

**CENTRAL ADMINISTRATIVE TRICENTRAL
LUCKNOW BENCH**

Original Application No.336/2007

This the 12th day of January 2009

HON'BLE MR. M. KANTHAIAH, MEMBER (J).

HON'BLE DR. A.K. MISHRA, MEMBER (A).

R.D. Srivastava, aged about 46 years, son of late Sri Hari Mohan, resident of J-68, Aashiyana Colony, Lucknow.

...Applicant.

By Advocate: Shri Rajon Roy.

Versus.

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. Engineer-in-Chief, Army Headquarters, Kashmir House, DHQ Post, New Delhi.
3. Chief Engineer, Headquarters, Central Command, Lucknow.

By Advocate: Shri D.S. Tiwari.

ORDER

BY MR. M. KANTHAIAH, MEMBER JUDICIAL.

The applicant has filed the OA with a prayer to set aside the impugned order Dt. 18.5.2007 (Ann.1) passed by Respondent No.1

with all consequential benefits including granting of promotion to the post of Superintending Engineer w.e.f. the date of his juniors have been promoted and also further restoration of his seniority on the promotional post on the ground that there was no mis-conduct on the part of the applicant but he was punished by the respondents without any merits.

2. The respondents have filed Counter Affidavit, denying the claim of the applicant stating that the respondents have acted in accordance with rules and punished under CCS (CCA) Rules, 1965 and thus, there are no justified grounds for interference of this Tribunal.

3. The applicant has filed Rejoinder Affidavit, denying the stand taken by the respondents and reiterated the pleas taken in OA.

4. Heard both sides.

5. The point for consideration is whether the applicant is entitled for the relief as prayed for.

6. The admitted facts of the case are that the applicant worked in MES as Garrison Engineer (Electrical/Mechanical) Kheria, Agra from September, 1998 to January, 2002. On 27.4.2005 (Ann-A-2) a Memorandum of charges was issued against the applicant alleging misconduct or misbehavior on which action was proposed against his relating to the period from January, 1999 to June, 1999 while working as Garrison Engineer, Kheri, Agra that he committed gross misconduct while placing supply orders for purchase of Ball Bearing at very high rates. It was alleged that the applicant acted in a negligent manner and had shown dereliction in his performance of his

duty, thus violated Rule-3 (1) (ii) and (iii) of CCS (Conduct) Rules 1964. But the applicant challenged the Memorandum of charges Dt. 27.4.2005 by filing OA No. 252/2002 on the file of this Tribunal but the same was dismissed as pre-mature vide judgment and order Dt. 19-15.2006 and aggrieved by the same, he also filed Writ Petition No.739/2006 challenging the dismissal of his OA Dt. 19.05.2006 but the same was also dismissed on the ground that it has become infructuous in view of the final order Dt. 18.05.2007 has been passed in the proceedings.

7. The applicant also submitted his reply Dt. 13.6.2006 (Ann.A-3) denying the allegation leveled against him vide Memorandum of charges Dt. 27.4.2005. But without considering his reply on merits, the Respondent No.1 passed the impugned punishment order Dt 18.5.2007 (Ann.-A-1)under Rule-12 of CCS (CC&A) Rule, 1965, imposing penalty of withholding of next increment of pay Rs.12000-875-16500 for a period of one year without cumulative effect upon the applicant, which is under challenge in this OA.

8. It is an undisputed fact that the applicant issued two supply orders for purchase of Ball Bearing amounting to Rs. 12,300/- and 12,600/- for the month of January, 1999 and purchased the same by accepting the rates recommended by Board of Officers, when earlier order was placed by his predecessor in respect of the similar items purchased in the year 1997-1998 He also called for quotations in the month of March, 1999 for the same items of Ball Bearings and on receipt of the quotation the applicant noticed that the rates quoted

were much lower than those which were accepted in January, 1999 upon which, on the one hand the applicant issued the supply orders vide order Dt. 22.3.1999 on lower rates and at the same time issued orders to the earlier supplier who had supplied the /Ball Barings in January, 1999, to deposit the difference in amount i.e. the excess amount, whereupon the earlier suppliers duly deposited the difference of amount on the basis of the rates of January, 1999 and March, 1999.

9. The Memorandum of charges against the applicant under Rule 16 of CCS (CC&A) Rules 1965 was that he acted in a negligent manner while placing supply order for purchase of Ball Bearings of various types at very high rates in the month of January, 1999 and thus, violated Rule 3 (1) (ii) and (ili) of the CCS (Conduct) Rules, 1964. After filing explanation from the applicant, the competent authority, who was not satisfied with his explanation, imposed minor penalty under Rule 16 of CCS (CC&A) Rules, 1965, without conducting any enquiry.

10. Admittedly, when the applicant placed order for supply of Ball Bearings in the month of January, 1999 and purchased the same basing on the rates recommended by the board in respect of items purchased in 97-98, when they placed similar orders during 1997-98 and subsequently, in the month of March, 1999 when he floated fresh tenders for supply of similar items, he noticed that there was variation in rates of earlier supply as compared to the ² rates received in the month of January, 1999. After noticing this discrepancy he prevailed upon the supplier and arranged for deposit of the differential amount.

Thus, there was no loss caused to the Government because of such recovery. But it is the case of the respondents that the applicant did not take care while purchasing the material in the month of January, 1999 and blindly he purchased the same basing on the earlier recommendations of the board when his predecessor had purchased similar items.

11. It is the contention of the applicant that his predecessor has got away with purchase of similar items in the preceding year at very high rates but he is being made to suffer on account of his sincere effort to recover the differential amount; that he has not committed any irregularity by placing repeat orders on the basis of rates finalized in the previous financial year, which had the approval of the Board of senior officers.

12. There was no misconduct on his part when he himself tried sincerely to rectify the position and was successful in effecting recovery of the differential amount. It was for his initiative that the correct market price was ascertained through fresh tenders. We find that it would be a travesty of justice to penalize a sincere officer who had acted in a bonafide manner in placing orders at rates which had been approved by the board of the senior officers and acted upon by his predecessor. He had every reason to believe that the rates finalized in the preceding financial year would be reasonable. Such an act cannot be called as against tenets of prudence. But when he

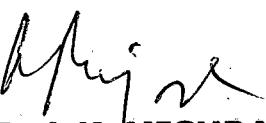


discovered the rates were very high, he took determined steps for recovery of the differential amount. He has cited other instances involving such over payment but subsequent recovery when no formal disciplinary action was taken against the officers concerned. Further his predecessor who was responsible for recommending the rate and the senior officers responsible for approving it and in the process causing loss to the government have not been taken to task, and that the applicant who was a victim of the circumstances and who acted in a bonafide manner all along had been made to suffer. The penalty imposed on him, though minor, will have civil consequences by way of affecting his future prospects.

13. From the material on record and the representation of the application, we find that the charge of misconduct is not made out against him. From the narration of the circumstances it is clear that there was no culpable negligence on the part of the applicant to warrant a charge of misconduct. His bonafide all along is transparent. There was no malafide in acting on the basis of rates finalized in the recent past,, which had received the approval of the Board of Senior Officers.. His conduct, at taking sincere efforts for recovering the differential price should be appreciated. To penalize such an officer will be a travesty of justice and it will offend all sense of equity and fair play. For the aforesaid reasons the impugned punishment meted out to the applicant for the bonafide action of the applicant and, in the

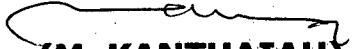
process, making suffer civil consequences cannot be supported from the point of view natural justice.

In the result, the punishment order Dt. 18.05.2007 (Ann.-A-1) is set-aside and OA is allowed with all consequential benefits on the ground that there was no ground to charge the applicant for misconduct. No costs.



(DR. A.K. MISHRA)

MEMBER (A)



(M. KANTHAIAH)

MEMBER (J)

Ak/.

12-01-09