IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATIONNO.1277/99

DATE OF ORDER : 31-5-2000

Between :-

C.Somanathan Pillai

...Applicant

And

1. Union of India represented by its Secretary to Govt., M/o Defence, New Delhi-11.

2. Engineer-in-Chief, Army headquarters, Kashmir House, New Delhi-11.

...Respondents

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Counsel for the Applicant : Shri Shiva

Counsel for the Respondents : Shri B.N.Sarma, Sr.CGSC

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CORAM:

THE HON'BLE SHRI R.RANGARAJAN : MEMBER (A)

THE HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (J)

(Order per Hon'ble Shri B.S.Jai Parameshwar, Member (J) ).

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(Order per Hon'ble Shri B.S.Jai Parameshwar, Member (J) ).

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Heard Sri Shiva, learned counsel for the applicant and Sri B.N.Sarma, learned standing counsel for the Respondents.

2. This is an application under section 19 of the Administrative Tribunal's Act. This application was filed on 12-8-1999. The applicant herein was working as Garrison Engineer, Borjar from 9-12-1982 to 20-5-1986. He was entrusted with the Administration of Works under CA No.CESZ/BOR/7 of 1983-84: Provision of Lecture cum-Cinema Hall at Digaru.

3. While final payments in respect of the said contract was prepared, the respondents noticed that there was overpayment to the Contractor to the tune of Rs.1,78,549.36. The same was examined by the Departmental Court of Enquiry. The Departmental Court of Enquiry had assembled on 4th and 5th March, 1991. The Court of Inquiry found out that the matter needed investigation. Based upon the findings of the Respondents issued letter to the applicant in reference No.77559/13/39/El.Con., dated 30.8.1991. On receiving the said communication, the applicant sought permission for perusal of four documents. The Department furnished him the copies of three documents for his perusal. The applicant submitted a detailed statement on 1-4-1992 stating that he was not responsible for making overpayments to the Contractor. The explanation offered by the applicant was not convincing. Hence he was issued with a charge memo bearing No.C.13011/1/VIG/96 dated 6-12-1996. The applicant submitted his explanation reiterating his earlier stand. He also pointed out that the incident took place more than 10

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years and 7 months ago and issuance of said charge memo after long lapse of time was bad.

4. The applicant submits that the respondents have a standard schedule of rates (SSR) for the items. Tenderers will be asked to quote above/below these rates. The contractor originally quoted (+) 150% above the pre-priced schedule. Since the amount was ~~brought~~ found to be on higher side, after negotations with the Contractor, the amount was brought down to (+) 130% which was then found to be reasonable. The applicant states that there was an arithmetical error while totaling the pre-priced rates and consequently the rate quoted by the contractor in terms of the percentage over the pre-priced rates also suffered an error. The applicant had brought this to the notice of the concerned and sought for clarification and necessary amendments to the contract agreement in August, 1984, followed by reminder in September, 1985. The applicant submits that no action was taken as long as the applicant was in-charge of the said work.

5. However, an enquiry was conducted into the charge memo dated 6-12-1996. During the course of enquiry only necessary and relevant documents were relied upon by the DisciplinaryAuthority. In fact, the applicant sought for his letter alleged to had been written during August, 1984. The applicant was satisfied with the authenticity of the documents relied upon by the Disciplinary Authority. The Enquiry Officer concluded the enquiry and submitted his report dated 17.2.1998. He recorded his findings as under :-

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61. Findings:- On the basis of the assessment of evidence adducted in the case before me and as brought out above in the analysis and the assessment of evidence, I hold that the Article I as per Annexure-I containing statement of Article of Charges framed against MES-109157 Shri CS Pillai is proved partially to the extent mentioned in paras 56 to 60 above.

6. A copy of the report of the Enquiry Officer was furnished to the applicant. The applicant submitted his representation against the report of the Enquiry Officer on 8-6-1998.

7. The Respondent No.1 by his impugned order dated 8-7-1999 agreed with the findings of the Enquiry Officer and imposed the penalty of reduction of pay of the applicant by one stage from Rs.16,700/- to Rs.16,300/- in the time scale of pay of Rs.14,300/- Rs.18,300 for a period of one year without cumulative effect with a further direction that the applicant would not earn increment during the period of reduction and on expiry of this period, the reduction will not have the effect of postponing his future increments.

8. The applicant has challenged the order dated 8.7.1999 in this application. He has prayed to call for the records relating to the impugned order dated 8-7-1999 of the Respondent No.1 and to quash or set aside the same holding it as arbitrary, illegal, unjust, unsustainable and violative of Articles 14 and 16 of the Constitution of India and consequently direct the respondents to release all the benefits including the grant of non-functional selection grade together with the monitory reliefs applicable to him consequent upon quashing the impugned order.

9. The applicant has challenged the impugned order on the following grounds :-

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(a) The charge memo was issued after a lapse of nearly 12 years. The incident took place during the year 1984 and there has been an in-ordinate delay in issuing the charge memo;

(b) The Respondents have a proceedure of maintaining a standard schedule of rates. The tenderers have to submit their pre-priced quotations on the basis of the schedules prepared based on these standard rates which may be above those rates or below those rates and in areas of work like construction of building etc., it would be a lumpsum amount based on drawings and specifications;

(c) The work and also the genuineness of the Contract was scrutinized by the Surveyor works Department who is to check the correctness of both arithmetic as well as the qualitative. It is passed through the higher hierarchy in the Surveyor Department that is the Surveyor Works and Senior Surveyor Works. The applicant further submits that the Chief Engineer accepted the tenders as he had agreed with the findings of the Surveyor Department and states that no misconduct can be attributed to him as long as he sticks to the terms and conditions of the contract as accepted by the Chief Engineer. The Enquiry Officer on this basis held that the charge is partially proved;

(d) There was absolutely no evidence to come to the conclusion the charge was even partially proved;

(e) The applicant had sought necessary clarification and ammendments to the contract agreement during August, 1984 followed by reminder in September, 1984. His request did not evoke any response from the higher authorities;

(f) The Enquiry Officer has come to the conclusion that the overpayment could have been avoided if only superior authorities i.e. the Chief Engineer, Shillong Zone and the Controller of Defence Accounts were careful in approving/scrutiny of the contract agreement;

(g) It was not proper for the Enquiry Officer to hold the applicant guilty. The Enquiry Officer relied upon the condition 6-A(B) of IAFW 2249 (General conditions of Contract) to substantiate the charge that the applicant should have restricted payment to lumpsum amount instead of accepting the percentage quoted by the contractor. The enquiry Officer has not properly appreciated the facts. The finding of the Enquiry Officer is perverse;

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(h) The Disciplinary authority during the course of the impugned order dated 8-7-1999 has not applied his mind. The Disciplinary Authority has not taken into consideration the long delay caused in issuing the charge memo. The Disciplinary Authority has not properly analysed the reasons recorded by the Enquiry Officer. He submits that no action has been initiated against the other officers who were in-charge of the said work; and

(i) The Enquiry Officer recorded a finding that the amount which was paid to the Contractor has been recovered and as such there was no loss to the Department. This factor ought to have weighed heavily with the Disciplinary Authority before imposition of the penalty. The Disciplinary Authority observed that the applicant has nothing to do with the recovery and that does not absolve him of his responsibility which he had failed to discharge.

10. Thus he prays for seting aside the impugned order dated 8-7-1999.

11. The Respondents have filed a reply. They submit that at the time of entering into contract with the contractor a mistake was found in Schedule-A part-III, according to which the rate was to be paid only at (+)68.82% instead of (+) 130%. The said mistake was within the knowledge of the applicant and as such while allowing the payment of VI RAR to XI RAR to the Contractor, the applicant should have restricted the payment on account of Contractor's percentage under Schedule 'A' Part-III to (+) 68.82% instead of (+) 130%. But the applicant allowed the payment to the Contractor at the rate of (+) 130% which ultimately led to over payment to the Contractor resulting in the final bill of the contract becoming a minus payment amounting to the tune of Rs.1,78,549.36.

12. Then the matter was referred to Arbitration and the

Engineer-in-Chief appointed a Sole Arbitrator by letter No.13600/ EC/313/E8 dated 18.12.1989 to ajudicate disputes between parties. The Arbitrator awarded a sum of Rs.48,350.00 in favour of the Department and the same was recovered from the Contractor.

13. A show cause notice for the lapse was served on the applicant vide letter dated 30.8.1991 for which a reply was submitted vide letter dated 1.4.1992 denying the allegations. His explanation was not accepted to by the Department and the charge sheet dated 6-12-1996 was issued.

14. From 1989 the matter was under active consideration. During the the enquiry full opportunity was given to the applicant. On the basis of the report submitted by the Enquiry Officer and considering the representation of the applicant the impugned penalty order was passed. The applicant was expected to ensure the execution of the work in terms of the aforesaid contract agreement. That the applicant was not expected to pay to the Contractor at (+) 130%. That the said payments were made while making payments VI RAR to XI RAR. That work was completed on 30.6.1987. That the final bill bearing voucher No.28/CV/2159 dated 16-3-1988 pertaining to Contract Agreement No.CESZ/BOR/7 of 1983-84 became minus amount of Rs.1,78,549.36. That the departmental courrt of Enquiry observed that Rs.1,28,951.20 was paid upto the last XII RAR dated 14.5.1986.considering the rate of (+) 130% for works under Schedule 'A' part-III. In the final bill the percentage was corrected to (+) 68.82%. The matter was under consideration since the preparation of final bill dt.16.3.1988. Further the Sole Arbitrator was asked to resolve the dispute between the parties. It is only on 2-3-1993 the contractor gave his willing-

ness to pay to the Government a sum of Rs.48,350/-. Therefore the contention of the applicant that there was long delay in issuing the charge memo is not correct.

15. They rely upon condition No.6 of IAFW-2249 which formed the part of the Contract Agrement. The applicant was fully aware of the said condition. The applicant was responsible for paying amount to the Contractor under VI RAR to XI RAR. These documents were produced before the Enquiry Officer. The applicant accepted the authenticity of the said documents. The documents relied upon by the applicant was also produced during the enquiry. The applicant cannot now contend that no witness was examined to substantiate the misconduct alleged against him.

16. They rely upon paras 55 and 56 of the report of the Enquiry Officer. They submit that the applicant was fully aware that he was making over payments to the contractor. Even if the error committed by him was overlooked by the Chief Engineer, shillong and Contraoller of Defence Accounts, it was still within the knowledge of the applicant. Only the Garrison Engineer had the Authority to sign the cheques to release the payments. The applicant who had worked then as the Garrison Engineer was fully aware of the discrepancy in Schedule A part-III and also the condition No.6 of IAFW 2249. The applicant should have used his intelligence while making payments to the Contractor.

17. Thus they submit that there are no reasons to interfere with the impugned order and the authority has taken note of all the factors into consideration and imposed only a minor penalty on the applicant. Hence they pray for the dismissal of the OA.

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18. The fact that the applicant was entrusted with the work of CA No.CESZ/BOR/7 of 1983-84 for provision of Lecture-cum-Cinema Hall at Digaru is not in dispute. The fact that the applicant made payments under VI RAR to XI RAR to the Contractor is also not in dispute. It is also not in dispute that there was a mistake in Schedule A part-III where the contracot claimed prepriced rates at (+) 130% whereas it was agreed to be paid at (+) 68.82%.

19. The first contention of the applicant is that there is a long delay in issuing the charge memo dt.6-12-1996. The Respondents have offered an explanation for the delay. From the reply it is disclosed that the final bill relating to the said Contract Agreement was prepared on 16-3-1988. The work entrusted to the Contractor was completed on 30.6.1987. When the final bill indicated the (-) amount to the extent of Rs.1,78,549.36, the matter was referred to the Arbitrator vide letter dt.18.12.1989. The arbitrator awarded a sum of Rs.48,350/- in favour of the Department. The Contractor gave his willingness to pay the said sum on 2-3-1993. Thereafter the respondents attempted to investigae into the reasons which prompted the Garrison Engineer to make over payments to the Contractor. The applicant was asked to explain the same by letter dated 30.8.1991. The applicant submitted his representation on 1.4.1992. It is thereafter the Respondents proceeded to issue the charge memo on 6-12-1996. The authorities have to consider the existence of the prima-facie case to proceed against the applicant. Normally, they should have considered the award of the Arbitrator, willingness of the Contractor

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to pay back the sum of Rs.48,350/- to the Department and they should have considered as to the officer who was responsible for making the payments under VI RAR to XI RAR. THerefore, it cannot be stated that there was a long delay in issuing the charge memo. Delay does not vitiate the Disciplinary Proceedings. An employer can proceed against the employee for any irregularity or misconduct at any time while the employee remains in service with the employer. Therefore the contention of the applicant that there is a long delay cannot be accepted.

20. It is now clear that the applicant was responsible for making over payments to the Contractor under VI RAR to XI RAR. Bills. The Respondents have categorically stated that the applicant was fully aware of the mistake in Schedule A, Part-III of the Contract Agreement and condition 6 of IAFW 2249. This is not at all rebutted by the applicant by filing any rejoinder.

21. During the course of arguments the learned counsel for the applicant relied upon paras 436, 440, 468 and 470 and 473 of the Tender works. We are not concerned with any mistake committed by the department at the time of entering contract agreement with the contractor. We are expected to consider whether the applicant had acted diligently in carrying out or supervising the work of the Contractor as a Garrison Engineer. The Garrison Engineer has some responsibilities and duties. In para-479, which relates to payment of Running Amount in accordance with the conditions of the Contract. The responsibility lies with the Garrison Engineer. Relevant portion in para 479 reads as follows :-

> "Such payments shall be made on the personal certificate of the GE on IAFW-2263. The CWE/CE may,

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however, in respect of any contract or any contractor or in respect of any particular payment or payments direct that the GE shall not sanction the advance payment but forward the R.A.R. bill to him for approval and shall in such cases, either personally or through his nominee get the same checked on the spot with reference to the value of the work done and the cost of stores collected.

22. The applicant has not disputed the payments made by him to the Contractor under VI RAR to XI RAR bills. When the final bill was prepared it was noticed that the applicant had made over payments to the Contractor in these RAR bills. When that is so, the applicant cannot escape his responsibility to answer for making the over payments. The respondents have contended that the applicant should have restricted to make payments at (+) 68.82% instead of making payments at (+) 130%. The applicant was fully aware of this mistake which had crept in Schedule-A, part-III of the Contract Agreement.

23. Further it is contended that No.6 of IAFW-2249 requires deligence on the part of the Garrison Engineer, the payment should have been commensurate with the works executed by the Contractor. The applicant was not expected to make payments for the works which were not carried out by the Contractor. It is on account of the applicant making payment under VI RAR to XI RAR bills (-) payments was disclosed in the final bill. The applicant has not been able to explain the reasons for making over payments. The applicant should have paid contractor after ascertaining the quantity of work executed. The payment should be in commensurate with the work executed. Had the applicant been diligent, he could have certainly avoided over payment to the contractor. Considering all these facts, we are of the view that the Enquiry Officer is justified ~~for making~~ in reaching the conclusion that the applicant was responsible for making

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over payments to the Contractor. The Disciplinary Authority taken note of the findings recorded by the enquiry officer.

24. The penalty order dated 8-7-1999 (Annexure-15 page-64 to the OA) the Disciplinary Authority has taken into consideration the various factors and has imposed only a minor penalty. The observation made by the Disciplinary Authority in fixing the responsibility on the applicant for making over payments to the Contractor cannot be said to be irregular.

25. In that view of the matter, we are of the opinion that there is no illegality or irregularity in the order dated 8-7-1999 of Respondent No.1.

26. There are no merits in this application. The same is liable to be dismissed. Accordingly the OA is dismissed leaving the parties to bear their own costs.

(B.S.JAI PARAMESHWAR)
Member (J)

(R.RANGARAJAN)
Member (A)

Dated: 31.5.2000.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD.

COPY TO:

1. HDHNJ
2. HRRN (ADMN) MEMBER
3. HOSJP (JUDL)MEMBER
4. D.R. (ADMN)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

IST AND IIND COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE HON'BLE MR.JUSTICE D.H.NASIR
VICE CHAIRMAN

THE HON'BLE MR.R.RANGARAJAN
MEMBER (ADMN.)

THE HON'BLE MR.B.S.JAI PARAMESHWAR
MEMBER (JUDL.)

7/6/21

DATE OF ORDER 31/5/2000

MA/~~BA~~/CP.NO.

IN

OA.NO. 1277/99

ADMITED AND INTERIM DIRECTIONS ISSUED

ALLOWED

C.P.CLOSED

R.A. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद न्यायपीठ
HYDERABAD BENCH
6 JUN 2000
Despatch
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अपील विभाग/APPAL SECTION