

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 511 OF 1990

SHRI B.N. NAGARAJU ...

... APPLICANT

v/s

UNION OF INDIA & 3 Ors. ...

... RESPONDENTS

WRITTEN STATEMENT OF RESPONDENTS

MAY IT PLEASE THE HONOURABLE TRIBUNAL :

The above application was filed by the applicant challenging the imposition of a penalty in that his pay was reduced by two stages from Rs.4000/- p.m. to Rs.3750/- p.m. vide Order No.5(67)/86-D(Ld) dated 26th August 1988 which is at Page 65 of the application for the misconduct of failing to check the Panel Doors/Shutters supplied/ arranged by the contractor for incorporation in the above work and accepted the substandard panel works/shutters; effecting a nominal recovery of Rs.700/- as against Rs.10,000/- which should have been effected in respect of sub standard panel doors/shutters; and for showing undue favour to the contractor vide Memo of Charge Sheet No.6(67)/86/D/Lab dt. 2.4.1987 which is at page 16 of the application. In this connection, the Respondents wish to invite attention of this Hon'ble Tribunal to a Ruling of the Hon'ble Supreme Court of India in the case of Union of India v/s Parmananda reported in 1989 - II L.L.J. Page 57. In this case, the Hon'ble Supreme Court ruled as under:

"The Administrative Tribunal is a substitute to the Civil Court and High Court. The jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment can not be equated with an appellate jurisdiction. The Tribunal can not interfere with the findings of the enquiry officer

or competent authority unless the findings of the enquiry officer/competent authority are arbitrary or utterly perverse. Power to impose a penalty is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice. the quantum of punishment is a matter of exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. Unless the penalty is malafide, the adequacy of the penalty is not the concern of the Tribunal.

The Tribunal can not also interfere with the penalty if the conclusion of the enquiry officer or the competent authority is based on evidence, even if some of it is found to be irrelevant or extraneous to the matter.

The only exception to the above proposition may be cases where the penalty is imposed under Cl. (a) of the second proviso to Art. 311 (2) of the Constitution. Where a person is dismissed or removed or reduced in rank without enquiry based solely on the basis of conviction by a criminal court, in such cases the Tribunal can examine the adequacy of the penalty imposed in the light of the conviction and sentence inflicted on the person. If the penalty impugned is apparently unreasonable or uncalled for having regard to the nature of the criminal charge, the Tribunal may step in to render substantial justice. It may either remit the matter to the competent authority for reconsideration or may itself substitute

one of the penalties provided under Cl. No.(a).

Neither the High Court nor the Tribunal has power of equitable jurisdiction which the Supreme Court can exercise under Article 136."

2. There is enough evidence to impose punishment on the applicant. Principles of natural justice have been fully complied with. In the foregoing premises, the Respondents respectfully submit that it is not open to the Hon'ble Tribunal to interfere with the findings of the enquiry officer and the punishment imposed by the Disciplinary authority which fall within the domain of the management hence this application is liable to be dismissed by this Hon'ble Tribunal. These preliminary submissions are without prejudice to the parawise submissions of the Respondents in the following paragraphs and to one another.

3. With reference to Para 1 of the application, the Respondents agree with the contents therein. The Review petition is under consideration of Ministry of Defence as intimated by Army HQ E-In-C's Branch letter No.78650/457/86/EID dated 1st Feb., 1991 (copy attached Exh. R-1)

4. With reference to para 2 of the application the Respondents submit that this Hon'ble Tribunal has no jurisdiction to entertain and adjudicate upon this application.

5. With reference to para 3 of the application it is agreed that the petitioner has filed a review petition. The Review Petition is under active consideration with the competent authority at Ministry of Defence as intimated vide Army HQ E.in-C's Branch letter No.78650/457/86/EID dt. 1.2.1991 (copy attached as Exh. R-1). Further communication will be intimated

to applicant on decision arrived by Ministry of Defence.

5. With reference to para 4.1 of the application the Respondents agree with the contents thereof.

6. With reference to para 4.2 of the application the Respondents deny the contents therein. The Staff Court of Enquiry has been held vide HQ 10 Inf Div Convening Order Bo 5051/A1 dated 30 July 1984 to investigate into circumstances under which :-

"(A) Major CG Manickam awarded contract No. CEJ-17/78-79 to M/s Bawar Ram & Sons. According to terms of contract panel doors shutters were to be obtained from the approved firm viz. M/s Himachal Ply Wood Pvt.Ltd Major CG Manickam instead allowed M/s Bawa Ram & Sons to manufacture the same at the site of works. He made payment for the door panel shutters to M/s Bawa Ram & Sons and caused loss to Govt., to the tune of Rs.17,000/- due to the use of sub standard materials.

(B) The Court of Enquiry blamed both IC-20704 Major CG Manickam and MES No.8464687 Shri B N Nagaraju for use of substandard panel door shutters. Copy of opinion of the Court is attached as Exh. R-2.

Based on the findings of the Court of Enquiry, GOC, 16 Corps had directed that Administrative action should be initiated against Major CG Manickam and competent authority as constituted in CCS Rules 1965 to take disciplinay action against MES No.8464687 Shri B N Nagaraju. Copy of opinion of the GOC, 16 Corps attached as Exh. R-3.

7. With reference to para 4.3 of the application, the Respondents agree with the contents of the application. The charge sheet was served on the basis of findings of Court of Enquiry as brought out in para 6 above.

8. The Respondents agree with the contents of Para 4.4 of the application that the applicant submitted his explanation dated 23 July 1987. The explanation was duly considered by the Inquiry Officer before reaching conclusion. Regarding production of M/s Bawa Ram & Sons Contractor for cross examination, it was conveyed to Shri B.N. Nagaraju that Shri Bawa Ram MES contractor need not be produced as a witness from the prosecution side as his name was not listed in Annexure IV (Ex.D to the application) to the memorandum of Charges. In case presence of Shri Bawa Ram was required for this defence, he was advised to approach Inquiry Officer after the prosecution case was over, in which case it would have been his responsibility to ensure presence of Shri Bawa Ram. Letter No.VB/BNN/26/C dt. 8 Feb., 1988 copy attached as Exh. R-4. The report of the inquiry is unquestionable and the applicant was given full opportunity to defend himself. It will not be out of place to submit that the departmental enquiry was held subsequent to Court of Inquiry ordered vide HQ 10 INF Divn, convening Order No. 5051/A1 dated 30th July 1984 where the same charges to have been proved. Departmental Inquiry proceedings clearly bring out irregularities. Punishment is quite light and in keeping with the irregularity committed and loss caused to the state, consequent to the commission of these irregularities.

9. With reference to para 5.1 of the application, the Respondents submit that all the facts are in black and white in the files. Moreover Court of Enquiry was conducted in August 1984 and all other documents required were made available to Shri B N Nagaraju for preparation of his defence.

Exh. R-4

Regarding remembering of facts by the former Capt. G. Tiwari, witness No.1 (second member in the Staff Court of Inquiry) he too had to refer to Court of Inquiry for bringing out of the facts. The delayed inquiry has not caused any prejudice to the applicant.

10.

10. With reference to para 5.2 of the application the Respondents submit that the charges levelled against the applicant were proved beyond doubt and could not be set aside, punishment due was awarded according to law to keep the administration of contracts clear.

11. With reference to para 5.3 of the application the Respondents agrees that the applicant had filed a review Petition. The Review Petition is under active consideration of the Competent authority at Ministry of Defence as intimated vide Army HQ E-In-C's Branch letter No.78650/457/866-EID dated 1 Feb. 1991. Further communication will be sent to the applicant.

12. With reference to para 5.4 of the application, the Respondents submit that allegation of bias is uncalled for allegation by the applicant. Inquiry Officer was neither biased nor cross examination has been carried out by him. Hence, the allegations are denied. The Inquiry Officer is entitled to put some questions to the Charge Sheeted employee by way of clarification.

13. With reference to para 5.5 of the application, the Respondents submit that the punishment due to others was imposed upon the applicant by the disciplinary authority. In the respectful submission of the applicant, the punishment is proportionate to the misconduct.

14. With reference to para 5.6 of the application, the Respondents submit that the findings and the opinion of the Court of Inquiry are relevant conclusions brought out by the Court of Inquiry and finally pin pointing the cause to person responsible for the action/omission for which Court of Inquiry has been ordered. Proceedings of the Court of Inquiry was made available to the applicant. Findings and opinion of the Court of Inquiry in this case are not relevant to the applicant.

15. With reference to para 5.7 of the application, the Respondents submit that the defects in door panel/shutters were pointed out by T E during site examination and subsequently these were tested by S E M T Pune, as per I S: 303-1975. Documentary evidence by the presenting Officer is the result of tests carried out by the organization designed for this type of tests. Procurement of witnesses to help Charge Sheet the employee is not the function of the management as laid down by the Hon'ble Supreme Court. Report submitted by such an organization are not to be questioned. In any case report from S E M T, Pune, corroborates other evidence proving the irregularities, therefore plea of the applicant that the report of S E M T Pune is the very foundation of the charge sheet is not agreed to. It is the Court of Inquiry conducted vide HQ 10 INF Division convening order No.5051/A1 dated 30th July, 1984 were the irregularities came to notice and were proved beyond doubt. Letter claimed to be written by the applicant in August 1981 is not on record. Shri Bawa Ram was not a prosecution witness, therefore, presenting officer has no obligation to produce him. The irregularities committed have been proved beyond doubt. The departmental inquiry and the punishment awarded are perfectly in order. If the evidence of Shri Bawa Ram, was found useful by the applicant, the applicant should have produced him as a witness.

Having failed to do this, the applicant cannot blame the Inquiry Officer.

16. With reference to para 5.8 of the application, the Respondents state submit that all the relevant documents suggested by Shri B N Nagaraju was inspected by him. In this respect please refer para 3 of Daily Order sheet dated 25. September, 1987 (copy attached) as Exh. R-5 which has been signed by the applicant too. The Report of the Inquiry Officer is based on facts brought out by witnesses and subsequent punishment is as per existing law.

17. With reference to para 5.9 of the application, the Respondents submit that no correspondence regarding this aspect is available in the file. Even if it be so, the applicant should not have allowed the items to be incorporated when in doubt that these were not meeting specification.

18. With reference to para 5.10 of the application, the Respondents submit that it is agreed that arbitration has to be resorted to, to recover the amount wrongfully paid to the contractor, but this wrongful payment is due to the irregularity committed by the applicant in addition to the others.

19. With reference to para 6 of the application, the Respondents state that the applicant has filed a Review Petition dated 17 October 1988 (Exh. C-I vide O.A. 531/90 of the applicant). Therefore this application is premature. The applicant should have waited for the disposal of the Review Petition.

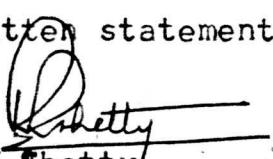
20. With reference to para 8 of the application, the Respondents state that in view of what is stated in the

foregoing paras the application deserves to be dismissed.

21. All statements, submissions, and contentions of the applicant in the application which are contrary and/or inconsistent with what is stated in the foregoing paras are denied, as if each such statement, submissions and contentions is specifically set out herein and traversed.

22. The Respondents crave leave of this Hon'ble Tribunal to add to, amend and alter this written statement if and when found necessary and to produce all relevant documents during the proceedings.

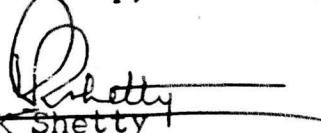
Written statement drawn by


R K Shetty
Advocate


Capt. S Ashrit
for GE, Akhnoor,
J & K

VERIFICATION

I, Capt. S Ashrit, working in the office of Garrison Engineer, Akhnoor, do hereby solemnly affirm and state that what is stated in paras 1 to 22 above is true to my own knowledge and belief and that I have not deliberately suppressed any material facts. This verification is signed at Bombay, this 23 day of July 1991.


R K Shetty
CGSE


Capt. S Ashrit
for GE, Akhnoor, J&K