

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH  
\*\*\*\*\*

OA 576/2002

Tuesday, this the 29th day of October, 2002.

CORAM :

HON'BLE SHRI A.V. HARIDASAN, VICE CHAIRMAN  
HON'BLE SHRI T.N.T. NAYAR, ADMINISTRATIVE MEMBER

K.G. Ramachandran Nair,  
S/o late N. Gopalan Nair,  
Working as Surveyor of Works,  
O/o the Chief Engineer(Project),  
Naval Academy(NAVAC),  
Naval Base, Kochi-682004  
residing at 'Chaithanya',  
Shine Road, Vytila,  
Kochi-682019.

... Applicant

( By Advocate Mr. O.V. Radhakrishnan )

Vs

1. Union of India rep. by its  
Secretary,  
Ministry of Defence,  
New Delhi.

2. Engineer-in-Chief,  
Army Headquarters,  
DHQ Post, New Delhi-110011.

3. B.M. Bhanu,  
Inquiry Officer,  
presently working as  
Additional Chief Engineer,  
O/o the Chief Engineer(Factory),  
Hyderabad, Opposite Parade Ground,  
Sardar Patel Road,  
Secunderabad - 500003.

... Respondents

( By Mr. C. Rajendran, SCGSC )

The application having been heard on 29.10.2002, the  
Tribunal on the same day delivered the following :

ORDER

HON'BLE SHRI A.V. HARIDASAN, VICE CHAIRMAN

The applicant, working as Surveyor of Works, in the office  
of the Chief Engineer(Project), NAVAC, Naval Base, Kochi, was  
while working as Assistant Surveyor in the office of the Garrison  
Engineer(P) (I) R&D, (West) Bangalore, served with Annexure A1  
show cause notice dated 11.2.1994 alleging that between the  
period from July, 1992 to February, 1993, he had recommended to  
the Garrison Engineer for accepting seven contracts for

✓

periodical services to buildings at Bangalore and those were accepted by the Garrison Engineer and contracted and the rates recommended by him to the Garrison Engineer for acceptance for all items were found high, that he had not clubbed up the buildings under one contract for the different items as was required, that market analysis showed that rates recommended by him were for superior quality specifications and that the above lapses on his part amounting to lack of devotion of duty. The applicant, immediately on 17.3.1994 submitted A2 explanation wherein he stated that there was no lack of devotion of duty, and that he had performed his duty properly and requested that no action be taken on the basis of the notice. Nothing was heard after that and the applicant believed that the matter was stopped. While so, the applicant was served with memorandum of charges A3 dated 8.9.1998 containing the following articles of charges :-

Statement of Articles of Charges framed against Shri KGRC Nair, ASW.

ARTICLE - I

That the said Shri KGRC Nair, ASW, while functioning as ASW at GE(P)(I) R&D(West) Bangalore, from 14.7.1992 committed the following lapses :-

(i) He was responsible for recommending high rates in seven contracts of periodical services for buildings at Bangalore. The rates recommended by him to GE for acceptance for all items in above contracts were found high when compared to rate in SSR 91 and the rate allowed by other MES formations at Bangalore for similar items.

(ii) He failed to guide GE to club up buildings under one contract for all items of periodical services and mislead GE to split up the services in a building into different contracts bringing the contract amounts within GE's powers. This led to ring tendering and allowed the contractors to share the works.

(iii) He failed to carry out proper market analysis for arriving at the reasonability of tender. He applied superior quality specifications in the market analysis while recommending acceptance of seven tenders when particular specifications of contract did not specify superior brand. Rate of smaller containers of paint/OBD etc. which were generally higher in rate per unit than bigger containers of even material were applied for. The labour constant and wastage applied for were on higher

✓

side. These facts boosted up the rate in market analysis and thus higher rates were applied in market analysis for matching the quoted rates.

The said Shri KGRC Nair, ASW, thus, by his above acts, failed to maintain devotion to duty and thereby violated Rule 3(1)(ii) of the CCS(Conduct) Rules, 1964.

2. The applicant denied the articles of charges and an enquiry was held. The enquiry authority submitted a report Annexure A10 finding part (i) charge partly proved, part (ii) charge not proved and part (iii) partly proved. The President after going through the report, issued Annexure A9 notice to which the applicant submitted Annexure A11 reply dated 7.8.2001. After considering the representation of the applicant, by Annexure A12 dated 14.3.2002, the President imposed on the applicant a penalty of reduction of pay by one stage in the time scale of pay for a period of one year from 1.2.2002 to 31.1.2003 with direction that he would not earn increment on pay during the period of such reduction, finding him guilty of the charges. Thereafter, the applicant was considered by the DPC and by Annexure A13 order dated 31.5.2002 was empanelled for promotion as Superintending Surveyor of Works. On the basis of Annexure A13, by order Annexure A14 dated 19.7.2002 under the authority of Ministry of Defence ID No.6(11)/2000/D(Works) dated 16.7.2002, the applicant was promoted as SSW and posted under the CE, Southern Command as SSW. However, to the surprise and dismay of the applicant, the 2nd respondent issued Annexure A15 order dated 23.7.2002 and Annexure A16 dated 24.7.2002 amending Annexure A13 as also Annexure A14 promotion and posting orders. Aggrieved by Annexure A12 order imposed on the applicant the penalty of reduction of pay and by Annexure A15 and A16 orders whereby promotion of the applicant is not given effect to, the applicant has filed this application seeking to set aside the impugned orders and also the memorandum of charges Annexure A3 and A10 enquiry report. It is alleged in the application that inordinate delay in initiating the disciplinary proceedings against the applicant on an instance which had alleged to have taken place in

on

the year 1992-93, for which a show cause notice was issued and reply submitted in the year 1994, has seriously prejudiced his defence and that the 2nd respondent had no jurisdiction to keep in abeyance the order of promotion and posting which has been approved by the Ministry of Defence. With these allegations, the applicant seeks to set aside the impugned orders and for a direction to the respondents to give effect to the promotion of the applicant as per Annexure A14 dated 19.7.2002 with consequential benefits.

3. As the applicant is due to retire from service on 31.1.2003, the respondents were directed to file reply statement on time and the case was listed for final hearing on 26.9.2002. On 26.9.2002 as no reply statement was filed, a final opportunity was given to the respondents to file reply statement within 2 weeks' time, making it clear that if reply be not filed within that time, the right of the respondents to file reply statement would stand forfeited. However, respondents have not yet filed the reply statement. Any way, a statement has been filed by the counsel on behalf of respondents. Shri C. Rajendran, SCGSC on behalf of respondents stated that the counsel statement may be taken as reply statement of the respondents and the matter may be disposed of hearing the arguments on the pleadings available.

4. When the application came up for hearing today, Shri O.V. Radhakrishnan, the learned counsel for the applicant raised a legal question, that the impugned orders Annexure 15 and A16 are not valid for the reason that the 2nd respondent, who is a subordinate to the appointing authority, who had approved the promotion and posting of the applicant, is not competent to amend or alter the promotion and posting orders, and that the OA may be disposed of on this question of jurisdiction leaving the other points open for contest if need be at the appropriate time.

M

5. We have heard the learned counsel for the applicant and Shri C. Rajendran, the learned counsel for the respondents. The only contention raised in the statement filed by the counsel for the respondents is that in accordance with the instructions contained in the Ministry of Defence letter No.22011/8/87-Estt(D) dated 9.4.1996, the official is entitled to promotion only on expiry of the penalty period and that since the applicant is undergoing the penalty, he cannot be promoted. The question is not whether the applicant is entitled to be promoted before the penalty imposed on him is over or not, really the question is whether the promotion and posting order of the applicant can be amended or altered by the 2nd respondent while it has been approved under the authority of the Ministry of Defence. It is evident from Annexure A13 empanelment that the DPC considered the case of the applicant for promotion as SSW <sup>after</sup> Annexure 12 order of penalty was issued. It cannot be presumed the fact that the applicant had been awarded the penalty was not brought to the notice of the DPC as there is no such case in the statement filed by the counsel on behalf of the respondents. Further by Annexure A14 order, the applicant was promoted and posted as SSW under the authority of Ministry of Defence, meaning thereby by President. The Engineer-in-Chief, is therefore, not competent to amend or alter the promotion and posting order in regard to the applicant. We notice that in Annexure A14 order, specific dates have been shown for giving effect to the promotion against persons at Sl. No.(f), (g) and (h), whereas no such specific date is given in the case of the applicant to give effect to the promotion and therefore the applicant's promotion should be given immediate effect. Once the competent authority has promoted and posted the applicant as SSW under CE, Southern Command, we are of the considered view that the 2nd respondent has no authority to keep the promotion order in abeyance. It is further to be noted that at clause 5 of Annexure A14 order, it is stipulated as follows :-

W

Before the officers are placed and assume higher appointment, it will be ensured that : -

- (a) The officer is not under suspension.
- (b) No charge sheet has been issued to the officer and no disciplinary proceedings are pending against him.,
- (c) No prosecution for a criminal charge is pending against him.

6. It has not been stated in Annexure A14 that the applicant's promotion would take effect only after the penalty has been suffered. Therefore, we are of the considered view that the 2nd respondent, who is subordinate to the Ministry of Defence has no jurisdiction or competence to issue the impugned order Annexure A15 and A16 modifying the Annexure A14 order issued under authority of Ministry of Defence.

7. In the result, the OA is partly allowed and the impugned orders A15 and 16 are set aside. The respondents are directed to give effect to the promotion and posting of the applicant to CE, Southern Command as SSW w.e.f. date of Annexure A14 with all consequential benefits. The above direction shall be complied with within a period of one month from the date of receipt of a copy of this order. In view of the course adopted by us, we are not going into the other rival contentions in this case. No order as to costs.

Dated the 29th October, 2002.

  
T.N.T. NAYAR  
ADMINISTRATIVE MEMBER

  
A.V. HARIDASAN  
VICE CHAIRMAN

oph

A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of the show-cause notice No.10642/5/EIC dated 11.2.94 of the 2nd respondent.
2. A-2: True copy of the representation dated 17.3.94 along with Appendix-A to the 2nd respondent.
3. A-3: True copy of the Memo of charges No.5(19)/98/D (Lab) dated 8.9.98 along with Annexures I to IV of the 1st respondent.
4. A-4: True copy of the letter No.MES/242144 KGRC Nair SW dated 23.10.98 of the applicant to the Hon'ble President of India.
5. A-5: True copy of the order No.5 (19)/98/D (Lab) dated 22.3.99 of the 1st respondent.
6. A-6: True copy of the written brief submitted by the applicant excluding the annexures dated March 2000 of the applicant.
7. A-7: True copy of the Daily Order Sheet No.DOS/15 dated 15.3.2000 of the 3rd respondent.
8. A-8: True copy of the daily order sheet No.DOS/16 dated 24.3.2000 of the 3rd respondent.
9. A-9: True copy of the memorandum No.5(4)/91/D (Lab) dated 25.5.2001 issued by the 1st respondent.
10. A-10: True copy of the inquiry report dated 20.4.2000 of the 3rd respondent.
11. A-11: True copy of the representation dated 7.8.2001 to the Hon'ble President of India.
12. A-12: True copy of the Order No.5(19)/98-D(Lab) dated 14.3.2002 of the 1st respondent.
13. A-13: True copy of the Memo No.B/42031/DPC/SSW/2002-03 /EIR dated 31.5.2002 of the 2nd respondent.
14. A-14: True copy of the Memo No.70001/SSW/16/2002 dated 19.7.2002 of the 2nd respondent.
15. A-15: True copy of the letter No.B/42031/DPC/SSW/ 2002-03/EIR dated 23.7.2002 of the 2nd respondent.
16. A-16: True copy of the letter No.70001/SSW/06/2002 dated 24.7.2002 of the 2nd respondent.

\*\*\*\*\*

npp  
14.11.02