

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH

Jaipur, this the 12<sup>th</sup> day of November, 2010

**ORIGINAL APPLICATION NO. 225/2006**

**CORAM**

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER  
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

R.K. Meena son of Shri Ram Lal Meena, aged about 40 years, resident of Sector No. 2, Vidhyadhar Nagar, Jaipur (Rajasthan).

.....Applicant

(By Advocate: Mr. Bhanwar Bagri)

**VERSUS**

1. Union of India through the Secretary, Department of Science & Technology, Technology Bhawan, New Mehrauli Road, New Delhi.
2. Surveyor General of India, Survey of India, Surveyor General Office, Post Box No. 37, Deharadoon (Uttaranchal).
3. Additional Surveyor General, Rajasthan GEO Spatial Data Centre Great ARC Bhawan-1, Sector-10, Vidyadhar Nagar, Jaipur.

.....Respondents

(By Advocate: Mr. Mukesh Agarwal)

**ORDER**

The applicant has filed this OA thereby praying for the following reliefs:-

- "(i) by appropriate order or direction, the entire relevant record of the non-applicants, pertaining to the case, may be summoned.
- (ii) by an appropriate order or direction, the impugned order dated 16.5.2005 may kindly be quashed and set aside and respondents may be directed to reinstate the applicant in service with continuity of service.
- (iii) Issue an appropriate order or direction by which respondents may be directed to pay all the consequential benefits to the applicant.
- (iv) Any other order/direction or relief may be granted in favour of the applicant, which may be deemed just and proper in the facts and circumstances of this case.

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(v) Cost of the Original Application may also be awarded in favour of the humble applicant.

2. Briefly stated, facts of the case are that the applicant while working on the post of Superintending of Surveyor was issued memorandum dated 17.01.2001 under Rule 14 of the CCS (CCA) Rules, 1965 thereby leveling allegations/charges against him that while working in the aforesaid capacity, he was posted in No. 29 Party (NEC) Survey of India, Shillong and holding the charge of the unit during the field season 1996-97 on current duty basis. It is further alleged that during his tenure as OC of No. 29 Party, a survey camp was sent to Arunachal Pradesh under the Camp Officer, Shri U.N. Mishra, then Deputy Superintending Surveyor of No. 12 Party (NEC), Shillong on attachment in No. 29 Party (NEC). All the field hands posted in the Camp including the Camp officer preferred contingent bills incurring reckless expenditure and presented vouchers/muster rolls and other records in excess of the amount actually incurred by them particularly on wages of porters, shifting of camps etc. in the contingent bills. It is further alleged that the applicant being the OC Unit passed the bills without proper verification/scrutiny though expenditure claimed by the field hands was much higher than actually incurred by them.

3. The second charge against the applicant was that he instructed his Camp Officer and Assistant Camp Officer to show 4 additional fictitious porters in Muster Roll in 8 squads of verifiers from 16.01.1997 to 28.02.1997 for his personal gain by fraud. On the denial of the charges by the applicant, a departmental inquiry was

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conducted. On conclusion, the Inquiry Officer submitted his report dated 19.06.2003 (Annexure A/4) whereby charges against the applicant were held to be proved. The copy of the inquiry report was furnished to the applicant, who submitted his representation there against. Keeping in view the gravity of the charges proved against the applicant, the Disciplinary Authority provisionally recommended for imposition of penalty on the applicant and forwarded the case records to the Commission for advice. The Commission noted that the task of verification of blue prints of the land survey within Lohit District of Arunachal Pradesh was entrusted to Unit No. 29 Party of the Survey of India by North Eastern Circle (NEC). The verification was conducted during the field season of 1996-97 under the supervision of the applicant in his capacity as Officer in Charge of NO. 29 Party. The Commission further noticed that a survey camp was set up at Hayuliang with Shri U.N. Mishra, Dy. Superintending Surveyor, as the Camp Officer (SW-I), Shri S.K. Sen, Surveyor, as the Assistant Camp Officer (SW-2) and they were supported by verifiers and Group 'D' Staff. The Commission further noticed that for the purpose of transportation of field equipments etc., the Director of NEC sanctioned deployment of 40 porters whereas the applicant had passed contingent bills without proper scrutiny in excess of the amount actually incurred on wages of porter etc. On the basis of these facts, the Commission came to the conclusion that while passing the bills, the applicant could not point out how he passed the bills of 73 porters as against the sanction for 40 porters. It was further concluded that the instructions of the Survey of India prescribed the personal responsibility of the officer in-charge to ensure that no expenditure is incurred without proper sanction and specific budget provision and defense of the

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applicant that he could not obtained ex-posto facto sanction for deployment of additional porters during the period from 16.01.1097 to 28.02.1997 as he was busy with field operations was rejected.

4. The Commission further observed that out of ~~one~~ of 5 contingent bills, contingent Bill No. 371/FVC dated 05.02.1997 for payment of conveyance charges of contingent employees and contingent Bill No. 11/FVC dated 04.04.1997 for payment of arrears of conveyance charges/wages were passed without any query or objections. The Commission further concluded that contingent bills (Exb. S-I to S-5) indicated the conveyance charges of 80 Porters for the month of January, 1997 and wages of 73 Porters for the month of February, 1997 were drawn by the applicant. The Commission further placed reliance on the statements of Shri U.N. Mishra (SW-1) and Shri S.K. Sen (SW-2) during the preliminary inquiry that extra Porters were included in the muster roll at the behest of the applicant. The Commission has also given reasons as to why the testimony of these two witnesses <sup>✓ who turns in</sup> ~~have~~ hostile during main inquiry proceedings could not be accepted.

5. Regarding Charge No. 2, the commission observed that the applicant had himself admitted that additional porters were engaged during the period from 16.01.1997 to 28.02.1997 and he wanted to take ex-pos facto sanction but could not do so owing to be busy with multifarious activities of field operations. The Commission also observed that wages and conveyance charges for Porters are far in excess of the sanctioned strength and in view of the extant instructions of the Survey of India; it was the personal responsibility of

the applicant to ensure that no expenditure is incurred without proper sanction and specific budget provision. Thus it was incumbent on the applicant to obtain prior sanction of the competent authority for deployment of additional Porters. Thus, the charge was held to be proved by the Commission on the basis of own admission of the applicant coupled with statements of SW-I and SW-2. The Disciplinary Authority after taking the advice of the UPSC imposed the penalty of reduction of the pay in the time scale by three stages for a period of three years with cumulative effect vide impugned order dated 16.05.2005 (Annexure A/1). It may be stated here that before referring the matter to the Commission, the Disciplinary Authority has also sought advice from CVC and it after seeking second stage advice from CVC, the Disciplinary Authority forwarded the case to the Commission whereby the Disciplinary Authority had concluded that penalty of reduction of pay in the time scale of pay of Rs.10000-325-15200 by three stages for a period of three years with cumulative effect should be awarded to the applicant. It is this order, which is challenged in this OA.

6. Notice of this application was given to the respondents. The respondents have filed their reply thereby justifying their action on the basis of the findings recorded by the Inquiry Officer as well as the order passed by the Disciplinary Authority.

7. The applicant has also filed rejoinder thereby reiterating the submission made by him in the OA.

8. We have heard the learned counsel for the parties and have gone through the material placed on record. Learned counsel for the applicant argued that the Inquiry Officer had not given any definite finding with regard to the charge of personal gain or fraud in respect of charge no. 2, as such the penalty imposed by the Disciplinary Authority based on the finding of the Inquiry Officer is not sustainable. The second submission made by the learned counsel for the applicant is that the Inquiry officer has not taken into consideration the statements of SW-1 and SW-2; as such the finding recorded to the contrary is also not sustainable.

9. We have given due consideration to the submission made by the learned counsel for the applicant. From the material placed on record and in view of the nature of allegation leveled against the applicant as contained in statement of imputation of misconduct or misbehaviour (Annexure II of impugned memorandum dated 17.01.2001), the charges leveled against the applicant was that the total amount of Rs.81,267/- pertaining to 5 contingent bills mentioned therein were found to be fictitious and which should have been disallowed by the applicant but the applicant instead of scrutinizing and verifying those bills, he passed those bills in toto. The second charge is that on the verbal instructions of the applicant, Shri U.N. Mishra (SW-1) and Shri S.K. Sen (SW-2) showed 4 fictitious porters in each of the squad of 8 verifiers from 16.01.1997 to 28.02.1997 for his personal gain. For that mal practice, every squad Incharge was offered Rs.1500/- by adjusting the amount against their contingent advance. Thus on the instructions of the applicant, wages of 32 fictitious porters were claimed in the said camp and the applicant being the OC Party of the Unit passed these

claims, claimed on muster rolls, without any verification/scrutiny..

These charges have been fully proved by the finding recorded on the basis of 5 contingent bills which have been exhibited as S-1 to S-5 and the facts remains that as per these conveyance bills of 80 Porters for the month of January, 1997 and wages for 73 porters for the month of February, 1997 were drawn by the applicant as against sanctioned strength of 40 porters. Even the applicant had admitted this fact that payment to 73 porters were made although there was no budget for the purpose and prior sanction for deploying additional porters and making payment of wages to such additional porters were obtained from the competent. Thus fact remains that the applicant not only acceded his authorities to engage porters but had also passed the bill and made payment despite the fact that there was no sanctioned budget. Thus the applicant has acceded his authorities and was not authorized to engage additional porters and also to sanction payment especially when there was no budget sanction for that purpose. Under these circumstances where a person has acted without any authority and caused extra burden to the State Ex-chequer, he is guilty of misconduct. The defense taken by the applicant that he had acted bona-fidely and could not obtained prior sanction for engaging muster roll porters because of busy schedule cannot be accepted and has to be rejected. Thus on the face of the material, which has come on record, the contention so raised by the applicant that no specific finding regarding using of extra amount for personal gain by fraud has been given by the Inquiry Officer is of no consequence as the charge against the applicant is to the effect that he has engaged 32 Porters without any authority of law and passed by the bills for their payment without there any budgetary provision.

10. So far as the second contention of the applicant that SW-1 and SW-2 have turned hostile as such their statement during preliminary inquiry cannot be relied and their statements made during the regular inquiry should have been taken into consideration and rather the charge should have been held not proved on the basis of the statement made by SW-1 and SW-2 during the course of inquiry; suffice it to say that it is not permissible for us to substitute the view/finding given by the Inquiry Officer/Disciplinary Authority based on other contemporaneous record and substitute that finding by relying upon the testimony of hostile witnesses namely, SW-1 and SW-2.

2. Further the Commission had given finding in Para 5(3) of letter dated 29.12.2004 (Annexure A/1) which form part of Annexure A/1 as to how the submissions made by the aforesaid witnesses during the course of inquiry cannot be relied upon and it was categorically held that the reasons given by these hostile witnesses that their statement were recorded under cohesion are untenable.

11. Regarding quantum of punishment imposed upon the applicant, it may be stated that the Apex Court in number of decisions has held that in a case involving corruption, there cannot be other punishment than dismissal. The Apex Court has however held that the amount misappropriated is small or large, it is act of misappropriation which is relevant.

12. At this stage, we wish to refer to the decision of the Apex Court in the case of **Regional Manager, U.P. SRTC, Etawah vs. Hoti Lal and Another**, 2003 SCC (L&S) 363. That was a case where the

respondent, a bus conductor, was carrying ticketless passenger and thus caused the State only a loss of Rs.16/-. The Apex Court held that in exercise of power of judicial review it is not permissible to interfere with the quantum of punishment. A mere statement that the punishment was disproportionate would not suffice. Not only the amount involved, but the mental set up, the type of duty and similar relevant circumstances have to be taken into consideration to decide the proportionality of the punishment. It was held that in such cases matter should be dealt with iron hands and not leniently. In **Municipal Committee, Bahadurgarh vs. Krishnan Behari**, 1996 SCC (L&S) 539, the Apex Court held as under:

"4.....In a case of such nature-indeed in cases involving corruption, there cannot be another other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriation which is relevant."

13. Similar view has been taken by the Hon'ble Apex court in the cases of **Ruston & Hornsby (I) Ltd. vs. T.B. Kadam**, 1976 SCC (L&S) 381; **U.P. SRTC vs. Basudev Chaudhary**, 1998 SCC (L&S) 155; **Janatha Bazar (South Kanara Central Coop. Wholesale Store Ltd. vs. Sahakari Noukarara Sangha**, 2000 SCC (L&S) 962; **Karnataka SRTC vs. B.S. Hullikatti**, 2001 SCC (O&S) 469; **Rajasthan SRTC vs. Ghandhyam Sharma**, 2003 SCC (L&S) 714; **NEKRTC vs. H. Amareesh**, 2006 SCC (L&S) 1290 and **UP SRTC vs. Vinod Kumar**, 2008(1) SCC (L&S) 1 wherein it has been held that the punishment should always be proportionate to gravity of the misconduct. However, in a case of corruption, the only punishment is dismissal from service. Therefore, the charge of corruption must

always be deal with keeping in mind that it has both civil and criminal consequences.

14. It may also be stated that the scope of interference by Courts/Tribunal with conclusion of guilt is limited to the situation where proceedings were held in violation of principles of natural justice or in violation of the statutory rule, prescribing the mode of inquiry or where conclusion/finding reached by the DA is based on no evidence or no reasonable person would have reached the conclusion. The Apex Court has further held that when person deals with public money is engaged in financial transaction, the highest degree of integrity is meant. If the matter is viewed in the light of the law settled by the Apex Court, we are of the view that it is not a case of such nature where the penalty awarded is excessive or the charges against the applicant is based on no evidence <sup>in requiring t</sup> regarding our interference.

15. For the foregoing reasons, the OA being bereft of merit is dismissed with no order as to costs.

*Anil Kumar*  
(ANIL KUMAR)  
MEMBER (A)

*M.L. Chauhan*  
(M.L. CHAUHAN)  
MEMBER (J)

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