(246)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD.

O.A.No.150/91. Date of Judgement : 24.3.1995

Syed Rahimuddin .. Applicant

Vs.

1. The Director-General,
C.S.I.R., Rafi Marg,
New Delhi-110001.

2. The Director,
Indian Institute of
Chemical Technology
(formerly Regional
Research Laboratory),
Hyderabad-500007.

3. Dr. A.V.Rama Rao,
Director,
Indian Institute of
Chemical Technology)
(formerly Regional
Research Laboratory),
Hyderabad-500007.

4. Dr. S.K.Rao,
Scientist 'F',
Incharge,
Civil Engg. Divn.,
Indian Institute of
Chemical Technology
(formerly Regional
Research Laboratory),
Hyderabad-500007.

5. R.Venkataramana,
Enquiry Officer &
Commissioner for
Departmental Enquiries,
Jamnagar House, Hutments,
Akbar Road,
New Delhi-110001. .. Respondents

Counsel for the Applicant :: Shri H.S.Gururaja Rao &
Shri V.Venkateswara Rao

Counsel for the Respondents:: Shri C.B.Desai,
SC for C.S.I.R.

C O R A M:

Hon'ble Shri A.V.Haridasan : Member(J)

Hon'ble Shri A.B.Gorthi : Member(A)

.....2

Judgement

X As per Hon'ble Shri A.B.Gorthi : Member(A) X

In this application, the Applicant has challenged the validity of the penalty of compulsory retirement imposed upon him by the Director, Regional Research Laboratory (now re-designated as the Indian Institute of Chemical Technology), Hyderabad, vide order dt. 1.2.1990. He prays that the penalty as also the order of the appellate authority confirming the said penalty be quashed and that he be reinstated in service with all consequential benefits.

2. When the Applicant was working as an Asst. Executive Engineer, he was suspended from duty w.e.f. 19.8.1988 and was thereafter served with a charge memo dt. 20.1.1989. Gist of the charges which all pertained to the Applicant's role in supervising the contractor's work relating to extension of canteen building is as under:-

Article I. Favoured the contractor by making payment for execution of "string or lacing course" in Sqm as the unit of measurement instead of Cum. A sum of Rs.9,600/- was thus paid to the contractor resulting in overpayment of Rs.8,640/.

Article II. Allowed payment for glazed tiles (1,775 tiles) when the material had not even been brought to t work site.

Article III. Made certain false entries in the Measurement Book, based on which payments were made to the contractor.

Article IV. Allowed additional quantities of work and extension of time for completion of contract without prior approval of the competent authority.

Article V. Failed to give proper accounting of materials issued to the contractor eventhough he prepared the final bill for payment.

3. A departmental disciplinary enquiry was held at the en of which, the Inquiry Officer found that charges No.1, 2 and were established, charge No.3 was partly established and th charge No.5 was not established. Accepting the Inquiry

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Officer's findings, the disciplinary authority found the Applicant guilty and awarded the penalty of compulsory retirement. An appeal submitted by the Applicant was rejected by the appellate authority.

4. Heard learned counsel for both the parties and perused the proceedings of the inquiry.

5. Shri H.S.Gururaja Rao, learned counsel for the Applicant assailed the validity of the penalty on several grounds. His first and foremost contention was that the Applicant committed no irregularity in the handling of his responsibility to supervise the construction work. He elaborately took us through the entire inquiry proceedings with a view to show that the alleged acts of commission/omission by the Applicant were either not established by cogent evidence or were done bona fide and hence could not be termed as misconduct.

6. Before we embark upon a careful scrutiny of the evidence adduced at the departmental enquiry, we must remind ourselves of the limited scope of judicial review of such inquiry proceedings. It is settled law that it is not for the Tribunal to review, much less re-appreci the evidence and to arrive at an independent finding on the evidence on record. The jurisdiction of the Tribun in this regard is the same as that of a High Court under Article 226 of the Constitution. In State Bank of India & Ors V Samarendra Kishore Endow & Anr. 1994 SCC (L&S) 687, the Hon'ble Supreme Court quoted with the approval the follow observations of the A.P.High Court in State of A.P. Vs. S.Sree Rama Rao, AIR 1963 SC 1723:-

> "The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmenta inquiry against a public servant; it is concerned to dete mine whether the inquiry is held by an authority competen in that behalf, and according to the procedure prescribed

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(249)

in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the inquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of inquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the inquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding ... under Article 226 of the Constitution."

7. Should the scrutiny reveal that it is a case of no evidence at all or that the finding on any of the charges is so perverse or capricious that no reasonable person could ever come to such a finding, we may, of course, justifiably step in.

8. The first charge related to the question whether the unit of measurement for "providing and laying cement concrete upto floor two level in string or lacing courses" is Sqm (square metre) or Cum (cubic metre). The tender documents, upon which quotations were sought were prepared by the Architect, M/s. Raj Expedith Associates. In the column titled "unit", against items at serial number 2.4 which related to the work referred to in charge No.1, it was typed as Cum, but under the column titled "quantity" it was shown as Sqm. Obviously there was an error, typographical or otherwise. In respect of quotation submitted by the contractor Shri Subba Rao, the error was corrected from Sqm to Cum. It was initialled by the members of the

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Tender Opening Committee of which the Applicant was also a member. In the quotation submitted by another contractor, the error was similarly corrected but the correction was not authenticated by the members of the Tender Opening Committee. In respect of the quotation submitted by Shri B.Sreeramulu Naidu (who got the contract), the error was left as it was. Thus, in the quotation that was finally accepted, the 'unit' was shown as Cum and 'quantity' as Sqm. Payment of Rs.9,600/ was, however, made. As only 12 Sqm of work was done, payment of Rs.9,600/- was made, whereas had the unit of measurement been Cum, the contractor would have been entitled only to Rs.[illegible] ...ment of Rs.8,640/- as averred in the charge. The plea of the Applicant's counsel is that the real culprit is the architect who was not examined at the enquiry and that the Applicant had no intention whatsoever to favour the contractor. At worst it could be an error, undetected by the Applicant due to excessive pressure of work. In any case, payments made in excess can always be recovered from the contractor. Shri H.S.Gururaja Rao thus contended that there was nothing in the first charge which could be construed as misconduct on the [illegible] ...Applicant being a qualified engineer and entrusted with the responsibility related to the construction work, cannot plead ignorance as to what was the correct unit of measurement. That it was only Cum, would be more than evident from the fact that he himself as a member of the Tender Opening Committee made the necessary correction in the quotation offered by another contractor. If his failure to effect similar correction in the accepted quotation and the resultant excess payment to the contractor are viewed by the concer authority as a favour shown to the contractor, it cannot said to be perverse or baseless.

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9. As regards the second charge, the documentary evidence sufficiently shows that a sum of Rs.6,388.80 was paid to the contractor by cheque dt. 30.3.1987 towards the cost of 1,775 tiles of the size 0.15 m. x 0.15 m. The allegation in the charge memo is that the Applicant allowed the said payment even though the glazed tiles were not received till then. There is also the controversy whether the number of tiles to be received is 1,775 or 1,725. There is clear documentary evidence to show that 1,725 tiles of the size 6" x 6" were received on 3.8.88. The discrepancy as regards the number of tiles or their dimensions is really not the core issue. The gravamen of the charge is that payment towards tiles was made when in fact, at the time of such payment, the tiles were yet to be supplied by the contractor (Page 143 of Material Papers - Vol.I) Documentary evidence led in this regard leaves no room for even doubt that the charge is established.

10. The third charge is for making certain false entries in the Measurement Book. Some of the entries in the Measurement Book were made by Shri P.Narayan Rao, J.E. who was deputed for the said work at the request of the Applicant. The Applicant signed all the entries in the Measurement Book, based on which payments were made. As regards some of the entries, the Inquiry Officer found that the allegation was not substantiated, but for the rest, he found them established. A committee comprising Dr. P.B.Sattur, Sc.'G', Shri S.Venkata Ratnam, Surveyor of Works, C.P.W.D. and Shri Nanjappa, Executive Engineer(Civil C.C.M., Hyderabad was asked to inspect the work site and se whether the entries in the Measurement Book were correct. They checked and found that the work, such as plastering et shown in the Measurement Book was not actually done. We need not record all the details here but one such discrepar may be mentioned. The committee noted that whereas the wo shown No.476 in the Measurement Book included 21 steps,

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inspection at the site revealed that "all steps are not in existence". The Applicant's explanation was that payment could always be withheld or, if made, money could be recovered.

11. Learned counsel for the Applicant asserted that the entries made in the Measurement Book were correct. If some plastering under the roof was not done, it was due to the manner in which the contractor finished the inside of the roof as would not require plastering separately. Similarly he argued as to how only a few steps could be constructed but not all. May it be so, but the committee that examined the work included, besides a Surveyor of Works, an Executive Engineer (Civil) and these gentlemen ought to know what they recorded as their findings. We cannot therefore conclude to the contrary notwithstanding the attractive arguments advanced by the Applicant's counsel.

12. In the fourth charge it was averred that the Applicant allowed additional quantity of work and extension of time to the contractor without the prior approval of the competent authority. Clause 24 of the agreement with the contractor stipulated that if the contractor needed additional time to complete the work, he shall apply in writing and that the Engineer (i.e., the Applicant) with the consent of the Employer (i.e., the Respondent No.1) may authorise such extension of time. As per the agreement, the work was to be completed by 31.3.1987 but the Applicant continued to issue materials like cement and steel to the contractor even during May and July, 1987. There was nothing on record to indicate either that the contractor sought extension of time or that the Applicant obtained approval of the competent authority for such extension. The Applicant did put up a note

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in January, 1988 for additional quantities of work to be executed but that would strictly have no relevance to the charge. The finding that the charge was established is, therefore, reasonable.

13. As regards the fifth charge, the Inquiry Officer found that the charge was not established, and the said finding was accepted by the disciplinary authority. It, therefore, calls for no further discussion.

14. The aforesaid brief discussion of the evidence on the charges of which the Applicant was found guilty, would show that there was sufficient material to support the findings on all the charges. As already observed, it is not the function of the Tribunal to review the evidence for the purpose of reaching a different conclusion, even where such a different conclusion is possible. So long there are some relevant materials which the disciplinary authority accepted and which materials may reasonably support the conclusion that the employee is guilty, it is not the function of the Tribunal to review the evidence and to arrive at a different conclusion. This view has been held consistently as can be seen from Union of India Vs. Sardar Bahadur, (1972) 4 SCC 618 and Govt. of Tamilnadu & Anr. Vs. A.Rajapandian, 1995 SCC (L&S) 292. We, therefore, cannot accept the plea of the Applicant that he should have been acquitted of all the charges for want of sufficiency of evidence. In this context, the relevant passage from the judgement in A.Rajapandian's case (supra) may be quoted.

> "8. We have quoted above three paragraphs from the impugned order of the Administrative Tribunal to show that the Tribunal reappreciated the evidence recorded before the inquiring authority. The Administrative Tribunal reached different conclusions from the inquiring authority on its own evaluation of the evidence. The Tribunal fell into patent error and acted wholly beyond its jurisdiction. It is not necessary for us to go into the merits of appreciation of evidence by the two authorities because we are of the view that the Administrative Tribunal had no jurisdiction to sit as an appellate authority over the findings of the inquiring authority."

15. It was next argued by Shri H.S.Gururaja Rao that the inquiry proceedings stood vitiated on account of bias of the Inquiry Officer. The tone and tenor of theInquiry Officer's report would show such bias. For example, he recorded in para 4.11 of his report " --- wants us to believe that he is innocent and that he is not to be bothered by such trivialities as checking discrepancies in the unit which could result in a monumental loss". Quite a few of such highly critical observations were made by the Inquiry Officer. We must, however, note that an Inquiry Officer, by the very nature of his rank and status, cannot be expected to elevate himself to the lofty pedestal of a trained judge, while making a record of his conclusions. Yet, it is of utmost importance that he should be a person with open mind, a mind which is nc biased against the delinquent. His approach should be rational and his attitute impartial. A few expressions of opinion, strongly flavoured though, appearing in the Inquiry Officer's report which is prepared at the conclusion of the enquiry, cannot by themselves establish bias on the part of the Inquiry Officer. It, therefore, becomes necessary to examine the next contention of the Applicant's counsel that the Inquiry Officer's bias would be evident from the fa that he and all others who attended the enquiry at Bangalore stayed in the same guest house of H.A.L. Bangalore. We do not see how by itself such a situation would establish bi of the Inquiry Officer. They stayed in the H.A.L. Guest Hou as per administrative arrangements. There is nothing on record to show that such arrangement was made for the purpos of winning over any of the witnesses or that all those concerned in the enquiry ganged up against the Applicant. Moreover, it is clear from the inquiry proceedings that the Applicant himself neither complained against the Inquiry Officer nor sought to have him replaced at any time during the enquiry.

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16. It was stated for the Applicant that some of the documents asked for were not allowed by the Inquiry Officer. Similarly, the architect who ought to have been examined was not examined. As regards the documents required for defence, we find that the Applicant demanded certain documents listed at Serial Nos.1 to 21 of his letter dt. 15.5.89 addressed to the Inquiry Officer. The record dt. 27.6.89 shows that documents listed at Serial Nos.1, 8, 10, 11, 15,17 and 18 were either shown or given to the Applicant and that the remaining documents, if available, were to be shown on 30.6.89. Prior to that date, during the conduct of enquiry from 3.6.89 to 6.6.89, 15 documents were brought on record for the defence and marked asD-1 to D-15. It was thereafter, on 14.8.89, the Applicant asked for some more documents which were not allowed by the Inquiry Officer on the ground that they were "totally irrelevant to the defence case" and that the said demand was being made, after conclusion of prosecution case, merely for delaying the conclusion of the enquiry. It is not stated for the Applicant as to how exactly the denial of those documents has handicapped him in his defence.

17. It is settled law that refusal to supply relevant documents to the delinquent employee would amount to denial of reasonable opportunity contemplated in Article 311(2) of the Constitution, which is mandatory. Whether a delinquent had reasonable opportunity of effectively defending himself is a question of fact which must be answered in the light of attendant circumstances of the case. In the instant case, the Applicant was either given or allowed to see some of th documents demanded. 15 documents were marked as exhibits for the defence case. A belated demand made for some additional documents was considered but rejected. Nothing

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has been brought before us to show in what way the non-production of any of the documents can be said to have prejudiced the Applicant in his defence. It cannot, therefore, be held that the Applicant was denied reasonable opportunity of defending himself during the enquiry.

18. The architect of M/s. Raj Expedith Associates was cited as a defence witness. He was called for and did appear before the Inquiry Officer, but refused to say anything in favour of the Applicant. Daily order sheet dt. 24.8.89 recorded by the Inquiry Officer and accepted by the Applicant indicates that "Mr. Raj (the architect) refused to depose as a defence witness" and that "the defence have rested the case". The Applicant cannot, therefore, have any reasonable grievance if his own defence witness, even when called to attend the enquiry, chose not to say anything in his favour for whatever might be the reason.

19. Finally it was argued by the learned counsel for the Applicant that Dr. A.V.Rama Rao (R3) and Dr. S.K.Rao (R4) were related to each other and that Dr. A.V.Rama Rao in his capacity as Director of Indian Institute of Chemical Technology once asked the Applicant to proceed to Poona and supervise the construction of his (Dr. A.V.Rama Rao's) house and that as the Applicant did not do so, both Dr. A.V.Rama Rao and Dr. S.K.Rao colluded with each other for the purpose of harming the Applicant. This allegation made by the Applicant was squarely denied by Dr. A.V.Rama Rao in the counter affidavit filed by him. It was stated in the counter affidavit that R2/R3 never made any request to the Applicant to go and supervise the construction of his house at Poona and that there was no truth in the allegation made by the Applicant. It is settled law that the burden of establishing ~~the~~ malafides is very high on the person who

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alleges it. The allegations of malafide are often more easily made than proved and the very seriousness of such allegations demands proof of ~~of~~ a high degree. This is what was laid down by the Hon'ble Supreme Court in E.P.Royappa Vs. State of Tamilnadu & Anr. AIR 1974 SC 555. It cannot therefore be said that there is anything on record to establish malafide on the part of Dr. A.V.Rama Rao or Dr. S.K.Rao.

20. Coming to the quantum of punishment, learned counsel for the Applicant urged before us that a lenient view of the omissions, if any, on the part of the Applicant could have been taken by the disciplinary authority, particularly when there was every possibility of recovering excess payments made to the contractor and thus protecting the interests of the Government. In this regard, the observation made by the disciplinary authority while imposing the penalty of compulsory retirement, as recorded in the impugned order is reproduced below:-

> "Since the misconduct committed by Shri S.Rahimuddin, AEE (Civil) (under suspension) is very serious and involves lack of integrity and devotion to duty, I am fully convince that Shri Rahimuddin is not a fit person to be retained in service and I would prefer to impose a penalty of removal from service. But keeping in view the length of service he has put-in in this Institute and to avoid suffering to the family due to his misdeeds, I take a lenient view".

21. Learned counsel for the Applicant,while squarely conceding that the Tribunal ordinarily cannot interfere with the penalty imposed after a departmental disciplinary enquiry, has drawn out attention to State Bank of India & C Vs. Samarendra Kishore Endow & Anr. 1994 SCC (L&S) 687, wherein it was found that the punishment of removal was excessive and deserved to be reconsidered by the disciplin authority or the appellate authority and consequently a direction was given to the appellate authority to consider whether a lesser punishment was not called for in view of facts and circumstances of the case.

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22. In the instant case there can be no denying the fact that the misconduct alleged is serious in nature. Public servants responsible for the handling of government works/ money, function as trustees of government property and are expected to exhibit a high degree of care and caution in the discharge of their responsibilities. Keeping in view the gravity of the charge it cannot be said that the penalty of compulsory retirement is either excessive or harsh. In any case, the disciplinary authority had already taken into consideration not only the gravity of the charge but also the length of service rendered by the Applicant in awarding, what he termed as, a lenient penalty. In these circumstances we find that there is hardly any justification to remit the question of considering the appropriateness of the penalty to either the disciplinary authority or the appellate authority.

23. For the reasons aforestated, we find that the O.A. is liable to be dismissed and it is accordingly dismissed. No order as to costs.

(A.B.Gorthi)
Member(A).

(A.V.Haridasan)
Member(J).

Dated: 24 March, 1995.

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DEPUTY REGISTRAR(J)

To

1. The Director General, C.S.I.R., Rafi Marg, New elhi - 110 001.
2. The Director, Indian Institute of Chemical Technology (formerly Regional) Research Laboratory, Hyderabad.
3. One copy to Mr.V.Venkateswar Rao, Advocate, CAT, Hyderabad.
4. One copy to Mr.C.B.Desai, SC for C.S.I.R., CAT, Hyderabad.
5. One copy to Library, CAT, Hyderabad.
6. One spare copy.
7. one copy to HBR (J) CAT, Hyd.

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