

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No.

1489/95

Transfer Application No.

Date of Decision

7.3.97

Daleep Singh Balbir Singh

Petitioner/s

Shri G.K.Masand

Advocate for  
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri R.K.Shetty.

Advocate for  
the Respondents

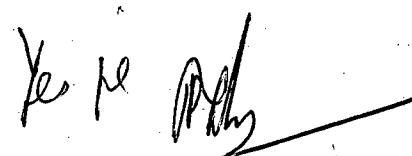
CORAM :

Hon'ble Shri. B.S.Hegde, Member(J).

Hon'ble Shri. P.P.Srivastava, Member(A).

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?

  
(B.S. HEGDE)  
MEMBER (J).



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 1489 / 1995

21, this the Friday day of November 1997.

Coram: Hon'ble Shri B.S.Hegde, Member(J),  
Hon'ble Shri P.P.Srivastava, Member(A).

Daleep Singh Balbir Singh,  
15, Chitalekha,  
Near R.C.Church,  
Colaba,  
Bombay - 400 005. ... Applicant.

(By Advocate Shri G.K.Masand)

V/s.

1. Union of India  
through the Secretary  
in the Ministry of Defence,  
New Delhi - 110 001.

2. Engineer in Chief,  
Army Head Quarters,  
Engineer in Chief Branch,  
Kashmir House, DHQPO,  
New Delhi - 110 011.

3. Chief Engineer,  
Central Command, M.G.Road,  
P.O.Dilkhusa, Lucknow Cantt.  
Lucknow - 226 002.

4. Commander Works Engineer,  
29-J, The Mall, Meerut Cantt.  
U.P. Pin : 250 001. ... Respondents.

(By Shri R.K.Shetty, Advocate).

O R D E R

(Per Shri B.S.Hegde, Member(J))

Heard Shri G.K.Masand, counsel for the applicant and Shri R.K.Shetty for the respondents. The short point for consideration is whether the impugned order issued by the Respondents vide order dt. 29.9.1995 initiating Disciplinary Proceedings against the applicant under Rule 16 of the CCS(CCA) Rules is sustainable under the law in the facts and circumstances of the case. The impugned order reads as below :

"1. MES/110932 Shri DB Singh EE is hereby informed

that it is proposed to take action against him under Rule 16 of CCS(CC&A) Rules, 1965. A statement of imputations of misconduct or misbehaviour on which action is proposed to be taken as mentioned above, is enclosed.

2. MES/110932 Shri DB Singh EE is hereby given an opportunity to make such representation as he may wish to make against the proposal.

3. IF MES/110932 Shri DB Singh EE fails to submit his representation within 10 days of the receipt of this Memorandum it will be presumed that he has no representation to make and orders will be liable to be passed against him ex-parte.

4. The receipt of this Memorandum should be acknowledged by MES/110932 Shri DB Singh EE."

2. The applicant has filed this O.A. on 19.12.1995 questioning the impugned Disciplinary Proceedings initiated against him on more than one grounds. Though the impugned order was alleged to have been issued by the Respondents on 29.9.1995 the same was served on him on 13.12.1995. The contention of the learned counsel for the applicant is that the charges levelled against him are very vague and the same is required to be quashed. The impugned memorandum is in respect of the incident which occurred in the year 1987. After 8 years the applicant has been called by the respondents to explain his role in respect of the said selection made by the Board of Officers in 1987. Therefore, the delay in issuing the impugned order itself is not warranted and deserves to be quashed. Since no opportunity has been given to the applicant by the respondents prior to the issue of the impugned order and they have taken an unilateral decision to initiate Disciplinary Proceedings against the applicant, the same is not tenable under the law. It is true that as per the direction of the Board of Officers Recruitment was carried out in the year 1987, the meeting was presided by the applicant along with two other Officers

of the rank of Assistant Engineers and the recommendation of the said Board was approved by the Commander Works Engineer as Competent Authority for making appointments. The impugned order is passed only against the applicant and not against the two other Officers, thereby action discriminatory and taken by the respondents is/violative of Article 14 and 16 of the Constitution. The Board was constituted only for the purpose of Recruitment of Mazdoor and not for the Recruitment of any other trade under the Rules, neither ~~anywritten~~ test nor any trade test ~~is~~ prescribed for ~~the post of~~ Mazdoors who are in Group 'D' Post. The role of the Presiding Officer of the Selection Board if was only ~~recommendatory~~ in nature and~~/there~~were any discrepancies in the method of selection, the competent appointing authority viz. Commander Works Engineer, Meerut was at liberty not to accept the said recommendations and direct a fresh selection to be conducted. Since the Competent Authority has accepted the recommendations of the Board of Officers that itself shows that there is no irregularity on the part of the applicant. Further the impugned order is issued on the eve of the applicant being considered for next promotion to the post of Superintending Engineer by the DPC and if this impugned order is sustained, great prejudice would be caused to the applicant in getting further promotion. Thereby, he submits that the impugned order is required to be quashed.

3. After hearing both the parties the Tribunal while admitting the O.A., ~~granted~~ the interim relief granted earlier was made absolute. On the other hand, the Respondents in their reply have not disputed the various contentions raised by the applicant, however, they have only stated in their reply that certain categories of posts of industrial and non-industrial ~~were~~ being filled

up as per Recruitment Rules, policy guidelines, trade tests etc. after holding test/interview amongst others in Meerut of candidates sponsored by Employment Exchange, Department candidates and ex-muster roll persons. For that purpose the Board of Officers were constituted for the purpose of carrying out test/interview, after observing the policy guidelines, recruitment procedure etc. The Board met in September, 1987 and proceedings were drawn up, forwarded to the Commander Works Engineer, Meerut and the same was concurred by the Commander Works Engineer and thereafter the persons recommended for appointment were sent appointment orders. However, two Ex-Servicemen by names Harbir Singh and Sukhir Singh who had worked on muster roll as MT Driver for number of days prior to 1987 with technical breaks who were left out of eligible candidates for test/interview and thus deprived of selection by the Board. Hence they moved the Principal Bench for being absorned in regular establishment. The Principal Bench decided the matter in their favour and ordered that they should be given regular appointment with full back wages. Thereafter, the respondents constituted a departmental Court of Inquiry for checking and verifying recruitment made by the Commander Works Engineer, Meerut in 1987. In November, 1993, the Court of Inquiry sent out a letter to the applicant who was the Presiding Officer for the Board of Officers for selection of candidates then, to attend to the Court of Inquiry. By that time the applicant was working under Chief Engineer Bombay Zone. However, he could not attend the Court of Inquiry on the stipulated date. A summons was issued on 18.12.1993 by the Court of Inquiry well in advance to attend the Court of Inquiry. On that date also

although summons was issued well in advance the applicant did not attend the Court of Inquiry. It is stated in the letter forwarding summons that it should be treated as authority for move. Since the applicant did not attend the Court of Inquiry, they did not wait any further and concluded its proceedings based on the records produced. The Court of Inquiry found many shortcomings and thereafter issued the Charge Sheet under Rule 16 of the CCS(CCA) Rules.

4. The main charges against the applicant is that the conduct of selection made by the committee was irregular, relevant procedures has not been followed. The applicant further denied the contention of the respondents that neither any trade test nor any written exam was involved, only on the basis of the sponsored candidates, they had to make selection. Since the selection made by the duly constituted committee have been approved by the Commander Works Engineer, the question of arbitrariness and mala fides does not arise. Further it is submitted that the respondents have deliberately not annexed the letter under which the Administrative Officer of the Office of Commander Works Engineer had given the names of the candidates to be interviewed or tested. Similarly, letters containing the names of the candidates which was given to the Presiding Officer has also not been annexed. Since there is no mala fide or arbitrariness in the selection the question of issuing any charge memo against the applicant is unwarranted. Further, though a letter is issued from the Meerut Office to the applicant and the said matter was brought to the notice of the Chief Engineer/Navy Bombay who is aware

of the fact and despite his writing to the Presiding Officer of the Court of Inquiry to issue appropriate directions for his movement, he was not relieved by the Chief Engineer, Bombay, thereby he could not attend the inquiry proceedings. Under the Rules of the Army he cannot leave his post until and unless a movement order is issued by the competent authority so as to present himself before the Court of Inquiry. As stated earlier, despite the summons which was brought to the notice of the competent authority he was not relieved to attend the Court of Inquiry. From the above, it is manifestly clear that apart from delay in initiating the departmental inquiry, that too for a minor penalty under Rule 16, the Respondents did not allege any mala fide or arbitrariness on the part of the selection committee. It is also manifestly clear that the charge memo was issued consequent upon the decision of the Principal Bench and directing the Respondents to regularise the services of the two of the petitioners whose names had not been considered by the selection committee as they were not sponsored neither by the Employment Exchange nor their names had been listed by the Respondent Department. Therefore, keeping in view of the facts and circumstances of the case, the Tribunal had directed not to initiate any disciplinary proceedings against the applicant firstly on the ground of arbitrariness picking up the applicant alone and not the other officers who were part of the selection committee, on that ground alone the impugned order can be quashed. Besides that there is no

specific charge levelled against the applicant stating that the selection made by the committee was bad nor any opportunity was given to the applicant to explain the same. It is an undisputed fact that the applicant joined the department as a direct Recruit in the year 1972 as Assistant Executive Engineer, thereafter he got his promotion as Executive Engineer in 1982 and he is an highly qualified person.

5. The Apex Court in the case of Union of India V/s. J.Ahmed (AIR 1979 SC 1022) has held that misconduct arising out of ill motive because of negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct. In the case before the Supreme Court the official was charged for misconduct on the ground of failure to take any effective preventive measures meaning thereby error in judgment in evaluating developing situation. The Supreme Court held that there may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high.

6. Keeping in view of the aforesaid decision of the Apex Court in the instant case before us, the only allegation made against the applicant in the charge memo is that the applicant was negligent and careless in proper discharge of his duty while selecting the

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candidates sponsored by the Employment Exchange and others. Nowhere it is mentioned as to what was the resultant damage caused to the department because of such negligence and such carelessness. Therefore, the averment in the Charge Memo cannot be assessed as observed by the Supreme Court that the degree of culpability would be very high. In the absence of that we are constrained to hold that the allegations made against the applicant would not constitute misconduct so as to initiate disciplinary inquiry against the applicant under Rule 16 of the CCS(CCA) Rules. There are also many decisions of the Tribunal regarding delay in issuing the charge memo. In this case, admittedly the charge memo was issued after a lapse of 8 years and the applicant is due for further promotions. Therefore, in our opinion, the issuing of charge memo at this belated stage, as such is unreasonable and on that count also the charge memo cannot be sustained.

7. Normally, the Tribunal is reluctant to go into the merits at the stage of charge memo, whether it is fulfilled in issuing the charge memo, but in the instant case for the reasons stated above, we are constrained to hold that the charge memo issued against the applicant and the proposed disciplinary enquiry cannot be allowed to stand and accordingly, the same is liable to be quashed and set aside. Therefore, we allow the O.A. and quash and set aside the impugned order dt.29.9.1995 with no order as to costs.

  
(P.P. SRIVASTAVA)  
MEMBER(A)

  
(B.S. HEGDE)  
MEMBER(J).

B.