

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 356 of 2003

Indore, this the 27th day of April, 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

Radhe Shyam Jayant, (Staff no. 8307), S/o. Shri H.R. Jayant, aged about 52 years, working as Divisional Engineer (Instl.), in O/o. the General Manager, Telecom. District Gwalior, Resident of H-1125, New Darpan Colony, Gwalior-474011. Applicant

(By Advocate – Shri M. Rao alongwith Shri S.C. Sharma)

V e r s u s

1. Union of India, thro' Secretary, Department of Telecommunication, Ministry of Communications and Information Technology, Sanchar Bhawan, 20, Ashoka Road, New Delhi – 110001.
2. Sr. Deputy Director General (Vigilance), Deptt. of Telecom. West lock 1, Wing 2, Ground Floor, Sector-I, R.K. Puram, New Delhi – 110066.
3. Central Vigilance Commission, through Chief Vigilance Commissioner, Satarkta Bhawan, Block-A, GPO Complex, INA, New Delhi.
4. Union Public Service Commission, through Secretary, Dholpur House, Shahjahan Road, New Delhi. Respondents

(By Advocate – Shri T.C. Singhal)

O R D E R

By Madan Mohan, Judicial Member -

By filing this Original Application the applicant has claimed the following main reliefs :



"(I) the order awarding punishment, Annexure A-20, be quashed. Respondents be commanded to pay all consequential benefits to the applicant,

(II) the respondents be directed to give all pecuniary as well as promotional benefits as if there is no punishment imposed against him."

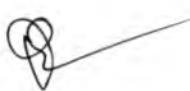
2. The brief facts of the case are that the applicant is presently posted as DE (Installation) in the office of the General Manager, Telecom, District Gwalior. During 18.4.1994 to 24.6.1994 the applicant was functioning as TDE, Ujjain and it is alleged that during this period the applicant irregularly placed purchase orders on the DG (S&D) rate contract, on various firms, for various items beyond his financial powers delegated without following the prescribed procedure, without approval of the competent authority and without any financial concurrence of IFA/AO. It was also alleged that purchases were made without any requirement from sub-ordinate units and without any sanctioned estimate. According to the allegations purchases were made worth more than Rs. 52,65,798/- While functioning as TDE, Guna during 25.6.1994 to 7.3.1995 the applicant has irregularly placed purchase orders on DG (S&D) rate contract, on various firms for various items worth more than Rs. 71,12,772/- beyond financial powers delegated to him. It is also alleged against him that while working as TDE, Ujjain and Guna he did not follow prescribed procedure for maintaining files while placing purchase orders and did not make over records pertaining to purchase orders to his successor. A charge sheet dated 11.8.1998 was issued (Annexure A-1). Subsequently the charge sheet was modified vide corrigendum dated 1.5.1999. The applicant denied the charges vide his application dated 9.9.1998 (Annexure A-3). Many of the important documents which was insisted by the applicant for being shown in original were not shown to him. Even out of 68 admitted additional documents, only 26 documents, which were of least importance, fromt eh point of defence, were shown and their copies, as demanded, were



provided and remaining 42 documents were virtually denied on the ground of non-availability. After conducting the enquiry the enquiry officer has submitted the enquiry report dated 16.3.2001 (Annexure A-15) by which the first two charges were proved and 3rd charge was not proved. The disciplinary authority disagreeing with the finding of the enquiry officer sent the case to CVC for advice. CVC advised for treating all charges against the charged official as proved and for imposition of suitable major penalty in view of the gravity of alleged lapses. Thereafter a show cause notice was served on the applicant pursuant to the holding of all the three charges as proved, in dis-agreement with the finding of the enquiry officer. The applicant submitted reply to the show cause notice on 19.10.2001 explaining briefly that the alleged charges are not sustainable. Thereafter the disciplinary authority sought advice of the UPSC in this regard. The UPSC vide letter dated 26.6.2002 advised that first two charges stand proved and the third charge is partially proved. The UPSC also advised that the ends of justice would be met if a penalty of reduction of pay by three stages in the time scale of pay for a period of three years with further direction that the applicant would not earn any increment during this period and that the reduction would have the effect of postponing the future increments of his pay, is imposed. Finally the disciplinary authority passed the impugned order dated 21st August, 2002 as advised by the UPSC (Annexure A-20). This action of the disciplinary authority is against the law. Hence, this Original Application is filed.

3. Heard the learned counsel for the parties and carefully perused the pleadings and records.

4. It is argued on behalf of the applicant that the copies of the relevant and important concerned documents were not shown to the applicant inspite of demand of the applicant by oral and in writing. Hence, he could not defend his case properly. The applicant only placed the purchase orders. He has not paid any money to any firm or any person. He has also



not traveled beyond his financial powers. So far as the missing of the file is concerned, the applicant is a Class-I officer and he is not responsible for maintaining the records and files of the office and this is the duty of the staff concerned for which the applicant cannot be held liable at all. According to the enquiry officer third charge was not proved while the disciplinary authority in his dissenting note sent the matter to the CVC which found the third charge also proved and suggested for major penalty. The learned counsel for the applicant has drawn our attention towards the judgment of the CAT, Madras Bench in the case of N. Sundaramurthy & Ors. Vs. Lieutenant Governor of Pondicherry, (1990) 12 ATC 553, wherein the Tribunal has held that "Vigilance Commission's advice to be restricted to facts and findings and should not extend to quantum of punishment." Hence, the whole proceedings conducted by the respondents are against the rules and law and are liable to be quashed and set aside.

5. In reply the learned counsel for the respondents argued that from the certificate issued by the applicant at Annexure A-6 all the listed documents were inspected by him. Infact the charge against the applicant was not that he did not keep any record of the purchase orders irregularly placed by him and therefore the copies of the purchase orders had to be obtained from DG (S&D). The applicant has no where denied that the purchase orders were placed by him. All the relevant and available documents were duly produced during the enquiry. The applicant has not referred to any particular document because of which his right of defence in any way hampered or prejudiced. The applicant was not himself sure about the relevance or importance of the thousands of documents he had sought to be filed as defence evidence. If the applicant had demanded with details as to how and why the particular documents was relevant or material and important, the respondents would certainly have procured it, with every possible effort. All purchases from any source are governed by schedule of financial powers and various instructions issued by the Department of Telecom. As well as by the CGM, Telecom of the circle



concerned. The orders placed by the applicant for purchase of stores were purchase orders placed on specified firms against rate contracts finalized by DGS&D. If the baseless contentions of the applicant are accepted it would mean that any officer designated as direct demanding officer would have absolute powers to make indiscriminate purchases for unlimited amount by placing indents or by placing purchase orders against rate contract finalized by DGS&D and that too with no authority. The enquiry officer in his report at Annexure A-15, the UPSC in their statutory advise Annexure A-19 and the President in the impugned order Annexure A-20 have thoroughly discussed and considered all the aspects of the charges framed against the applicant, the evidence adduced during the enquiry, submissions made by the applicant and also various relevant rules and instructions. So far as the ruling of the CAT Madras Bench cited on behalf of the applicant is concerned, it is not applicable in this case as the impugned order is passed on the basis of the advice of the UPSC as is also admitted by the applicant in his OA in paragraph 4.19 and not on the advice of the CVC. The CVC has simply advised for imposition of suitable major penalty in view of the gravity of the alleged lapses treating all the charges as proved. Hence, the respondents have neither committed any irregularity or illegality in conducting the departmental enquiry proceedings and also while passing the impugned orders. Thus, this Original Application deserves to be dismissed.

6. After hearing the learned counsel for both the parties and on careful perusal of the pleadings and records, we find that according to the enquiry officer's report the third charge was not proved. We have perused the memorandum dated 16th July, 2001 (Annexure A-17) i.e. the dissenting note in which it is clearly mentioned that purchase orders were placed in the file only. In fact office copies of the purchase orders had to be obtained from DGS&D, as the same were not available in any file. The charged officer has not adduced any documentary or oral evidence to substantiate his claim that he had followed the prescribed procedure for



maintenance of files. The depositions of the concerned witnesses clearly proved that the charged officer was handling the purchase orders himself and the same were in the personal possession of the charged officer, as the TDE, and that the purchase proposals were not processed in any file, and no record was kept of the purchase orders placed. Further while making over charge to his successors, he did not make over the records pertaining to the purchase orders placed by him for huge amount. The Charged officer deliberately did not follow the procedure for maintenance of the files, while placing the purchase orders in question, and that he kept his successors totally in the dark about the said purchase orders, in violation of the rules. Hence, charge No. 3 is fully proved. Opportunity of hearing was given to the applicant against this dissenting note as the applicant submitted his explanation and it was duly considered in view of the above facts the applicant cannot say that he was not responsible for the concerned files as he himself placed the purchase orders without taking prior permission or directions from the concerned officers. These files were in possession of the applicant himself and he did not handover these files to his successors and he kept them in dark. Though the applicant has not made any payment himself but he has traveled beyond his delegated financial powers while passing the alleged purchase orders to the specified firms. The applicant was not legally entitled or authorized in this regard. So far as the ruling of the CAT Madras Bench is concerned, we have perused this ruling and also perused the advise of the Central Vigilance Commission. We find that the CVC has simply advised for imposition of a suitable major penalty in view of the gravity of the lapses committed by him and adduced during the course of enquiry proceedings. The applicant had placed 2 purchase orders amounting to Rs. 53,65,798/- while functioning as TDE, Ujjain and for Rs. 71,12,772/-, while functioning as TDE, Guna. We have perused the advise of the UPSC dated 26.6.2002 which is a detailed, speaking and reasoned advise and in its paragraph 5 it is mentioned as under :



"5. In the light of their findings as discussed above and after taking into account all other aspects relevant to the case, the Commission consider that the ends of justice will be met if a penalty of reduction of pay by three stages in the time scale of pay for a period of three years with further directions that the CO Shri R.S. Jayant would not earn any increment during this period and that the reduction would have the effect of postponing the future increments of his pay, is imposed upon him. They advise accordingly.

Under these circumstances the ruling cited by the applicant of the Madras Bench is not applicable in the present case and it is distinguishable. The disciplinary authority has passed the impugned order dated 21st August, 2002 (Annexure A-20) and we find that this is a speaking, detailed and reasoned order. We have perused this order and find that the same is passed on the basis of the advice of the UPSC as also admitted by the applicant himself in his OA in paragraph 4.19.

7. Considering all the facts and circumstances of the case, we are of the opinion that the applicant has failed to prove his case and this Original Application is liable to be dismissed as having no merits. Accordingly, the Original Application is dismissed. No costs.


(Madan Mohan)
 Judicial Member


(M.P. Singh)
 Vice Chairman

पूर्णकान रोड/ला जबलपुर, दि.....
 यादिनी निवास, जबलपुर
 (1) सचिव, दिवाली, रोड/ला, जबलपुर, जबलपुर
 (2) आवेदक दिवाली, रोड/ला, जबलपुर, जबलपुर के काउंसल
 "SA" (3) प्रबली दिवाली, रोड/ला, जबलपुर, जबलपुर के काउंसल
 (4) विद्यालय, लोहा, जबलपुर, जबलपुर
 सूचना एवं आवश्यक कानूनी हेतु

*m Rao Dr. & w
 T. C. Singh Dr. & w*

*Deemed
 on 6.5.05*