

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 570 of 2002

Jabalpur, this the 16th day of August, 2004

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. A.K. Bhatnagar, Judicial Member

Pramod Kumar Khindri,
Chief General Manager,
Telecom, Date of Birth
13/11/1949, S/o Shri G.D.
Khindri, Bungalow No.1
Type VI, T & D Circle
Colony, Theatre Road,
Jabalpur(M.P.) 482001

APPLICANT

(By Advocate - Shri S. Paul)

VERSUS

1. Union of India,
Through its Secretary,
Ministry, of Communication
New Delhi.

2. Union Public Service
Commission through its
Secretary, Dholpur House,
Shahjahan Road,
New Delhi.

RESPONDENTS

(By Advocate - Shri S.P. Singh)

O R D E R (ORAL)

By M.P. Singh, Vice Chairman -

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

"(ii) Set aside the charge-sheet dated 6.6.2001
Annexure A/5 and the punishment order dated 27.6.2002
Annexure A/1;

(iii) Consequently, command the respondents to
provide all consequential benefits to the petitioner
as if the impugned orders aforesaid are never passed."

2. The brief facts of the case, as narrated by the
applicant, are that he was working as Chief General Manager,
Telecom, Railway Electrification Project Circle, Nagpur
during the period from 15.2.1994 to 31.7.1998. He was issued
a charge-sheet under Rule 16 of Central Civil Services
(Classification, Control & Appeal) Rules, 1965 vide memo dated
6.6.2001 (Annexure-A-5) alleging as under-

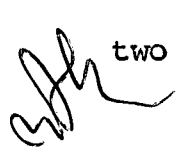
"The said Shri P.K. Khindri, as the Chief General
Manager, thus totally ignored the extant rules/
regulations and the specific instructions issued
vide the aforesaid circular letter No.51-6/91-MMC/Pt.
dated 12.1.1993; and, without any authority, approved
the purchase of huge quantities of 2/2 VHF Radio

systems from two specified firms, without inviting tenders as required, far beyond his financial powers, and inducted the said non-standard equipments into the Telecom network. Further, the equipments thus irregularly purchased were not got inspected by the prescribed inspecting authority, viz. Telecom Quality Assurance Circle. He thus committed gross financial impropriety, thereby violating inter-alia Rule 60 of P&T Financial Handbook Volume-I."

The applicant submitted his detailed representation on 25.6.2001 (Annexure-A-6) demanding inspection of various documents and providing of photo copies of the same. He has also submitted a representation on 18.7.2001 (Annexure-A-7) for providing him a copy of the 'Minutes/Report of the High Power Committee for evaluation of the performance of 2/2 VHF Radio System set up by Deptt. of Telecom'. The respondents vide letter dated 10.10.2001 have observed as under-

"The President has carefully considered the request of Shri P.K.Khindri, and has observed that, while the charge against Shri P.K.Khindri pertains to irregularities in the purchases of 2/2 VHF systems allegedly made by him, the "Report of the Committee to examine the issue of 2/2 systems" to which access has been sought by the charged officer, is about the performance and compatibility of the said systems, with the Telecom network. The President has, therefore, held that the Report in question is in no way relevant to the defence of the charged officer, and has, therefore, ordered that the Report should not be made available to the charged officer".


Thereafter, the applicant has submitted his detailed representation on 21.10.2001 vide Annexure-A-9, to the aforesaid charge-sheet under Rule 16 of CCS(CCA) Rules. On receipt of the aforesaid representation of the applicant, the matter was referred to the UPSC for advice and the UPSC tendered their advice vide their letter dated 30.4.2002 holding that all the imputations of misconduct stand proved against the applicant, except the one regarding not following the procedure laid down in Department of Telecom circular letter dated 12.1.1993. Accordingly, the President has considered the records of the case; the submissions made by the applicant; the advice tendered by the UPSC and all other facts and circumstances relevant to the case. Vide order dated 27.6.2002, the President accepting the aforesaid advice of the UPSC, has imposed the penalty of reduction ^{of pay} by two stages from Rs.21,900 to Rs.20,900/- in the time scale of



pay of Rs.18,400-500-22,400/- for a period of two years with immediate effect. The President has further directed that the reduction will be without cumulative effect. Aggrieved by this order, the applicant has filed this Original Application claiming the afore-mentioned reliefs.

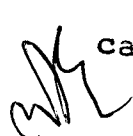
3. Heard the learned counsel of both the parties at a great length.

4. The learned counsel for the applicant has submitted that in pursuance of the issuance of charge-sheet under Rule 16 ibid, the applicant had demanded certain documents including the 'Minutes/Report of the High Power Committee for evaluation of the performance of 2/2 VHF Radio system set up by Deptt. of Telecom', vide his letters dated 25.6.2001 and 18.7.2001. The respondents after considering his request have observed vide order dated 10.10.2001 that "while the charge against Shri P.K.Khindri pertains to irregularities in the purchases of 2/2 VHF systems allegedly made by him, the 'Report of the committee to examine the issue of 2/2 systems' to which access has been sought by the charged officer, is about the performance and compatibility of the said systems, with the Telecom network". The President has, therefore, held that the report in question is in no way relevant to the defence of the charged officer". The learned counsel has submitted that, in other words, the charge relating to performance and compatibility of the said system has been dropped and the only charge sustained was with regard to the irregularities in the purchase of 2/2VHF system. The disciplinary authority while passing the impugned order imposing the penalty has also stated that the applicant was alleged to have totally ignored the extant rules/regulations and the specific instructions issued vide Department of Telecom circular letter No.51-6/91-MMC/Pt. dated 12.1.1993; and, without any authority, approved the purchase of huge quantities of 2/2VHF Radio systems from two specified firms, without inviting tenders as required, far beyond his financial powers, and inducted the said non-standard equipments into the Telecom network. Further, the



equipments thus irregularly purchased were not got inspected by the prescribed inspecting authority, viz. Telecom Quality Assurance Circle. He was thus alleged to have committed gross financial impropriety, thereby violating inter alia Rule 60 of P&T Financial Hand Book, Volume-I. The learned counsel for the applicant has submitted that vide aforesaid letter dated 10.10.2001 the charge relating to performance and compatibility of the said system appears to have been dropped and only charge sustain was about his irregularities.

5. The learned counsel for the applicant has further submitted that the applicant has submitted his representation dated 21.10.2001 (Annexure-A-9) in response to the charge-sheet, and along with this letter he has attached an annexure, which shows that most of the items during the year 1991, 1992 and 1993 have been purchased prior to his joining and, therefore, to that extent that charge also does not sustain with regard to the items purchased during this period. The only item purchased by the applicant was with regard to Radio Base ^{Station} Unit or Base Station Unit on 17.3.1994. In this case, the price fixed by the Department of Telecom (DOT) was Rs.75,000/-, whereas the applicant has ordered to purchase this item at the rate of Rs.74,500/-. He has also submitted that the 2/2 VHF Radio ^{MARR system are} System and Base Station Unit of 2/15 the samething. He has also drawn our attention to the advice given by the UPSC. He has submitted that the advice of the UPSC is to the effect that all the imputation of misconduct stand proved against the applicant except not following the procedure laid down in DOT's circular letter dated 12.1.1993, is wrong as it is not based on the correct facts. He has stated that the finding of the UPSC ^{is} that "no documentary evidence ^{is} available on record nor produced by the charged officer to show that purchase of 2/2 VHF Radio System and its price per unit was approved by DOT. Since the value of purchases approved by him on all occasions exceeded Rs.5 lakh, it was desirable that the system of calling open tenders by advertisement in National dailies/




Indian Trade Journals was adopted to obtain competitive rates". The learned counsel for the applicant has drawn our attention to letter dated 17.3.1994 (Annexure-A-16) issued by the Department of Telecommunications, New Delhi. This letter is addressed to the Director, Railway Electrification, Nagpur, which state that "Based on the price of Single Channel VHF systems and the price reduction for 2/15 MARR systems recently, the approximate price breakup may be taken as follows:

cost of Subs.equipment @ 17,000.00/subs.:

= 15x17000 2,55,000.00

cost of Radio Base Station : 80,639.00".

According to the learned counsel for the applicant, this price was reduced to Rs.75,000/- as may be seen from representation of the applicant dated 21.10.2001 (Annexure-A-9). In para 15 of the representation dated 21.10.2001 it is stated by the applicant that "2/2 Radio system was nothing but Base Station Unit of 2/15 MARR system. The only difference was that instead of using one Base Station Unit as in 2/15 MARR system, two Base Station Units were to be used to meet the requirements of the protection work because of the Railway Electrification Project. The fact that this system was approved by the DOT is borne out by the fact that the DOT had vide their letter No. 80-114/91-MMC/ARM dated 17.3.94...intimated that the cost of one Base Unit would be Rs.80,639. Later on this was changed to Rs.75,000/- per unit. Purchases made during my tenure were at the rate of Rs.74,500/- per unit". The learned counsel for the applicant has also drawn our attention to the Schedule of financial powers, Department of Telecommunications, 1992 (corrected up to 31.1.1992), which states that in the case of Non-stocked items (para 4.1.2) the Chief General Manager will have the full powers if purchased against rate contracts/ prices, finalised by DGS&D/DOT. It is not in dispute that the item in question is a non-stocked item and the rates have already been approved by the DOT as per letter dated 17.3.94 (Annexure-A-16) and, therefore, the contention of the

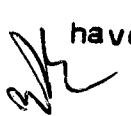
 respondents that he did not have the powers and the findings

of the UPSC that it is not an approved item of DOT and the applicant had only powers to purchase items upto Rs.5 lakhs is not sustainable.

6. The learned counsel for the applicant has also stated that in another case, the respondents have issued a charge-sheet to one Shri M. Ramchandran, General Manager, Guntur Telecom District, Guntur, in which the following charge was levelled that "Sh. Ramchandran was alleged to have approved the purchase of 2/2 VHF Radio ^{system} while functioning as General Manager, Guntur Telecom District during the period 1995-96, without in any way satisfying the conditions stipulated in the guidelines for such purchases vide Department of Telecom circular letter No. 51-6/91-MMC/Pt dated 12.1.1993, far beyond his delegated financial powers, by splitting up the purchase to avoid the necessity for obtaining the sanction of higher authority required with reference to the total amount of the orders, in violation of Rule 104 of General Financial Rules, 1963. He thus totally ignored the extant rules/regulations and the specific instructions issued vide the aforesaid circular letter dated 12.1.1993, inter-alia that no orders should be placed merely on the basis of price appearing in any other purchase order; and without any authority, purchased the 2/2 VHF Radio systems from a particular firm, and inducted the said non-standard equipments into the Telecom network. Further, the equipments thus irregularly purchased were not got inspected by the prescribed inspecting authority, viz. Telecom Quality Assurance Circle". (Annex. RJ/1) In the case of said Shri M. Ramchandran the UPSC has stated that "in the light of their findings and after taking into account all other aspects relevant to the case, the Commission consider that the charges levelled against the charged officer are not proved, and that the ends of justice would be met in this case if the charged officer is exonerated of all the charges levelled against him" (Annex. RJ 2). The learned counsel for the applicant has, therefore, contended that though in the case of the applicant the UPSC has stated that the charge has been proved whereas in the aforesaid case of Shri M. Ramchandran, where also similar charges were levelled

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against him, the UPSC has stated that the charges are not proved. The learned counsel has further contended that in the case of applicant the UPSC has categorically stated that "since the equipment was not to be procured under decentralized purchase of equipment in pursuance of circular letter dated 12.1.1993 the condition of getting it tested by DoT QA Circle were not applicable to purchases approved by the CO. In view of above, the Commission have held that all the imputations of misconduct stand proved against the CO except not following the procedure laid down in Dot circular letter dated 12.1.1993", which means that the main charge about the irregularities committed by the applicant by ignoring the rules and instructions issued vide letter dated 12.1.1993 and without getting the equipment inspected by the prescribed authority has not been proved by the UPSC. The learned counsel has further drawn our attention to the letter No.F.3/269/95-SI(Annexure-RJ/2) issued in the case of said Shri M.Ramchandran, in which the UPSC has observed that the Chief General Manager has full powers of making purchases in the case of non-stocked items which are approved by the DGS&D or DOT, but in the case of the applicant, correct facts have not been appreciated by the UPSC and they have held that "the CO was empowered to make purchases of non-stocked items only upto Rs.4 lakh(on each occasion) from sources other than PSUs where rate contracts/prices approved by DGS&D or DOT did not exist.....However, as is clear from the documents on record purchase of 2/2 VHF Radio System and its prices were not approved by DOT. As such the CO was not empowered to exceed the prescribed limit of Rs.4 lakh for which no valid explanation is available. Further the Commission observe that though the purchases were approved for different Telecom Divisions, but in all the cases single purchase order was placed for all the Divisions.". Thus, the UPSC has not appreciated the correct facts in the case of the applicant in view of the approval of the DOT vide letter dated 17.3.1994(Annexure-A-16). While on the other hand, in the case of said Shri M.Ramchandran, (on the same set of charges which have been proved against the applicant), the charges have ^{not} been proved by the UPSC. The applicant has also relied upon



the judgment of this Tribunal of Madras Bench dated 11.1.2001 in the case of K.Muthuswami Vs. Union of India & Anr. in OA No. 1139/2000 (RJ/5) wherein a similar issue was dealt with. In view of this judgment of the Tribunal whatever ground prevailed to exonerate Mr. Ramchandran, ought to apply equally in the case of the applicant. He has also contended that the work of the applicant has all along been appreciated by various authorities and this fact has not been denied by the respondents.

7. On the other hand, the learned counsel for the respondents has stated that the applicant has not followed the procedure required under the rules. There was no approval of the DOT for purchase of the equipment. The letter dated 17.3.1994 (Annexure-A-16) is the approval given by the DOT only in respect of a particular case and not with respect to the items purchased by the applicant. The same approval cannot be taken as the approval for the items purchased by the applicant. He has also stated that the items purchased by the applicant have been not in use. They have been purchased without ascertaining the need of the item. They have been kept idle in the circle and thus causing loss of crores of rupees to the Government. He has further stated that the charges levelled against the applicant have been proved. Even the UPSC has held that "all the imputations of misconduct stand proved against the CO except not following the procedure laid down in DoT circular letter dated 12.1.1993". However, taking a lenient view, the applicant has been given only a minor penalty. The learned counsel for the respondents has further submitted that the reliance placed by the applicant on the case of Shri M. Ramchandran, GM, Guntur Telecom District. is not applicable to the instant case as that case cannot be compared with the present case for the reason that the facts and circumstances of both the cases are completely different. In view of these, the learned counsel has submitted that the O.A. is without any merit and is accordingly liable to be dismissed.

8. We have given careful consideration to the arguments advanced on behalf of both the learned counsel and we find that the main charge levelled against the applicant was about the irregularities committed by the applicant in purchase of 2/2 VHF Radio System. In para 4 of



the order dated 27.6.2002 (Annexure-A-1), it has been stated as under:-

"4. The Commission have held that all the imputations of misconduct stand proved against the charged officer, except the one regarding not following the procedure laid down in Department of Telecom circular letter No.51-6/91-MMC/Pt. dated 12.1.1993. Regarding the said circular letter dated 12.1.1993, the Commission is of the view that, as 2/2 VHF Radio system was not an item to be purchased by the Chief General Managers under decentralized ordering of equipment authorized by Department of Telecom vide the said circular, nor it figured in the list of standard Department of Telecom items, neither the instructions contained in the said circular were applicable for purchase of 2/2 VHF Radio system (this being not an item authorised for purchase under decentralized scheme) nor the item was included in the list of standard Department of Telecom items. The Commission is, therefore, of the view that there is no question of any violation of instructions contained in the said circular dated 12.1.1993. The Commission have, therefore held that the equipment in question could be procured only within the delegated financial powers for non-stocked items of stores.."

As regards the competence of the applicant to purchase the equipment, we find that as per schedule of financial powers, the Chief General Manager has full powers to make purchases of non-stocked items against rate contracts/prices, finalised by the DGS&D/and DOT. In this case, as per Annexure-A-16, the rates have been approved by the DOT. The contention of the respondents that these rates were not approved for all the divisions and it was only applicable for a particular case, is not correct and rejected as the rate approved by the DOT for a particular item are not approved for a particular organisation or a circle of the Telecom but the same rate, which is approved by the DOT, is applicable to all units of the department.

9. As regards the contention of the learned counsel for the respondents that these items were not required by the respondents and that there was no immediate need and the system purchased were kept idle, is also not correct. The para 13 of applicant in/his representation dated 21.10.2001 (Annexure-A-9) has clearly stated that vide letter dated 6.12.1994 the CGMT, Bhopal has made a request to supply 50 numbers 2/2 Radio system so that the commitments made to public representatives and DOT could be met as the circle was not having adequate funds at that stage. In the said letter the CGMT, Bhopal has

stated that "although our requirement for such systems is quite large but 50 numbers of 2/2 radio systems may please be made available at the earliest and not later than 15th Jan.1995 so that the commitments made to the public representative and DOT for providing STD facility to rural exchanges could be met". Therefore, the aforesaid contention of the respondents is wrong and rejected. Moreover, the UPSC ^{mtu} ~~although~~ it has come to a conclusion that all the charges have been proved but as regards this particular allegation, no finding has been given by the UPSC. Moreover, the respondents while imposing the penalty on the applicant have also not specifically stated or discussed in their letter dated 27.6.2002 about the finding of this allegation that there was no need/requirement to purchase this equipment.

10. As this was a case of minor penalty charge-sheet, no detailed enquiry had been held by the respondents by appointing any enquiry officer to investigate into the charges. The respondents have mainly gone by the findings recorded by the UPSC, which have been recorded in their letter dated 30.4.2002(Annexure-A-23). In view of the facts and discussion made above, we find that the applicant has approved the proposal and placed the order within his delegated financial power and only after following the due procedure and after obtaining the advice of the Internal Financial Adviser as required under the rules.

11. In view of the aforesaid, we are of the considered view that the respondents have failed to establish that the charges levelled against the applicant are proved. We also find that this is a case of no evidence and the penalty imposed by the respondents is without any merit and liable to be set aside.

12. In the result, for the reasons recorded above, the O.A is allowed. The order dated 27.6.2002(Annexure-A-1) is quashed and set aside. The respondents are directed to grant all consequential benefits to the applicant within a period of three months from the date of communication of this order. No costs.

(A.K. Bhatnagar)
Judicial Member

(M.P. Singh)
Vice Chairman