 and 3.

4. The brief facts of the case are that the applicant who is a scheduled caste officer was posted as a Land Control Officer, Eastern Railway, Calcutta. While he was issued a charge sheet and he submitted his reply and an inquiry officer was appointed who held that Article of Charges 1 and 2 were proved, whereas Article 3 was partially proved. The charged officer has submitted his reply to the enquiry report which is at annexure-IV to the

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application.

5. Article of Charge no.2 states that the applicant, while working as Divisional Engineer (4)/Howrah, accepted a high rate for the work of cleaning of drain and in doing so acted fraudulently while justifying such high rate and thereby failed to maintain integrity and devotion to duty by which act he contravened Rule 3.1(i) and (ii) of Railway Service Conduct Rule 1966. It appears from the statement of imputations of misconduct on which the Article of Charge is deemed to be sustainable that 4 rates were approved for cleaning the drain. It appears that the tender committee consisting of AEN/RPH and ADAQ/HWH had drawn the minutes which had clearly shown the locations of serial nos.3 and 4 in respect of which the high rates were approved. The applicant has explained in his reply against the inquiry report that the rate of drain cleaning works was dependent on the variance in depth, the 'L' being fixed, 'W' being almost same. The nomenclature of the 4 tendered works for cleaning side drains were cleaning long drain including dewatering and picking up ballast from inside the drain and spreading over the track.

6. The findings of the inquiry officer in the 2nd para of 4.5(a) states that if the unit of measurement of a work is "per metre" and the contractors are to be paid for the said work at "per metre rate", then the "rate" becomes independent of the quantity or volume or both of the work in question and is not affected by them in any way. Therefore, the CO's clarification is not only absurd but also atrocious and revolting to reason. The applicant has submitted that these observations of the enquiry officer showed the imputations in not appreciating the technical reasons were not substantiated and, therefore, the conclusions arrived at are not based on factual consideration of the applicant's defence. It has been explained by the applicant that he was not a member of the Tender Committee although he was the accepting authority, whereas the enquiry officer in his report has mentioned at different places that the applicant was a member of the Tender Committee. The Tender Committee comprised of Mr.A.K.Ghosal, AEN/Rampurhat as the technical member and Shri A.K.Ghosh, ADAQ, as the Finance Member. The applicant

has stated that he had accepted the recommendations of the Tender Committee who had justified the rates of the lowest tenderer as reasonable, whereas he himself as the accepting authority had not justified it. The applicant has further stated in para 6.5.1 as follows :

"Regarding concealment and camouflage, I would like to mention that competent authority's (Sr.DEN's) approval was taken at three stages (i) During sanction of estimate (ii) Before calling limited tender (iii) During acceptance of Tender Committee Minutes.

Approval of Finance Member was also taken in two stages (i) During vetting of estimate before sanction (ii) During recommendation of Tender Committee Minutes. Thus the question of keeping approving authority and Finance Member in dark does not arise at all."

6. The disciplinary authority i.e. the Railway Board had decided to impose a penalty of reduction by two stages in his present grade of pay for a period of 4 years without cumulative effect.

It was subsequently reduced by two stages for 2 years by the vide its order dated 5.6.97 i.e. after the filing of the O.A. appellate authority. The applicant has explained in his appeal to the President of India at para 4.9 that Mr.A.K.Ghosal, Assistant Engineer, Rampurhat, was issued a charge sheet for a minor penalty on 15.1.1990 for the same charges of Articles 1 and 2 and the case has been closed vide order dated 14.8.1990 with imposition of penalty of 'censure'. Mr.Ghosal was a Technical Member of the Tender Committee in all the four tender cases and was a State witness. In his deposition on 19.8.1991 at New Delhi, he had stated as follows -

"As a member of Tender Committee, I have to critically check the table and statement. I have to check and compare the rate quoted by the lowest tenderer with the last accepted rate. Being a technical member, I have to work out the rate analysis of the work to the present market rate basis and compare the rates with lowest tenderer. I have also to check the credential and performance of the lowest tenderer. After satisfying all these items, we will justify the rate. Although the name and nomenclature of the work is identical, but the quantity and volume of work were different under the PWIs. The rate depends in the quantity and the volume of work per metre. The nature of soil under PWI/Pakur is stable, rain cuts are less, hence volume of work is less. Whereas the nature of soils under PWI/Rampurhat is unstable and more rain cut, hence the accumulation of silt and ballast is much more. The labour rate at Pakur is less than Rampurhat due to non-availability of labour at Rampurhat in the harvesting season. I have not only compared the rates of the lowest tender with the last accepted rate but also worked

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out a rate analysis on local condition basis. I was satisfied that the both rates are reasonable and hence recommended."

7. We have heard Mr.S.K.Dutta, leading Mr.T.K.Biswas for the applicant and Mr.R.K.De for the respondents.

8. The 1d.counsel for the applicant has vehemently argued that the applicant could not be singled out for punishment as Mr.A.K.Ghosal who was a member of the tender committee had been let off by a punishment of 'censure'.

9. Mr.R.K.De, 1d.counsel for the respondents, submits that the appeal preferred by the applicant before the President of India has been considered in consultation with the U.P.S.C. and after obtaining their opinion, reduced the penalty imposed upon the applicant, as stated above. Hence, Mr.De submits that there is no merit in the application.

10. We have considered the memorandum of charges issued to the applicant, the punishment awarded to him by the President of India as the appellate authority as also the submissions made by the 1d.counsel for the applicant as well as the respondents. One thing is clear that the applicant was not a member of the tender committee. He had only accepted the recommendations of the tender committee, whereas the enquiry officer has stated in his report that he was a member of the tender committee. The U.P.S.C. in its advice has stated - "The Commission also observes that a study of exhibits SW-3 and SW-4 reveals that the rates quoted by the different tenderers apparently have been typed on the same typewriter and in the case of Ex.S-3, there is a spare quotation unsigned by any Contractor, quoting a rate of Rs.10 per metre is also available on records. It appears that the rates were already typed and thereafter quotations have been got signed from the various tenderers. Thus it appears to be a case of pooling of tenderers, suggesting a strong possibility of payment of higher rates. Under the circumstances, the Commission holds Article-II of the charge as proved against the charged officer. This shows that this observation of the Commission is based only on surmises and not supported by any independent evidence.

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The very fact that Mr.A.K.Ghosal was also issued a charge sheet for imposition of a minor penalty and the same was ultimately converted into a punishment of 'censure' although he was a technical member of the tender committee, the applicant should not have been treated differently. It would be said that while accepting the recommendations of the tender committee, he did not apply his mind and mechanically approved the rates of the tender committee. For this, the penalty imposed upon the applicant appears harsh and should be set aside.

11. We could have straightaway reduced the punishment inflicted upon the applicant to that of 'censure' as was inflicted on the co-accused, Mr.A.K.Ghosal, but in view of the successive decisions of the Hon'ble Supreme Court we refrain from doing so. It has been held by the Hon'ble Supreme Court in Union of India vs. Parma Nanda (1989 (2) SCC 177) which has been further reiterated in the case of V.R.Katarki vs. State of Karnataka & Ors. (1991 (1) SCALE 497), that the Court or Tribunal should not interfere with the punishment inflicted by the disciplinary authority or appellate authority. However, considering the very special facts of the case, we are of the opinion that ends of justice will be met if the appellate authority is directed to reconsider the matter.

12. In the result the application is allowed in part. The order of the appellate authority dated 5.6.1997 (annexure 'X' to the supplementary application), reducing the punishment inflicted by the disciplinary authority dated 27.11.1995, is hereby set aside. The matter is remanded back to the appellate authority for reconsideration of the punishment imposed upon the applicant, after giving him an opportunity of personal hearing in view of the judgment of the Hon'ble Apex Court reported in 1986 (2) SLR 608 (Ram Chander vs. UOI & Ors.) where it has been held that the appellate authority shall give a hearing to the applicant before disposing the appeal.

13. This O.A. is disposed of. No order is made as to costs.

G.S. Masingi
(G.S. Masingi)
Administrative Member

D.Purkayastha
(D.Purkayastha)
Judicial Member