

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

OA No.908/03

Jabalpur, this the 16th day of December 2004

CORAM

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

R.P.Shrivastava
S/o Late Shri Shitla Sahai Shrivastava
Retired Assistant General Manager.
O/o Chief General Manager, Telecom
M.P.Telecom Circle, Bhopal

Applicant

(By advocate Shri Sanjay K.Agarwal)

Versus

1. Union of India through
the Secretary, Ministry
of Communications,
Deptt. of Telecommunications
West Block I, Wing.II, Ground Floor
R.K.Puram, Sector-I, New Delhi.
2. Union Public Service Commission
through its Secretary, Dholpur House
Shahjahan Road, New Delhi.

Respondents

(By advocate Shri K.N.Pethia)

O R D E R

By Madan Mohan, Judicial Member

By filing this OA, the applicant has sought the following
reliefs:

- (i) To quash the impugned order dated 11.9.03.
- (ii) To direct the respondents to refund the amount,
if any, recovered from the applicant on the
basis of impugned order.

2. The brief facts of the case are that the applicant
was working as Telecom District Engineer at Bilaspur.
He was placed under suspension by an order dated 28.6.95.
The applicant filed OA No.315/96 which was disposed of
by the Tribunal with a direction to the respondents to
consider and decide the representation of the applicant.



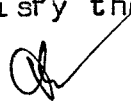
On the basis of the Tribunal's order, the suspension of the applicant was revoked vide order dated 9.1.98. He was kept under suspension for a period of almost 3 years on incorrect grounds. A year after the order of suspension was revoked, a memo was issued to the applicant dated 1.3.99 whereby a DE was proposed to be instituted against the applicant. The applicant filed reply to the charge sheet and denied the charges. Shri K.K.Kushreshtha, Assistant Director General was appointed as Enquiry Officer and upon conclusion of the enquiry, he submitted his report to the disciplinary authority on 18.7.01, with the finding that the charges against the applicant are not proved. In spite of clear exonerative report by the enquiry officer and recommendations made by Central Vigilance Commission, the disciplinary authority did not agree with the findings and consequently a memo was issued to the applicant on 21.8.02 after one year, by which the applicant was informed that the disciplinary authority proposed to disagree with the findings of the enquiry officer as well as the advice tendered by CVC and the applicant was asked to submit a representation. The applicant submitted a detailed representation to the aforesaid memo whereby he objected to the proposed action of the disciplinary authority. The disciplinary authority thereafter consulted the UPSC which tendered its advice on 10.7.03. The UPSC observed that there was no urgency at all for the applicant for effecting purchase of the items in question without any authority or without following usual procedure. The



The disciplinary authority impressed by the advice tendered by the UPSC and without recording any reasons and without affording any opportunity of hearing on the question of quantum of punishment inflicted penalty of withholding of 10% of pension for a period of 5 years on the applicant vide order dated 11.9.03. Hence this OA is filed.


3. Heard learned counsel for both parties. It is argued on behalf of the applicant that the enquiry officer had submitted his report to the disciplinary authority on 18.7.2001 in which it is clearly mentioned that the charge against the applicant is not proved and the report of CVC also shows that "serving of government displeasure on the applicant in place of written warning". But the disciplinary authority has ignored the aforesaid report of the enquiry officer and the report of the CVC and only based on the advice of the UPSC which is not at all proved by any evidence. The penalty of 10% reduction of pension is very harsh and without any basis. Hence the impugned order is liable to be quashed and set aside.

4. In reply, learned counsel for the respondents argued that the charge against the applicant related to corruption. The disciplinary authority has considered the advice tendered by the UPSC. The commission, inter-alia, observed that the ~~main thrust~~ of the argument in defence of the charged officer is that the Telecom District Engineer, being a Direct De manding Officer, had absolute financial powers and sanction of any higher authority was not required. The Commission have, however, noted that it is evident that consultation with the Internal Financial Advisor is mandatory before approving any proposal for incurring expenditure in order to satisfy the conditions laid down

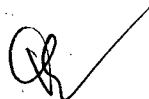


in para 38.17 of CPWD Manual Vol.II. The Commission have also found that purchase through Rate Contract approved by DGS&D is only one of the different modes of purchases, in which only the process of inviting tenders is eliminated, and purchase in any manner has to be governed by the Schedule of Financial Powers of Officers of the Department of Telecom. After having discussed all aspects of the case, the Commission have noted that, the fact is established that none of the field officers had intimated their requirement in writing and there was no urgency at all for the charged officer for effecting the purchase of the items in question, worth Rs. 5,70,407/- without any authority and without following the usual procedure", and further argued that the President disagreed with the finding of the enquiry authority dated 18.7.01 and the advice tendered by the CVC and stated in the memo that the memo along with the copy of the enquiry report was forwarded to the applicant (Annexure A7) and on the basis of the submission made by the applicant and the advice of the UPSC, the dissenting note was prepared and the impugned order of punishment was passed in accordance with the rules and law. Hence there is no irregularity or illegality in conducting the departmental enquiry proceedings against the applicant and in passing the impugned orders.

5. After hearing the learned counsel for the parties and carefully perusing the records, we find that the enquiry officer in his report dated 18.7.01 (Annexure A8) has mentioned that the charge against the applicant is not proved. We have perused the original documents produced by the respondents in compliance with the order of the Tribunal dated 7th ^{Oct. 04} Aug. '04, i.e. the departmental enquiry proceedings including the dissenting note dated 21st Aug. '02. In the dissenting note, it is mentioned



that "The President has observed that the Inquiry Authority has held the charge, as not proved, mainly on the ground that the charged officer, as the Telecom District Engineer, was a 'Direct Demanding Officer'. The Inquiry Authority has concluded that, as Direct Demanding Officer, the charged officer had absolute powers to make purchases against DGS&D Rate Contracts, irrespective of the financial powers delegated to him. However, nothing has come on record to substantiate this conclusion of the Inquiring Authority, except the baseless averment of the charged officer to that effect," and further mentioned that "the fact, as has emerged from the depositions of witnesses, that none of the field officers had intimated their requirement in writing, establishes that there was no urgency at all for effecting purchase of the items in question worth Rs.5,70,407/- without any authority and without following the usual procedure. The president, therefore, proposes to hold the charge framed against ~~he~~ said R.P.Shrivastava, as proved, on the basis of evidence on record, in disagreement with the findings of the inquiring authority as well as the advice tendered by the CVC." we have perused this dissenting note. The President has carefully considered the records, the finding of the enquiry and the submissions made by the applicant as also the advice tendered by the UPSC and then he made the objective assessment of the entire case and, therefore, the charge was found proved against the applicant. The copy of the report of the EO and the dissenting note were sent to the applicant. Due opportunity of hearing was given. We have perused the advice of the UPSC (Annexure A11) in which it is clearly mentioned in para 11 that "taking all



factors into account as discussed above, the Commission note that the charge against the CO stands proved and consider that the ends of justice would be met in the case if penalty of 10% cut in the CO's pension for a period of 5 years is imposed on the CO. They advise accordingly." Hence this is not a case of no evidence and the Tribunal cannot reappraise the evidence. The charge against the applicant is very serious, involving Rs.5,70,407. As the applicant is retired from service, no other punishment can be awarded except the impugned punishment of 10% cut in the pension for 5 years. It does not seem to be harsh.

6. Considering all facts and circumstances of the case, we are of the considered opinion that the OA has no merit. Accordingly the OA is dismissed. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

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पृष्ठकल सं ओ/व्या. जवलपुर, दि.....

पतिविधि अर्को विधि:-

- (1) सचिव, उच्च न्यायालय धर (उपनिर्देशन, जवलपुर)
- (2) अध्यक्ष श्री. शिखरी/रु के कार्यालय
- (3) कार्यवाही श्री/श्रीमती/रु के कार्यालय
- (4) बं. न्या. म. म. म. जवलपुर न्यायाधीश
सूचना एवं आवश्यक कार्यवाही हेतु

उप सचिवद्वारा

Sanjay K. Agrawal
Dev. 288
K. R. Pithia
Dev. 287

Received
On 17-12-04
BS