

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH.

O.A.No.280/2000

Decided on : April 1, 2005.

**CORAM : HON'BLE MR.KULDIP SINGH, VICE CHAIRMAN &
HON'BLE MR.G.R.PATWARDHAN, MEMBER (ADM.).**

Rafique Ahmed son of Late Shri Hassam Khan, aged about 61 years, Resident of 199, Subhash Colony, Shastri Nagar, Jaipur.

By : Mr.S.K.Jain, Advocate.

Applicant

Versus

1. Union of India through the Secretary, Ministry of Communications, Department of Telecom, Sanchar Bhawan, New Delhi.
2. The Assistant Director General (Vigilance), Ministry of Communication, Department of Telecom, West Block, No.1, Wing-2, Ground Floor, R.K.Puram, Sector 6, New Delhi.

By : Mr.Neeraj Batra, Advocate.

Respondents

ORDER (ORAL)

KULDIP SINGH, VC

The applicant has filed this O.A challenging the order dated 28.4.2000 (Annexure A-1) by which a punishment of withholding of his pension to the extent of 20% for a period of 5 years, has been imposed upon him.

The facts as alleged by the applicant giving rise to filing of this O.A are that applicant was appointed as Engineering Supervisor in 1963 (or so) and reached to the level of Senior Time Scale of Indian Telecom Service, Group A, in the year 1989. His service record was above board. He was served with a charge sheet dated 20.12.1995 (Annexure A-2) containing the following three articles of charges :

"Article-I.

That the said Shri Rafique Ahmed while functioning as TDE, Sikar, during the period from 1992 to 1993, purchased 3700.07 metres. Of GI pipes 1-1/2 inches ISI mark 'B' class from M/s Rajan

-2-

Enterprises, Sikar, without any actual requirement, as is evident from the fact that 2533.20 mtrs. Out of the total purchase of 3700.07 mtrs. Were lying unutilised even on 27.9.1993; and further, the said purchase was made at exorbitant rates, thereby causing a loss of about Rs.1,80,378/41 to the Department and corresponding undue pecuniary advantage to the said supplier.....

Article-II.

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Rafique Ahmed irregularly awarded the work of construction of over-head lines in Sikar Telecom District to M/s Ojha Construction Co., Jaipur, whose rates were the second lowest, after having floated Short Tender for the said work in the absence of any urgency, without any assessment of L & W Stores, number of Works to be carried out or sanction of detailed estimates; and further, irregularly refunded the Earnest Money Deposit of Rs.50,000/- to M/s B.L.Saini of Khetri, through the same should have been forfeited as the said tenderer had been held to have failed to abide by the terms and conditions of tender....

Article-III

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Rafique Ahmed committed irregularities in the hiring of buildings for Fatehpur, Laxmangarh and Sri Madhopur Telephone Exchanges, thereby showing undue favour to the landlords/landlady of the buildings thus, hired..”

It was thus alleged that applicant, by his above conduct, committed grave misconduct, failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of Government servant thereby contravening Rule 3 (1)(i), (ii) and (iii) of the CCS (Conduct) Rules, 1964.

Shri D.C.Gupta was appointed as Inquiry Officer who proved the first and second charge against the applicant by inquiry report (Annexure A-5). He submits that the inquiry was not proper as principles of natural justice, rules and instructions were not followed. The applicant has enclosed the copies of statement of evidence brought before the Inquiry Officer as Annexure A-3. The first charge pertains to the excess purchase of G.I. Pipe and that too on a higher

rate. Thus, it had two parts. None was established by the respondents. During the relevant time the applicant was posted as TDE Sikar and requirement of pipe was demanded by SDO, Sikar and Jhunjhunu and thus he was not responsible for such demand. Thus, the charge is false against him. Secondly, purchase of pipe was to be made through a tender which was floated by the Telecom District Engineer and lowest tender was accepted. One Million Enterprises had also submitted its tender but the said firm was not fulfilling the terms and conditions of the NIT and thus, applicant had to choose M/s Rajan Enterprises who had lowest rate of Rs.124/- per metre of G.I.Pipe with over-head expenses i.e inclusive of all taxes and all other over-head expenses. Before such purchase the Dy. TDE had conducted a market survey which also showed that rate of the material was between Rs.85-90 per metre excluding taxes etc. Thus, ^{With the} from concurrence of the Accounts Officer, the purchase order was placed. So, the purchase was not on exorbitant rate and Accounts Officer was duly involved in it.

It is further submitted by applicant that under the rules, it is the Accounts Officer who is responsible for process and procedure for finalization of the rate and quantity and thus, his concurrence is pre-condition. It is this authority who is to thoroughly examine so as to ensure that procedure laid down in the rules and terms and conditions for making purchase of stores are fulfilled/adhered to strictly. Thus, service of charge sheet on him is illegal. He submits that charge no.2 was also partially proved against him wrongly as done in case of charge no.1 and charge no.3 was dropped by the respondents.

The applicant retired in July, 1997. However, he was paid gratuity in June, 2000, with a delay of three years. The respondents had sent the matter to the UPSC for consultation and ultimately by order dated 28.4.2000, passed in the name of the President of India, the respondents have imposed punishment for withholding of 20% of

(K)

the pension for a period of 5 years.

In the grounds to challenge the impugned order, the applicant submits that he has been punished for the fault of the Accounts Officer. However, the other guilty officials have been served charge sheet with a delay of 5-6 years, even though in their cases, permission was sought in 1994 itself. He submits that witnesses have deposed that purchase of the pipe was on the reasonable price. Thus, the finding of the inquiry officer against applicant is perverse as it ignores the main role of the Accounts Officer. The applicant has not been issued any notice before imposition of punishment which is in violation of rule 8 of the CCS (Pension) Rules. The punishment imposed on the applicant is illegal as there is no finding against him. The inquiry officer has recorded the finding in a mechanical manner without application of mind which is illegal. The evidence of the witnesses that material was purchased at reasonable price was disregarded by the inquiry officer. Infact, the real guilty is Accounts Officer and not the applicant. The entire purchase was made through the assessment and requisition sent by the SDO and with prior concurrence of Accounts Officer, thus, no fault lies with applicant. Even after receipt of the requisition for purchase, the matter is to process for financial sanction by the Accounts Officer and Dy.TDE. Thus, the applicant had no role in excess purchase. Now, the respondents have served the Dy.TDE and the Accounts Officer with charge sheets. The finding that purchase of material was in bulk is perverse as the same was purchased from time to time. The purchase was made by following the due procedure, rules and regulations and only the lowest tenderer was approved. The pipe was purchased on reasonable price and no financial proprietary was violated. The UPSC as well as the respondents have failed to consider that despite asking of the applicant, G-23 was not produced in the inquiry. The finding that lower rate was available is perverse as the

DGS&D rates were not communicated to the applicant. Shri R.D.Gupta executed work 10 times more than what applicant did, but no action was taken against him. Thus, there is discrimination. The respondents have not given him any show cause notice before proposed penalty as the findings of inquiry officer are in his favour. The issue of DGS&D rates was never considered in the inquiry. The charge of non-utilisation of charge is not tenable as material could not be utilised due to the diversion of machinery to some other project. The quotation of lowest rate given by Friends Engineering corporation, Jaipur, was after one year. He submits that there was a communication of higher officer for execution of work i.e. A work to be undertaken at Pilani and thus, the official concerned has processed the file on the basis of such communication, though initially the applicant himself made a remark and justification to place the order beyond the period of agreement. On the order of higher officers, one order was placed beyond the period of agreement, after extending the period of agreement which is permissible under the rules and for which no fault lies with the applicant. His procedure was approved by the Accounts Office and Dy. Telecom District Engineer. The respondents have not considered the term "market rate" in its right perspective. The Government has not suffered any loss and thus finding recorded to the contrary is perverse. The punishment is on the higher side as compared to the degree of offence alleged against the applicant.

The applicant has prayed for quashing the order dated 28.4.2000 with all the consequential benefits of full pension with arrears there on and also pay interest on the amount of gratuity from 1.8.1997 at the rate of 18% per annum till its realization.

The respondents are contesting the O.A. They submit that the charges levelled against Shri D.C.Gupta, Inquiry Officer, are not tenable as he is not a party in the O.A. The inquiry proceedings have

been conducted against the applicant in terms of rule 14 and 15 of the CCS (CCA) Rules, 1965 and the inquiry officer has not violated any rules, regulations or principles of natural justice. The applicant was given reasonable opportunity to defend himself. Out of the total purchase of 3700.07 mtrs. GI pipes worth Rs.2533.20 mtrs were lying underutilized even on 27.9.1993. The purchase was made at exorbitant rates, and thus a loss of Rs.1,80,378.41 was caused to the department. The applicant regularly awarded the work of construction of over-head lines in Sikar Telecom District to M/s Ojha Construction Ltd., Jaipur, whose rates were the second lowest, after having floated short tender for the said work in the absence of any urgency and without any assessment of L&W Stores, number of works to be carried out or sanction of detailed estimates; and further irregularly refunded the earnest money deposit of Rs.50,000/- to M/s B.L.Saini of Khetri though the same should have been forfeited as the said tender had been held to have failed to abide by the terms and conditions of tender. He committed irregularities in hiring of building for Fatehpur, Laxmangarh and Shri Madhopur Telephone Exchanges thereby showing undue favour to the landlords/landlady of the buildings hired by him. The inquiry officer has rightly recorded finding against the applicant. The disciplinary authority has found the applicant guilty of grave misconduct during the period of his service and accordingly punishment was rightly imposed upon him. The inquiry officer has arrived at cogent and well reasoned findings in respect of Article I and III which were accepted by the disciplinary authority in consultation with the UPSC. The copy of the UPSC advice is at Annexure R-1 dated 31.3.2000. The charge against him in regard to Article I and III has been proved fully whereas Article II has been proved partly. His gratuity was withheld in view of rule 69 (1)(c) of CCS (Pension) Rules, 1972. The applicant has not availed remedy of

Ku

review petition under rule 29-A of the CCS (CCA) Rules, 1965. The applicant has filed a rejoinder. The applicant has placed on record, Annexure A-9, an order passed in respect of Accounts Officer who was also charge sheeted departmentally and by this order he has been punished with the penalty of reduction of his pay by two stages from Rs.10,475/- to Rs.9920/- in the time scale of pay of Rs.8000-275-13500/- for a period of two years with cumulative effect.

We have heard the learned counsel for the parties present and have gone through the material on the file.

It is well settled that this Tribunal has very limited power to interfere in the disciplinary matters and only if it is found that there has been procedural infirmity or illegalities resulting into denial of reasonable opportunity to a delinquent employee to defend himself; or that it is a case of no evidence or if the punishment imposed upon the employee is so harsh that it shatters the conscience of the Court, that the Courts or Tribunals come into picture. Now, let us see as to whether there is any evidence against the applicant or not. Para 4.1 of the advice of the UPSC is worth mentioning here :-

"The case has been examined by the Commission in detail. As regard Article I of the charge they observe that the CO while functioning as TDE, Sikar, during 1992 to 1993 invited tenders by issue of Press Notice dated 27.8.1992 for supply of 1000 mtrs of GI pipe of 1-1/2 inch, ISI mark 'B' Class, and the tenders were opened on 17.9.92. Out of 5 tenders received, the lowest rate was quoted by M/s Million Hardware Stores @ Rs.75/- per metre who did not deposit EM while the next lowest tenderer was M/s Rajan Enterprises, Sikar with a quoted rate of Rs.124/- per meter including taxes. On a query by Accounts Officer (AO), the Dy. TDE recorded that the local market rate of the above pipe is about Rs.85/- to 90/- per meter and the AO, therefore, recommended negotiations with the 2nd lowest tenderer. Accordingly after negotiations, the work was awarded to M/s Rajan Enterprises at the rate of Rs.118.75 per metre inclusive of taxes, carriage (at site) without mentioning any quantity and a total quantity of 3700 meters of pipe against original tendered

KW

quantity of 1000 meters was purchased at the rate of Rs.118.75 per meter against the market rate of Rs.70/- resulting in alleged loss of Rs.1.80 lakhs (approx.).

It has been recorded that there was no justification for huge purchase of 3700 meters of pipe when the tender was only for 1000 metres of pipe that too after tender expired on 31.3.1993 and only 1166 metres of pipe had been utilised and about 2533 metres of pipes were lying underutilized. Thus, the allegation of placing order without specific requirement stood establishment. In so far as allegation of making purchase at higher rates is concerned, it was noticed that no justification of rates based on the local market rates was worked out before acceptance of the lowest tender. Moreover, the rate of purchase was higher than the prevailing market rate as well as DGS&D rate. Thus, the element of charge relating to higher rate has also been proved. Charge no.3 also stands proved. Considering the facts and circumstances of this case, it cannot be said that it is a case of no evidence inasmuch as even the applicant says that if there was some irregularity the entire blame lies on the Accounts Officer. Undisputedly, purchase of GI Pipe through the tender was job of a team in which Accounts Officer as well as the applicant and his juniors had important role to play. The applicant cannot save his skin by saying that the entire responsibility lies with the Accounts Officer. If his averment is accepted, then what was the requirement and importance of the post held by the applicant. It was expected of the applicant also to apply his mind when he is involved in the process. He cannot put blame on others.

In so far as Accounts Officer is concerned, disciplinary proceedings were conducted against him also and the CVC in its report has recorded that if the actual quantity was not brought to notice of Accounts Officer, he would have ascertained the same before his

K

recommendation. He allowed the bills of 3700.07 mtrs to be passed and did not care for the validity of the tender which expired on 31.3.1993 and allowed the purchases till 27.5.1993. He had accepted that it was decision of all the members of TEC to call for the documents of two lowest parties. Being member of the TEC, he failed to put forth his viewpoint and did not record his protest/objection. He has also been punished. It is not the case of the applicant that the applicant could not give his comments on the advice of the Accounts Officer or he was bound to accept the same blindly. If the excess requirement was given by the other officers, it was expected of the applicant to have verified the same and not act upon such excess demands.

It was argued on behalf of the applicant that the Accounts Officer has been visited with less penalty as compared to applicant who has been visited with heavy penalty whereas the charges against both the officers are same. Considering the nature of allegations, we do not find that the penalty imposed upon the applicant is disproportionate to the alleged degree of offence levelled and proved against him. Moreover, the Accounts Officer was still in service when he was imposed the punishment whereas the applicant had retired. So, probably no other punishment could be imposed upon him. Thus, to say that there has been discrimination in the choosing of penalty against the applicant is nothing but an argument which has to be rejected.

Learned counsel for the applicant tried to invite this Tribunal to indulge in appreciation of evidence. He has referred to the report of the inquiry officer as well as statement of the Accounts Officer recorded during the inquiry. Learned counsel for the applicant submitted that the applicant was not the only person to have accepted the tender. It was with the concurrence of the Accounts officer and the other members of the tender committee who accepted the tender. Besides that, counsel for the applicant submitted that the statement of the Accounts Officer proves that there was a requirement of quantity purchased as various exchanges were

under development in the District itself. With reference to statement of the Accounts Officer, he submits that the requirement from various other SDOTs were received and the SDOT Pilani had given the requirement of 1702 Mtrs. Of GI Pipes and approval for purchase of the same on the earlier approved rate was sought from the Accounts Officer which was confirmed by the Accounts Officer. Thus, it is submitted by the counsel for the applicant that there was no excess purchase as alleged and thus the finding arrived at by the Inquiry Officer Officer are perverse.

First of all, let it be stated that while exercising the power of judicial review, this Tribunal cannot re-appreciate the evidence when it has been specifically dealt with by the Inquiry officer by returning his findings against the applicant based on evidence. Besides that we may mention that the NIT was issued only for 1000 Mtrs. Of GI Pies whereas the purchases have been made four times than the requirement for which the tender had been invited and excess purchase was made after the lapse of the tender contract. Thus, it cannot be said that the findings recorded by the inquiry officer are perverse. Rather these facts go to show that the findings recorded by the inquiry officer ~~have~~ are correct that the purchase of excess material beyond the period of validity of tender is against the financial propriety. It is well settled that even if the Tribunal/Courts take a different view based on facts/evidence, the Court cannot substitute its own finding for that of the inquiry officer more particularly when there is sufficient evidence with the inquiry officer to base his finding and such evidence is apparent on the face of the record. The counsel for the applicant had also submitted that the charge as contained in Article I is stated to have been proved because same mentions about the purchase of 3700 Mtrs. Of the GI Pipes out of which 2533 mtrs remain unutilised and further the said purchase was made at an exorbitant rate. The counsel for the applicant also referred to a judgement in the case reported as 1987(Supp) SCC 579 titled Bhagwati Prasad Dubey Vs. Food Corporation of India etc. In that case the charge

of purchase of material on higher rates was alleged against the delinquent employee. The purchase had been made by the appellant officer under pressure by acting to the best of his judgement and he had made purchases at the rates on which the another undertaking had purchased the same material. He was visited with the penalty of removal by the disciplinary authority. The Hon'ble Supreme Court held that in the circumstances and facts of the case, the appellant at worst, could only be accused of an error of judgement. So, the order of removal was quashed. On the same analogy learned counsel for the applicant submitted that in this case also since the applicant acted to the best of his judgement as the lower tender of M/s Million Traders of Rs.75/-PM could not be accepted as the same was invalid and the next lowest tender was accepted that too after negotiations at the rate of Rs.118.75 per mtr. It is in these circumstances that under pressure the purchase was made at higher rates. In our view this contention of the learned counsel for the applicant has no force because first of all this was not the case of acute necessity. There was no pressure of necessity. Besides that it has also come in evidence clearly that rate of about Rs.75/- to Rs.80/- per mtr was there in the market but the purchase was made at the rate of Rs.118.75 which was obviously on higher side. So, the judgement relied upon by the learned counsel for the applicant is not applicable and further when the tender was invited only for 1000 Mtrs. Of GI Pipe, why the 3700 mtrs. Of purchase was made that too after lapse of the period of tender and without verifying the actual requirement. This shows that the inquiry officer has rightly concluded that there was violation of financial propriety.

In so far as procedure adopted in conduct of the inquiry is concerned, we find that the applicant has been given due opportunity of hearing to present his side of the case which has been duly availed of by him. The inquiry officer, the disciplinary authority as well as the UPSC have considered the points relevant to the issue. The allegations against



the inquiry officer that he was biased are not tenable in view of the fact that ~~neither the inquiry report is under challenge nor the inquiry officer is a party in this O.A.~~ In so far as the claim for the applicant that only part of the charge was proved against the applicant is concerned, it may be stated that the Hon'ble Supreme Court of India in the case of State of Punjab & Others Vs. Ram Singh, JT 1992 (4) SC, 253, has held that even a single act of misconduct is sufficient for major penalty and there is no need of plurality of misconduct against a delinquent employee. Thus, we do not find any force even in this ground raised on behalf of the applicant.

In the result the O.A. is found to be devoid of any merits and is rejected, without any order as to costs.


(G.R.PATWARDHAN)
MEMBER (ADM.)


(KULDIP SINGH)
VICE CHAIRMAN

April 1, 2005.

HC*