

(11)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 820/88

~~XXX~~xxx Nox

198

DATE OF DECISION 3.6.1991

J.S.Gehlot Petitioner

Mr.G.S.Walia Advocate for the Petitioner(s)

Versus

Union of India and ors. Respondent

Mr.N.K.Srinivasan Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice U.C.Srivastava, Vice-Chairman

The Hon'ble Mr. M.Y.Priolkar, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(U.C.SRIVASTAVA)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.820/88

J.S.Gehlot,
C/o.G.S.Walia,
Advocate High Court,
89/10, Western Railway
Employees Colony,
Matunga Road,
Bombay - 400 019.

.. Applicant

vs.

1. Union of India
through
Secretary(E),
Ministry of Railways,
Railway Board,
New Delhi.
2. The Secretary,
Railway Board,
Ministry of Railways,
New Delhi.

.. Respondents

Coram: Hon'ble Shri Justice U.C.Srivastava, Vice-Chairman
Hon'ble Shri M.Y.Priolkar, Member(A)

Appearances:

1. Mr.G.S.Walia
Advocate for the
Applicant.
2. Mr.N.K.Srinivasan
Advocate for the
Respondents.

ORAL JUDGMENT:
Per U.C.Srivastava, Vice-Chairman

Date: 3-6-1991

The applicant who is a Chief Engineer(W) moved this Tribunal in the year 1988 praying for the quashing of the two orders of punishment dated 5-2-1985 and 20-1-1986 and subsequent order rejecting the appeals. He has also prayed that a declaration may be granted that the applicant is entitled to all the consequential benefits in respect of arrears of salaries, increments, seniority etc and any entry which may have been made in the record affecting his future promotions and career may also be expunged. The two punishments against which the applicant has come up before the Tribunal is dated 5-2-1985 which was upheld in appeal by the order dated 30-4-1986 and the second one dated 20-1-1986 which was affirmed vide order dated 30-9-1988. The punishment orders was

passed by the Disciplinary Authority and the appeal was disposed of by the President of India: Vide order dated 5-2-1985 the applicant was reduced from the stage of Rs.2,500 to 2,250 in the time scale of Rs.2,250-2,500/- for a period of two years with effect of postponing future increments and in the second case the penalty of reduction of pay from the stage of Rs.2,500/- to Rs.2,250/- in the time scale of Rs.2,250-2500/- for a period of two years with effect of postponing future increments was inflicted. The second penalty was ^{to} come into operation only after expiry of the first penalty imposed. The applicant has explained the delay in not filing any application against the earlier order on the ground that Articles 2 and 3 combined in the case of first case and Articles 1 and 3 each of the second case respectively are actually identical and there was not much gap as the appeal against the first punishment was decided and when the proceedings started again as the appeal was still pending against the first order and it was disposed of only on 30-4-1986 while proceedings in the second case had already started and before the disposal of the appeal in the first case punishment order was passed against him on 20th January, 1986. In these circumstances we are of the view that the ~~appeal~~ ^{delay} has been sufficiently explained and any delay is still there it is condoned and the case will be disposed of on merits.

2. This case relates to his tenure as Additional Chief Engineer(Construction)Silchar, Assam. It appears that tenders for certain constructions were invited and the tender committee also gave its opinion also in the matter taking into consideration the lowest and highest tender. About 27th July, 1981 the applicant accepted

a tender of another person whose tender was not considered to be the lowest by the tender committee.

On 14-2-1983 the applicant was served with a chargesheet the following and three charges were levelled against him

"ARTICLE - I

Shri J.S.Gehlot, Ex.ACE/Con/Silchar, as the accepting authority of the tenders for the work of construction of minor bridges and protection works etc. for the new M.G.railway line between Dharamanagar and Kumarghat under Case No.W/362/Con/D-K/81/11, did not record his orders of acceptance promptly and specifically on the body of the Tender Committees recommendations which were put up to him on 27-7-1981.

ARTICLE - II

Shri J.S.Gehlot accepted the revised offer of one of the tenderers whose original offer was not the lowest, on the basis of an unsolicited letter received after the Tender Committee minutes had already been put up to him for acceptance, thereby allowing the tenderer viz. M/s.Durga Krishna Store to gain undue advantage without affording an opportunity to all other tenderers to offer their revised rates as recommended by the Tender Committee.

ARTICLE - III

Shri J.S.Gehlot recorded on PP/2 of case File No.W/362/Con/D-K/81/11 that "negotiation is not likely to be successful" and accepted the revised offer of M/s.Durga Krishna Store based on their unsolicited letter received after the Tender Committee recommendations had already been put up to him for acceptance. His action tantamounted to negotiation with a single tender on his own and thereby vitiated the sanctity of the tender system and violated the administrative instructions laid down vide Railway Board's letters No.67/W-1/CT/32 dtd. 25-5-1968, 77/W1/CT/20/ dated 29-4-77 and 70/W1/CT/32 dated 7/9/9-70.

By the aforesaid acts, Shri J.S.Gehlot failed to maintain absolute integrity and devotion to duty and thereby contravened Rule 3(1)(i) and (ii) of the Railway Services(Conduct)Rules,1966."

3. The applicant's defence from the very beginning was that whatever he did, he did in the interest of railway administration and he only accepted the lowest tender. So far as the other person ¹⁵ Shri L.G.Agarwala whose tender is said to be the lowest in fact was not lowest in view of the fact that he added one condition and if that condition would have been accepted then his tender would have been higher than the tender of the person whose tender he has accepted ~~after~~ subsequently though earlier it was the lowest in case the special condition of L.G.Agarwala was not ~~be~~ to be seen. The applicant's defence was that there was no mala-fide intention or corrupt intention on his part and whatever he did, he did in accordance with the earlier directions of the Railway Board, in this behalf and in his discretion he considered it better to accept the tender of M/s.Durga Krishna Stores.

4. Para 3 of the letter dated 25.5.1968 issued by the Railway Board is reproduced below:-

"3. It should be clearly understood that selection of contractors by negotiation is an exception rather than the rule, and may be resorted to -

- (a) Where all the tenders are considered to be unreasonably high in value and it is felt that retendering would not secure better advantage to the railway, and/or
- (b) Where the lowest tender is technically unacceptable, or is rejected because of unsatisfactory credentials capacity or unworkable rates, and the next higher offers to be considered in accordance with the established procedure are found to be unreasonably high.
- (c) Where in the case of proprietary items of stores, the price quoted is considered to be unreasonably high."

5. The Inquiry Officer after holding the departmental enquiry exonerated the applicant of all the charges. The Railway Board did not agree but imposed the penalty of reduction of pay as indicated above. The applicant filed an appeal against the same before President of India. The matter was referred to the Public Service Commission. The Public Service Commission was of the opinion that Article-I of the chargesheet was not conclusively proved. Thereafter the applicant filed a review application in respect of charges No.2 and 3 and according to the applicant no reply of the same has been received so far. The second chargesheet was also of the same nature. The charges against the applicant were as follows:

"Article - I

Shri J.S.Gehlot, ex.ACE/Con/Silchar as the accepting authority of tender case No.W/362/Con/D-K/81/10, did not record his reasons for over ruling the recommendations of the Tender Committee recommending negotiation with all valid tenderers. Instead Shri Gehlot awarded the tender based on ~~a~~ unsolicited letter sent after the Tender Committee minutes were put up to him. This action amounted to negotiating with the one party which was not in conformity with the then extant instructions."

Article-II

Shri J.S.Gehlot, ex ACE/Con/Silchar as the accepting authority of Tender case No.ACE/SCL/SJ/80/1, did not record his reasons for overruling the Tender Committee's recommendations when they were put up to him on 16.2.81. Instead he resorted to dilatory methods by calling for recommendations on the ability of the contractor with lowest offer to do the work. Even when these were furnished, Shri Gehlot without giving good and sufficient reasons excluded him from being considered for award of contract. This caused an avoidable loss of about Rs.2.75 lakhs to the Railway Administration.

Article - III

Shri J.S.Gehlot, ex. ACE/Con/Silchar as the accepting authority of Tender Case No. ACE/SCL/D-K/80/27, awarded the tender based on an unsolicited letter received after the recommendations of the Tender Committee recommending negotiation with all contractors were put up to him. Awarding tender based on an unsolicited letter after the Tender Committee's minutes were drawn and put up for acceptance, was in violation of Railway Board's letter No.77/WI/CT/20 dtd. 29.4.77. This also amounted to negotiating with a single tender which was no conformity with the then extant orders.

Article-IV

Shri J.S.Gehlot, Ex.ACE/Con/Silchar in the case of TENDER No.2 of 1980, by countersigning the revised last page of the Tender Committee's minutes, colluded with his Dy.Chief Engineer in tampering with the records.

By the aforesaid acts, Shri J.S.Gehlot, ex ACE/Con/Silchar now working as OSD/IR/N.R.Railway Maligaon failed to maintain absolute integrity and exhibited lack of devotion to duty and thereby contravened Rule 3(1)(i)&(ii) of the Railway Services(Conduct)Rules,1966."

The defence of the applicant was more or less the same. The Inquiry Officer held the applicant guilty of the charges against him. Thereafter the Railway Board has imposed upon him the punishment as indicated above. Thereafter he filed an appeal with the appellate authority. The appellate authority decided the appeal after taking into consideration the opinion of the Public Service Commission. The opinion of the Public Service Commission is also placed on record and the opinion indicates that two charges against the applicant were proved while two were not proved but the UPSC had concurred with the appellate authority so far as the punishment is concerned.

6. We have heard the counsels at length and the learned counsel for the applicant has taken us into the fact in support of his contention that the UPSC has also found that there was no corrupt or mala-fide intention on the part of the applicant ^{and} he did not gain anything. This according to the applicant whatever he did, he did for the interest of the railway administration, ~~andxxxxxx~~ and instead of requiring the railway administration to pay more he, as a prudent man, accepted the tender in order that the railway administration may be required to pay little less what it would have been otherwise to. This has been strongly refuted by the learned counsel for the respondents who contended that ~~the~~ it was a misconduct on the part of the applicant and there was no devotion of duty on his part. In this connection reference has been made to Rule 3(1)(i) and (ii) of the Railway Services(Conduct)Rules,1966 under which punishment has been awarded which reads as follows:-

"3.General(1) Every railway servant shall at all times:-

(i) maintain absolute integrity;

(ii) maintain devotion to duty; . . ."

So far as Rule 3(1)(i) is concerned obviously the charge has not been proved against the applicant because no one has doubted integrity. So far as rule 3(1)(ii) is concerned it appears that the punishment has been awarded to him for acting against the same."

7. It is not necessary for us to enter into the question whether the charge proved against the applicant is covered by 3(1)(i)&(ii) or not as we are sending back the matter to the appellate authority. The appellate authority after it was found that one charge in one case is not proved against the applicant and in the other case two charges were not proved the matter should have been

considered whether the same punishment should have been maintained or the punishment should have been reduced, varied or modified. As the Tribunal itself is not in a ~~pos~~ position to decide on this question as such we have no option ~~is~~ but to refer back the matter to the appellate authority which will consider this question along with the plea which has been made by the applicant that the case ~~ex~~ is not actually covered by 3(1)(i) and (ii). Accordingly we allow^{both} this petition only to this extent that the orders are quashed and set aside and the matters are sent back to the appellate authority for deciding the question in accordance with law. The appellate authority will dispose of the appeal within a period of two months from the date of receipt of a copy of this order in accordance with the law. There will be no order as to costs.


(M.Y.PRIOLKAR)
Member(A)


(U.C.SRIVASTAVA)
Vice-Chairman