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CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH
JABALPUR

Original Application No. 470 of 2005

Jabalpur, this the 18th day of December, 2006

Hon'ble Dr. G.C. Srivastava, Vice Chairman
Hon'ble Shri A.K. Gaur, Judicial Member

K.K. Nath,
Aged about 70 years,
S/o. Late Shri K.M. Nath,
Retd. SAO (Con)/Bilaspur
Indira Colony, Behind Tar-Bahar
Police Station, P.O. Bilaspur,
R.S., Chhattisgarh – 495004.

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Applicant

(By Advocate – Shri V.G. Tamaskar)

V E R S U S

1. Union of India,
Through : Secretary,
Ministry of Railways,
Rail Bhawan,
New Delhi.

2. General Manager,
South Eastern Railway,
Garden – Reach,
Kolkata – 700043.

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Respondents

(By Advocate – Shri M.N. Banerji)

O R D E R

By Dr. G.C. Srivastava, Vice Chairman –

This Original Application has been filed against the order dated 8.4.2005 (Annexure A-2) whereby a penalty of 20% cut in pension has been imposed upon the applicant. The applicant has also challenged the charge sheet dated 22.12.1999 (Annexure A-1) based upon which the penalty order was issued. Accordingly, the applicant has prayed for the following relief:

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“(i) That, the Hon’ble Tribunal be pleased to quash, Charge sheet memo No. E(O)I-99/PU-2/SE/134 Government of India Ministry of Railways (Railway Board) New Delhi dated 22.12.1999 i.e. Annexure A-1,

(ii) That, the Hon’ble Tribunal be pleased to quash punishment order No. E(O)I-99/Pu-2/SE/134 Government of India Ministry of Railways (Railway Board) New Delhi date 8.4.2005 i.e. Annexure A-2,

(iii) That, the Hon’ble Tribunal be pleased to quash No. DCPO(G)/CON/KKN/99/MJR/846 South Eastern Railway dated 11.4.2005 i.e. Annexure A-3.”

2. The undisputed facts of the case are that the applicant, who retired as Senior Accounts Officer (Construction), South Eastern Railway, Bilaspur on 31.12.1995, was asked to participate in a tender committee meeting on 28.12.1995 along with Deputy Chief Electrical Engineer (Construction), Bilaspur and Deputy Chief Signal and Telecommunication Engineer (Construction), Bilaspur. The tender committee held its meeting on 28.12.1995 and considered the tenders which had been opened on 15.11.1995. It recommended the lowest tender for acceptance. Subsequently on 22.12.1999 a charge sheet was issued against the applicant alleging that he committed grave misconduct in as much as he along with other members of the tender committee recommended acceptance of the offer of a contractor who was not eligible and had tendered rates, which were not workable. Consequently the work could not be executed in time causing delay and huge loss to the Railways. On denial by the applicant, the charge was inquired into and the inquiry officer held as proved two elements of the charge, namely that the applicant recommended acceptance of the offer of a contractor, who did not fulfill the eligibility criteria stipulated for the award of the contract and that the applicant had the knowledge of the eligibility criteria, but he ignored the same while recommending the tender offer. The inquiry officer further held as not proved the third element of the charge that the tender rates quoted by the contractor were too low to be workable. After obtaining the advice of the Union Public Service Commission, the President, accepting the

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report of the inquiry officer, imposed the penalty of 20% cut in the pension of the applicant for five years.

3. The main grounds on which the applicant has challenged the penalty order are i) the disciplinary proceedings had been initiated more than four years after the event took place, ii) he was not the original member of the tender committee and was forced to attend the meeting although he was not competent to do so, and iii) he alone has been singled out for punishment leaving out other members of the tender committee and has been made scapegoat to save senior and responsible officers.

4. Controverting these contentions, the respondents have, in their reply, stated that the charge sheet was served on the applicant on 24.12.1999, while the event i.e. the meeting of the tender committee took place on 28.12.1995. Hence the initiation of disciplinary proceeding is well within time. The respondents have also stated that the applicant was finance member of the tender committee and having participated in the meeting of the tender committee he cannot escape from his responsibility as the finance member of the committee. Regarding the allegation that the applicant was singled out for punishment, respondents have stated that another member, Deputy Chief Electrical Engineer (Constructions) who was convener of the tender committee was also held responsible and the penalty of 20% cut in pension for a period of 5 years was imposed on him. The third member of the Committee as well the tender accepting authority were also proceeded against.

5. Counsel for both the parties submitted their written submissions which have been taken on record. We have perused the records as well as have gone through the written arguments.

6. Originally the applicant had claimed that he was served with the charge sheet dated 22.12.1999 on 29.12.1999 for an event that took

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place on 15.11.1995. His contention was that the cause of action arose on 15.11.1995 when the tenders were opened. The respondents controverted this statement by stating that the charge sheet was issued on 22.12.1999 and it was served upon the applicant on 24.12.1999. This statement was subsequently admitted by the applicant. It is also an admitted fact that the tender committee meeting took place on 28.12.1995. The contention of the applicant that the time limit of four years, has to be reckoned with effect from 15.11.1995 is misleading. The applicant himself has admitted that the tenders were opened by the Deputy Chief Electrical Engineer (Construction) on 15.11.1995 and thereafter these were considered by the tender committee of which the applicant was a part on 28.12.1995. The time period of four years has, therefore, ^{to} be reckoned from 28.12.1995. Consequently, we hold that the disciplinary proceedings were initiated within time, as the charge sheet was served on the applicant on 24.12.1999.

7. So far as the composition of the tender committee is concerned, it is not the case of the applicant that it is a statutory body, composition of which cannot be altered by executive instructions. It is an admitted fact that the regular finance member of the tender committee i.e. Deputy Chief Accounts Officer (Construction) was not available and that is why the applicant who was at that time Senior Accounts Officer (Construction) was asked to attend the meeting. This is a common practice and the applicant cannot get out of his responsibility on the ground that he was not the regular member of the tender committee. He appears to be the officer next to the Deputy Chief Accounts Officer (Construction) and therefore it is unacceptable that he was not qualified to be a member of the tender committee.

8. The respondents have categorically denied the allegation that the applicant was singled out for punishment. It has been clearly stated that another member of the tender committee was also given identical punishment of 20% cut in pension. Hence the allegation that the impugned order is discriminatory does not hold ground.

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9. The applicant has not found any fault with the inquiry proceedings or with the findings of the inquiry officer. It is clear from the documents on record that the recommended tenderer did not have the minimum eligibility criterion of having executed at least one single work costing Rs. 20,00,000/- or above. It has not been averred by the applicant that he recommended the case of the alleged tenderer because he was not aware of this eligibility criterion. In view of these facts, we are firmly of the view that the inquiry officer's report holding the aforesaid two elements of the charges as proved has rightly been accepted by the disciplinary authority.

10. It is well settled law that Tribunals are not expected to interfere with the quantum of punishment unless it shocks the conscience of the adjudicating authority. In the instance case, the applicant has not averred that the penalty imposed on him is too excessive. No irregularities in the conduct of the disciplinary proceedings have been alleged either.

11. In view of the above discussion, we find that order of the disciplinary authority (Annexure A-2) does not suffer from inequity or legal infirmity and in no way it can be found fault with. Accordingly, we do not find any merit in this Original Application and it is dismissed with no order as to costs.

A.K. Gaur
(A.K. Gaur)
Judicial Member

G.C. Srivastava
(Dr. G.C. Srivastava)
Vice Chairman

पूठांकन सं ओ/न्या.....जबलपुर, दि.....

एवमिति अर्थात् दिनांक.....

- (1) सचिव, न्यायिक सेवा आयोग, जबलपुर
- (2) अध्यक्ष, न्यायिक सेवा आयोग, जबलपुर
- (3) उपाध्यक्ष, न्यायिक सेवा आयोग, जबलपुर
- (4) न्यायपालिका, जबलपुर

सूचना एवं आवश्यक कार्यवाही हेतु
उप रजिस्ट्रार

V.L. Tamaskar
M.K. Bhatnagar
A.V. Bhatnagar

Sh. D. K. Tamaskar
22/12/06
22/12/06

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