

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR

O.A. No. 390/99  
T.A. No.

199

DATE OF DECISION 27.6.2000

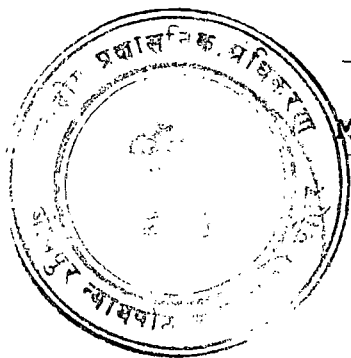
Ranjeet Lal Jain Petitioner

Mr. S.K. Singh Advocate for the Petitioner (s)

Versus

U.O.I. & Another Respondent

Mr. Vineet Mathur Advocate for the Respondent (s)



CORAM :

The Hon'ble Mr. A.K. Misra, Judicial Member

The Hon'ble Mr. Gopal Singh, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? No
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether it needs to be circulated to other Benches of the Tribunal ? No

Gopal Singh  
(GOPAL SINGH)

A.M.

A.K. Misra  
(A.K. MISRA)

J.M.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH : JODHPUR

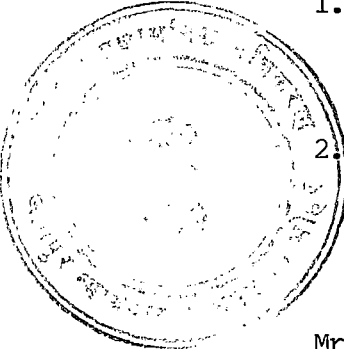
Date of order : 27.6.2000

O.A. 390/1999

Ranjeet Lal Jain son of Shri S.L. Jain aged about 46 years, presently working as Assistant Engineer (Electrical-II), Department of Telecommunications, Electrical, Sub-Division-II, Udaipur : Office Address - Department of Telecommunication, Electrical, Sub-Division-II, Opposite B.N. College, Udaipur.

... Applicant.

v e r s u s

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1. Union of India through Secretary, Ministry of Communication, Department of Telecommunications, 1300-A, Sanchar Bhavan, 20, Ashoka Road, New Delhi - 110 001.
  2. Chief General Manager, Telecom, Rajasthan Telecom Circle, Jaipur- 302 008.

... Respondents.

Mr. S.K. Singh, Counsel for the applicant.

Mr. Vinit Mathur, Counsel for the respondents.

CORAM:

Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. Gopal Singh, Administrative Member.

: O R D E R :

(Per Hon'ble Mr. A.K. Misra)

The applicant has filed this O.A. with the prayer that the memorandum dated 3.11.99 for the proposed enquiry be quashed and the promotion of the applicant may not be withheld on the basis of that proposed enquiry.

2. Notice of the O.A. was given to the respondents who have filed their reply.

3. We have heard the learned counsel for the parties and have gone

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through the case file.

4. It is alleged by the applicant that the applicant was posted as Junior Engineer at Jaipur in April, 1980. At that time installation of AC Plant in Tax Building, Jaipur, was in progress. By memorandum dated 3.11.99, the applicant has been served with a charge-sheet in which it is alleged that due to lack of supervision by the applicant in constructional activities of the said AC Plant for the periods April, 1980 onwards, overpayment was made to the contractor which was subsequently ordered to be recovered from the amount of the Contractor. In the same charge-sheet, it is alleged that due to inaccurate measurements done by the applicant, overpayment was made to the Contractor, and thus, the applicant failed to maintain absolute integrity and devotion to duty. The said charge-sheet has been challenged by the applicant on the ground that the charge-sheet is relating to an incident of remote past which allegedly has taken place 18 years ago, the alleged overpayment was recovered from the bills of the Contractor, the entire AC Plant has since been scrapped and new AC Plant has been installed, therefore, the alleged wrong measurements cannot now be physically checked and the memorandum has been served on the applicant in order to deny further promotion to the applicant, which is due. It is also stated by the applicant that relating to the same charges and incidents, one Shri S.K. Deewan, who was then working as Assistant Engineer, was served with a charge-sheet in the year 1997, the charge-sheet was quashed by the Tribunal vide its order dated 7.1.99 on the ground that the incidents relate to a remote past and has been unduly delayed. The case of the applicant is almost similar and based on the same facts, therefore, the memorandum (Annexure A/1) alongwith the charge-sheet deserves to be quashed.



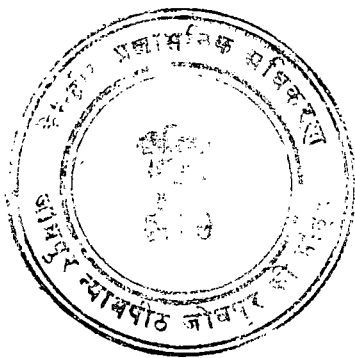
5. The respondents have stated in their reply that due to inefficient supervision and control over the constructional work by the applicant, overpayment to the tune of about Rs. 63,000/- was made to the Contractor which, on discovery of these facts, had to be recovered from the Contractor. Moreover, due to wrong measurements recorded by the applicant, payment of about Rs. 14000/- was made in excess to the Contractor and thus, the applicant has been rightly charge-sheeted. The Tribunal cannot, at this stage, go into the correctness of the charges, which are based on official records and therefore, the O.A. is devoid of any force and deserves to be dismissed.

6. We have heard the learned counsel for the parties and have gone through the case file. There is no dispute regarding the legal

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position that the Tribunal cannot go into the correctness of the charges. In the instant case, we are also not examining the correctness of the charges. What has been alleged by the applicant is that there is inordinate delay in chargesheeting the applicant and the matter relates to a remote past and almost 18 years old. We are of the opinion that, in the instant case, the department has unduly delayed the service of the charges on the applicant. The incident about which the charge-sheet has been served on the applicant is almost 17 to 18 years old and can safely be categorised as an incident of remote past. The alleged overpayment of Rs. 63,000/- was recovered from the Contractor long back. The fact of overpayment was discovered by the authorities years ago. From the letter Annexure A/2 dated 14.10.87, it appears that the AC Plant was handed over to the D.M.T., Jaipur, on 31.1.86, that means, the work of AC Plant must have been completed much prior to that date. As per the facts of the case of Surendra Kumar Dewan, it appears that the lapses which were attributed to Shri Dewan in that case and which have been attributed to the applicant in this case and which are similar in all respects in both the case, were detected as far back as October, 1986 or 1987. Therefore, the applicant could have been served with a charge-sheet in that year or immediately thereafter. But serving the charge-sheet in the year 1999 on the applicant on the basis of lapse and facts discovered in the year 1987 or prior thereto cannot be said to be a bonafide legal action. Even in the present charge-sheet, the respondents have not stated as to when these irregularities and dereliction of duties by the applicant had come to the notice of the higher authorities, but from the facts of the case, it appears that the alleged dereliction of duties had come to the notice of the departmental authorities much prior to 1987. The complete Plant itself had been handed over to the concerned department on 31.1.86, therefore, it can be presumed that finalisation of all accounts must have been done prior to that. But the department had taken almost 12 years thereafter to finalise the charge-sheet, which in no case can be said to be a justified time taken in preparation of charge-sheet. The case of Shri Diwan was disposed of in January, 1999 by our order dated 7.1.1999 and the charge-sheet, in the instant case, was served on the applicant in November, 1999. From this fact, it appears that the department is trying to fix the responsibilities on some officers who had some control over the work of disputed AC Plant. This sort of activities cannot be judicially approved and inference of malafides can be safely drawn in such matters.

7. From the charges as mentioned in the charge-sheet, it appears that the alleged overpayment has been recovered from the Contractor. For



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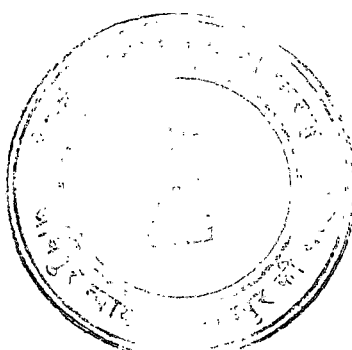
better appreciation of rival arguments of the parties, it would be useful to quote the charges framed against the applicant:-

#### Article-I

"That the said Shri R.L. Jain during the period 4/80 onwards, while functioning as JE(E) incharge of the work failed to cause effective supervision in execution of the work resulting in defective and deficient execution which necessitated substantial recoveries to be effected from the Contractor M/s Airconditioning Corporation, New Delhi. The fact that he has failed to bring to the notice of higher authorities and allowed the works at a later date, is in total violation of instructions laid down in Section 31 of CPWD Manual Volume-II, which deals with payment for sub-standard rate of works.

Thus by the above act, Shri R.L. Jain exhibited lack of devotion to duty and acted in a manner unbecoming of a Government servant, as indicated in Rule 3(i) (ii) and (iii) of CCS (Conduct) Rules, 1964.

#### Article-II



That the said Shri R.L. Jain, while functioning as JE(E) TE Section, Jaipur, during the period 4/80 onwards, while incharge of the works of SITC AC Plant at TAX Bldg. Jaipur, had recorded detailed measurements which were found to be inaccurate and excessive later on, resulting in a overpayment to the Contractor M/s. Airconditioning Corporation, New Delhi, executed by them vide agreement no. 16/EE/P&T/E. As per the guidelines from CPWD Manual Volume-II, Section 5, item 5.11.1 relating to execution of works, primarily an officer who records measurements for an item of work will be responsible for quality, quantity and dimensional accuracy. Also in accordance with item 30 under Section 7 of the CPWD Manual Volume-II, the officer preparing the bill before submission to the Divisional office, must satisfy himself that the payment for the work billed has actually been carried out and it was his personal responsibility to inspect the work thoroughly and prepare the bills correctly with reference to the correct measurements.

Due to utter negligence Shri R.L. Jain violated in observing the above guidelines in recording measurement which were found to be inaccurate later on and also resulted in overpayment due to excessive measurements.

Thus, by the above act, Shri R.L. Jain, exhibited lack of devotion to duty and acted in a manner unbecoming of a Government servant as indicated in Rule 3(i) (ii) & (iii) of CCS (Conduct) Rules, 1964."

In the statement of misconduct, Annexure A/2 to the impugned memorandum, it has been mentioned that due to above deficiencies, it had become necessary to recover a sum of Rs. 46,000/- from the bills of the firm subsequently. Further, it is mentioned that Rs. 16,600/- were subsequently recovered. Relating to second charge, it has been mentioned that the department has proposed a recovery of Rs. 13,935/- as indicated in Appendix I and II. In letter Annexure A/2 dated 14.10.87, it is mentioned that the amount of recovery proposed is lesser than the amount due to the firm, and recovery as per the statement is being done in the final bill of the firm. From these facts it is clear

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that, the department has not suffered any loss on the ground of alleged lack of supervision of the applicant. Moreover, the said AC Plant has since been scrapped and removed long ago as is clear from the letter Annexure A/5 dated 25.3.97, therefore, the correctness of the charges relating to wrong measurements or relating to uninstalled items etc. is difficult to verify. In view of these facts, the service of such delayed charge-sheet on the applicant is difficult to sustain and the bonafide of such charges becomes questionable.

8. We have also considered the rulings cited by the learned counsel for the applicant. In AIR 1990 SC 1308, State of M.P. vs. Bani Singh & Ors., it has been held by Hon'ble the Supreme Court that disciplinary proceedings - delay and laches - department aware of involvement of officer in alleged irregularities - No satisfactory explanation for inordinate delay in issuing the charge memo - disciplinary proceedings initiated against him after more than 12 years - liable to be quashed. Likewise, in JT 1998 (3) 584, it was held by Hon'ble the Supreme Court that the Administrative Tribunal was justified in ordering that delay vitiated the disciplinary proceedings and directed that the respondent be promoted ignoring the charge memo. In 1994 (4) SLR 365, it was held by Hon'ble Allahabad High Court that charges relate to a period of ten years back - charge sheet served after more than 8 years - enquiry proceedings after much delay - charge sheet as well as the disciplinary proceedings set aside. The Hon'ble High Court followed Bani Singh's case while laying down the above preposition.

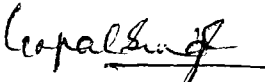
9. Rulings relied upon by the learned counsel for the respondents are not applicable in the instant case due to different facts. The rule propounded in a ruling is to be read in the context of the facts of that case. Similarity or dissimilarity of facts make the rule so propounded applicable or inapplicable, as the case may be. Thus, the rule propounded in the rulings cited by the learned counsel for the respondents are of no help to them in the instant case.

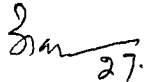
10. In view of the foregoing discussions, we are of the opinion that the applicant has been served with a charge sheet relating to incidents of the year 1982 in the year 1999 vide memorandum Annexure A/1. Serving of charge-sheet with such an inordinate delay is a sufficient ground to quash the same and correctness or otherwise of the same is of no consequence. The O.A., in our opinion, deserves to be allowed and the impugned charge-sheet Annexure A/1 dated 3.11.99 deserves to be quashed.

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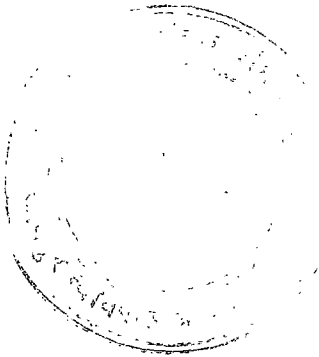
11. The O.A. is, therefore, allowed. Memorandum Annexure A/1 dated 3.11.99 alongwith its enclosures, i.e. charge-sheet and statement of imputations etc., is hereby quashed and treated as nonest.

12. Parties are left to bear their own costs.

  
(GOPAL SINGH)  
Adm. Member

  
27.6.2000  
( A.K. MISRA )  
Judl. Member

cvr.



Part II and III destroyed  
in my presence on 30-10-06  
under the supervision of  
section officer ( ) as per  
order dated 23/8/06

Section officer (Record) 2 <sup>pr</sup>

Copy Recd

K. S. Yildiz

4-7-2000  
for V.K. Mathur

Copy of memo dt 27/6/2K sent to Applicant  
vide no 169 dt 6/7/2000

A.D. Rana  
AR