

✓

Central Administrative Tribunal  
Mumbai Bench

OA No.893/1999

Mumbai this the 16th day of June, 2003.

Hon'ble Mr. V.K. Majotra, Member (Admnv)  
Hon'ble Mr. Shanker Raju, Member (Jud1)

Yashwant Dharmaji Gaikwad,  
1, Santaji Ghorpade Road,  
Kirkee, Poona-411 003.

-Applicant

(By Advocate Shri S.P. Saxena)

Versus

1. The Union of India,  
through the Secretary,  
Ministry of Defence,  
New Delhi-110 011.

2. The Engineer-in-Chief,  
Army Headquarters,  
Kashmir House,  
New Delhi-110 011.

3. The Chief Engineer,  
Southern Command,  
Poona-411 001.

-Respondents

(By Advocate Shri R.K. Shetty)

ORDER (ORAL)

Mr. Shanker Raju, Member (J)

Applicant impugns respondents' penalty order dated 12.9.98, imposing upon penalty of reduction to lower stage in the time scale of pay for a period of two years without cumulative effect as well as appellate order dated 16.6.99, maintaining the punishment. He has sought quashment of the same with all consequential benefits.

2. While working as Barrack Stores Officer (BSO) a Group 'B' post applicant was served upon a show cause notice on 2.7.96 as to the proposal of holding a disciplinary proceeding. On reply a minor penalty chargesheet under Rule 16 of the CCS (CCA) Rules, 1965 was served upon him on the following allegations:

1. MES-106014 Shri Y.P. Gaikwad, BSO while serving in GE Ranchi during the period from Oct 94 to Dec 94 committed gross irregularity, in that he was responsible for giving undue advantage to the contractor M/S Delhi Enterprises in charging for electric supply without meter against the work of Manufacture and supply of furniture for Md Accn for Officers/JCOs/ORs at Ranchi against CA No. CWE/RAN/4C of 93-94 and not pursuing timely recovery of electricity charges from him.

2. By the above act of omission the said MES-106014 Shri Y.P. Gaikwad, BSO exhibited lack of devotion to duty and dereliction of duty which is conduct unbecoming of a Govt. official and thus violative of COS (Conduct) Rules, 1964."

3. Applicant responded to the aforesaid memo by way of a written reply resulting in imposition of minor penalty which was on appeal affirmed by the appellate authority, giving rise to the present OA.

4. Learned counsel for applicant contends that punishment is illegal in so far as the same is based on no misconduct. The allegations levelled against applicant pertain to extending undue advantage to the contractor for electric supply without meter against the work of manufacture and not pursuing timely recovery of electric charges from him. It is in this backdrop stated by referring to Annexure A-9 letter dated 14.3.93 where applicant as BSO has recommended a three phase electric connection to the contractor and also letter dated 4.11.93 wherein the availability of meter was regretted by the AE.

5. Learned counsel has further referred to letter dated 5.11.94 contending that applicant had requested the concerned authorities and apprised them to charge expenses towards electricity bill to be deducted from the contractor bill and further re-iterated vide his letter dated 17.11.94. In this backdrop it is stated

that as the aforesaid electric charges have been recovered from the contractor and no loss has been caused to Government.

6. It is further stated that though in the counter-reply and on preliminary objections several other officers have been found guilty of dereliction who were competent and responsible for providing meter and realising electric charges have not been proceeded with resulting in hostile discrimination violative of Articles 14 and 16 of the Constitution of India.

7. It is further stated that AGE (E&M) despite recommendation of applicant and non-availability of meter provided direct line connection to the contractor without meter with the approval of Garrison Engineer (GE). It is further submitted that applicant was on leave from 16.5.94 to 21.5.94 and the appeal was cleared by GE by constituting a Board of Officers, as such behind the back of applicant other officers have committed misconduct but were not brought on record and were not proceeded against and punished.

8. On the other hand, learned counsel for respondents Sh. R.K. Shetty, denied the contentions and stated that as per para 49 of Regulations for MES, 1968 BSO is responsible for maintaining properly the furniture and divisional stock and loss are promptly investigated and reported to the GE. It is further stated that no legal infirmity is present in the proceedings to warrant any interference and the orders passed are reasoned.

9. We have carefully considered the rival contentions of the parties and perused the material on record. In the light of the decision of the Apex Court in Kuldeep Singh v. Commissioner of Police, JT 1998 (8) SC 603 we know our constraints as to interference with a disciplinary proceeding. The same is to be interfered when the findings are perverse based on no misconduct and do not pass the test of common prudent man.

10. On application of the aforesaid principle in the conspectus of the present case we find that although applicant had recommended for allotment of three phase meter to the contractor, GE during the leave period of absent through Board of Officers approved and allowed direct connection for which the amount incurred was also apprised by applicant to respondents on 5.11.94 and 17.11.94, as such the conclusion arrived at by the disciplinary authority that applicant was responsible for giving undue advantage to the contractor in charging for electric supply without meter and not pursuing the timely recovery cannot be countenanced.

11. In a case of no misconduct which is apparent from the facts and proved from the record that the allegations levelled are absolutely perverse without any material to support and on the face of the documents of respondents the allegations levelled against applicant at the outset do not show any misconduct. The Apex court in Union of India v. J. Ahmed, 1979 SCC (L&S) 157 has held that mere negligence or dereliction of duty would not amount to misconduct unless it is mala fide or resultant damage would be so high that the degree of misconduct proportionally becomes high. As

the electric charges have been recovered from the contractor, we do not find any misconduct attributable to applicant warranting any punishment.

12. Moreover, in a matter of punishment Articles 14 and 16 has a role to play. The other officers GE and AE who are equally responsible have been meted out differential treatment, as neither any disciplinary proceeding were initiated nor were they punished. This is without any justification and cannot be countenanced, in the light of Articles 14 and 16. Our conclusion is well supported by the decision of the Apex Court in Tata Engineering and Locomotive v. Jitendra Prasad Singh, 2002 SCC (L&S) 909.

13. In the result, for the foregoing reasons, OA is allowed. Impugned orders are quashed and set aside. Applicant shall also be entitled to all consequential benefits. No costs.

S. Raju

• (Shanker Raju)  
Member (J)

'San.'

V.K. Majotra

(V.K. Majotra)  
Member (A)