

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 16th day of December, 2010

Original Application No. 42/2006

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

Bhagirath Prasad
s/o Shri B.L.Prasad,
Chief General Manager (Retd.)
Bharat Sanchar Nigam Ltd.,
Rajasthan, Jaipur
r/o B-11, Hanuman Nagar,
Sirs Road,
Jaipur

.. Applicant

(BY Advocate: Shri R.P.Sharma)

Versus

Union of India
through the Secretary, Telecom,
Government of India,
Ministry of Communication and
Information Technology,
Department of Telecommunication,
(Vigilance-II Sec.),
Sanchar Bhavan,
New Delhi.

... Respondent

(By Advocate: Shri B.K.Pareek, proxy counsel for Shri Tej Prakash
Sharma)

O R D E R

Per Hon'ble Mr. M.L. Chauhan

The applicant has filed this OA thereby praying for quashing
the order dated 24.10.2005 (Ann.A/1) whereby the Disciplinary

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Authority has imposed a penalty of 10% cut in pension of the applicant on permanent basis. It is this order which is under challenge in this OA and the applicant has prayed that this order may be quashed and set-aside and the applicant be given all consequential benefits arising out of quashing of the aforesaid order.

2. Briefly stated, facts of the case are that major penalty proceedings were initiated against the applicant under Rule 14 of CCS (CCA) Rules, 1965 when he was working as Chief General Manager, Rajasthan Telecom Circle vide memorandum No. No.8-247/2003-Vig.II dated 28.7.2003. The articles of charge against the applicant was that while functioning as General Manager, Nasik Telecom District, Nasik during the period from July 1997 to February, 1998, in connivance with Shri A.K.Dutta, Deputy General Manager (Planning), Shri N.G.Kamalpurkar, Assistant General Manager (Planning), Shri M.D.Gosavi, Chief Accounts Officer and Shri A.K.Pathak, Sub Divisional Manager (Planning), all of Nasik Telecom District, procured non-stocked items viz. Cable Route Tracers, Cable Fault Locators, Pulse Reflectometers, Battery Voltage Monitoring Systems, Digital Earth Resistance Testers, and Cable Test Sets, from M/s Aplab-Seba Electronics Ltd., Pune, M/s Aplab Ltd., Pune, M/s Hi-Tech Telecom Systems, Hyderabad, and M/s Aishwarya Telecom Pvt. Ltd., Hyderabad, for a total of Rs. 12,97624/- on the basis of quotations, without any tenders as required, though the equipments were not proprietary items, far in excess of the delegated financial

powers of the General Manager and without ascertaining the specific requirements of the field units; in violation inter alia of Rule-6, and Para 28 of Annexure to Chapter-8 of General Financial Rules 1963, Department of Telecom Circular No.51-6/91-MMC/Pt. dated 12.1.93 and No. 305-2/95-MMS dated 8.11.95, and letter No. BGT/3-9/97-98/13 dated 9.12.97 from General Manager (Finance), Maharashtra Telecom Circle, addressed to the applicant and Rule-60 of P&T Financial Handbook Volume-I thereby depriving the Department of the benefit of competitive rates and showing undue favour to the aforesaid private parties. The applicant denied the charges vide his letter dated 7.8.2003. Thus, Inquiry Officer was appointed who submitted his report dated 5.5.2005 holding the charge as proved. Copy of the details inquiry report containing 22 pages has been placed on record along with the OA. It may be stated that since the applicant has retired from service on 31.7.2003, the proceedings were deemed to be proceedings under Rule 9 of the CCS (Pension) Rules, 1972. After submissions of the inquiry report, the matter was referred to the Chief Vigilance Commission (CVC) for its advice. The CVC advised that the charge against the applicant is proved and suitable cut in pension may be imposed upon the applicant. The CVC also advised to recover to the extent possible loss caused by the applicant which loss may be recovered from the terminal dues payable to him. The inquiry report along with the copy of the CVC second stage advice was accepted by the competent Disciplinary Authority and the same was sent to the charged officer for making representation, if any.

The applicant submitted his representation dated 4.9.2004. The competent Disciplinary Authority thereafter referred the matter to the Union Public Service Commission (UPSC) for statutory advice regarding quantum of punishment that may be imposed on the applicant. The UPSC tendered its advice vide letter dated 19.9.2005 and was of the opinion that on the basis of the charge proved, the applicant has committed a grave misconduct thereby warranting penalty of 10% cut in his pension on permanent basis. The Disciplinary Authority after taking into consideration the submissions made by the applicant in his representation dated 4.9.2004, the advice tendered by the UPSC vide letter dated 19.9.2005 and taking into consideration the relevant facts and circumstances imposed penalty of 10% cut in the pension on permanent basis vide impugned order dated 24.10.2005 (Ann.A/1). The impugned order has been challenged by the applicant, inter alia, on the ground that the action was taken against the applicant on the basis of audit report confined to Nasik district alone whereas in respect of other districts no action has been taken, as such, it is a case of discrimination, the chargesheet has been issued on account of malice of his counter-parts when the purchase was made on the basis of rates approved by one of the districts and even the Chief Accounts Officer has not raised any objection.

3. Notice of this application was given to the respondents. The respondents by filing reply have justified their action on the basis of the findings given by the Inquiry Officer and the order passed by

the competent Disciplinary Authority after taking advice of the CVC and the UPSC. It is alleged that the applicant has cheated the department while he was functioning as Chief General Manager, Nasik by purchasing non-stocked items of Rs. 12,97,624/- without inviting tenders. Thus, according to respondents the department was deprived of the benefit of competitive rates and undue favour was shown to Ms/ Alpab-Seba Electronics Ltd., Pune, M/s Aplab Ltd., Pune, Ms/ High-Tech Telecom Systems, Hyderabad and M/s Aishwarya Telecom Pvt. Ltd. Hyderabad and thus, the applicant is guilty of grave misconduct.

4. We have heard the learned counsel for the parties and gone through the material placed on record. The learned counsel for the applicant has placed reliance upon internal communication of the Department of Telecommunications, Vigilance Minotiring-II dated 25th November, 2003 (Ann.A/8) which, inter alia, stipulates that in respect of local purchases where there are very limited suppliers and no mala fide intention behind the purchase is involved, the disciplinary action in such cases should not be started, however, the concerned officer should be warned to follow the prescribed methods of purchase. On the basis of this internal communication, the learned counsel for the applicant has argued that it was not permissible for the respondents to initiate departmental proceedings against the applicant.

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5. We have given due consideration to the submissions so made by the learned counsel for the applicant. We are of the view that such contention raised by the learned counsel for the applicant deserves out right rejection. Firstly, this is internal-communication of the Department of Telecommunication which provides that in respect of local purchases like Aplab Testers etc. having very limited suppliers and if there is no mala fide intention behind the purchase was involved, the disciplinary action should not be initiated. It may be stated here that the Department was aware about its own circulars and after looking into gravity of the charge as the applicant has procured items of about 13 lakhs without any tender and also that he was not competent to sanction the amount and has resorted to purchase without their being any demand and specific requirement of field units, the applicant cannot take any assistance from this circular. That apart, gravity of this charge was also examined by the CVC. The CVC has not only given its first stage advice to proceed against the applicant under Rule 14 of the CCS (CCA) Rules, but has also given second stage advice after preliminary report of the inquiry that a suitable cut in pension may be imposed on the applicant and the loss caused to the department may also be recovered from the terminal dues payable to the applicant. Thus, according to us, the applicant cannot take any assistance from the internal communication

Ann.A/8.



6. That apart, any departmental communication cannot be termed as an order and the case cannot be decided on that basis as held by the Apex Court in the case of Union of India vs. Kartick Chandra Mondal and Anr., 2010 (2) AISLJ 81.

7. The learned counsel for the applicant while inviting our attention to the impugned order Ann.A/1 vis-à-vis the defence he has taken in the representation made on 4.9.2004 based upon the inquiry report and copy of the CVC advice which was made available to the applicant, has argued that the competent authority has not taken his defence into consideration whereby he has explained the circumstances under which the purchase was made. According to the learned counsel for the applicant, it was necessary for the respondents to consider his representation in terms of Rule 15(2-A) of the CCS (CCA) Rules.

8. We have considered the submissions made by the learned counsel for the applicant. Rule 15(2-A) stipulates that the Disciplinary Authority shall consider the representation, if any, submitted by the Govt. servant and record its findings before proceedings further in the matter as specified in sub-rule (3) and (4). Sub rule (3) stipulates that before any of the penalties mentioned under Rule 11 of the CCS (CCA) Rules is imposed, the Disciplinary Authority should consult the Commission and sub-rule (4) mandates that before imposing the penalty in terms of Rule 11, the Disciplinary Authority shall record its findings on all or any of articles of charge and on the basis of evidence adduced during the enquiry, it shall

10

make an order imposing such penalty and the Govt. servant is not required to be heard. If one has regard to para -4 of the impugned order Ann.A/1, it is clear that before the matter was sent to the Commission, the second stage advice of the CVC was made available to the applicant who has made representation dated 4.9.2004 and it has further been recorded in this Para that the charged officer has not brought any additional facts/evidence, which could disprove the charges, except enclosing copies of some commendation letters from senior functionaries of the DOT in support of this achievement in various fields of Telecom service. Therefore, with the approval of the competent authority, the case was referred to the UPSC for statutory advice on the quantum of punishment.

Thus, from the facts as stated above, it is evident that before referring the matter to the UPSC, the Disciplinary Authority has come to the conclusion that it is a case which warrant imposition of penalty and in the representation filed by the applicant no additional facts/evident has been brought. Since before referring the matter to the UPSC, the Disciplinary Authority has also taken into consideration the defence of the applicant, thus, there is sufficient compliance of Rule 15(2-A).

9. So far as further contention of the applicant that the order is non-speaking order and the representation has been rejected without taking his defence whereby he has explained the circumstances under which he had made purchase, also requires

to be rejected. At this stage, we wish to reproduce para 6 and 7 of the impugned order, which thus reads–

“6. AND WHEREAS the UPSC have tendered their advice in this matter vide their letter No. F.3/434/04-S.I. dated 19.09.2005. The Commission have, inter-alia, observed that:-

(a) The allegation that procurement of material was approved on the basis of quotation without inviting tenders is conclusively proved against the Charged Officer, even though in some cases approval was given by the DGM (co-accused). The Commission are of the view that since the Charged Officer was overall in-charge of the Circle and DGM was working under him, he cannot escape his supervisory responsibility.

(b) The component of the charge that the Charged Officer exceeded his delegated financial powers and specific requirements were not ascertained from the field units is also proved. The Commission are of the view that the Charged Officer also remains responsible for the purchase made by his DGM, who did not have the delegated powers.

(c) Charged Officer's action was in violation of the provisions of GFR and other instructions/guidelines of the DOT.

(d) Purchase were made on the basis of orders of other circles which was done in spite of instructions of the contrary,

Taking into account all the aspects relevant to the case, the Commission consider that the charges proved against Shri B.Prasad constitute grave misconduct and ends of justice would be met in this case, if a penalty of 10% cut in his pension is imposed on him permanently.

7. NOW THEREFORE, after careful consideration of the submissions made by Shri B.Prasad, the Charged Officer, in his representation dated 04.09.05 and all relevant facts and circumstances of this case, the President, the Competent Disciplinary Authority hereby impose penalty of 10% cut in pension on permanent basis on Shri B.Prasad, CGM (Retired).”

As can be seen from para-6 as reproduced above, the UPSC has given the reasoning as to how the charge against the applicant stood proved. It is only thereafter that the Disciplinary Authority in para-7 has held that after carefully considering the submissions of the applicant made in his representation dated

4.9.2004 and advice tendered by the UPSC the penalty of 10% cut in pension was awarded. Thus, on the face of these facts and findings recorded above, it is difficult to say that the competent authority had not applied its mind to the case before imposing penalty on the applicant. Thus, according to us, when the punishing authority has taken into consideration the advice and reasoning given by the UPSC into consideration while imposing penalty, it was not necessary for the punishing authority to again discuss the evidence and come to the conclusion to the same finding as that of the UPSC and give the same reasoning for the findings. Thus we are unable to consider the contention raised on behalf of the applicant that order is vitiated and does not contain any reason. The reliance placed by the applicant to the judgment of the Apex Court in the case of M/s Mahabir Prasad Santosh Kumar vs. State of U.P. and Ors, AIR 1970 SC 1302 is of no consequence. That was a case regarding cancellation of licence. It was under this context that it was held that where administrative order is passed affecting right of a citizen which is of quasi-judicial nature, the order must be of speaking one. It was under this context that it was held that where such order is subject to statutory appeal, the executive authority entertaining the appeal must give reasons while dismissing appeal. As such, the judgment cited by the applicant is not attracted in the facts and circumstance of this case. In the instant case, the UPSC has given reasoning based upon the inquiry report as to how the charge against the applicant stood proved. The advice of the UPSC was taken into consideration by the competent

authority along with the representation of the applicant and the competent authority has imposed the same penalty as was recommended by the UPSC based upon the same reasoning, as such, under these circumstances, it was not necessary to give reasoning thereby repeating the same reasoning which was given by the UPSC in order to hold the charge. The law on this point is no longer res-integra. At this stage, we wish to quote certain decisions of the Apex Court whereby it has been stated that the order does not vitiate by non-application of mind on failure to furnish the reason where the punishing authority has accepted the findings of the inquiry officer. In the case of Ram Kumar vs. State of Haryana, 1988 SCC (L&S) 246, which decision was followed by the Hon'ble Apex Court in the case of Indian Institute of Technology, Bombay vs. Union of India and Others, 1991 Supp. (2) SCC 12, and Prabhu Dayal Grover vs. State Bank of Bikaner and Jaipur, 1995(6) SCC 279, it was held that more detailed reasons were not necessary while affirming finding of the inquiry officer.

Further, contention of the learned counsel for the applicant that on the basis of audit report action has been taken in respect of Nasik district and no action has been taken in respect of other districts, as such, he has been discriminated in issuing the chargesheet, cannot be accepted, inasmuch as, it has been settled by the Apex Court in number of decisions that Article 14 is a positive concept and the same cannot be ~~enforced~~ ^{enforced} ~~intertected~~ in a negative manner. Simply because the department has not taken any action against any other units, the applicant cannot be absolved from the

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misconduct he has committed and held proved in the departmental inquiry.

11. Even on merits, the applicant has not made out any case for our interference. It is admitted fact that the applicant made purchase of about 13 lakhs without inviting tenders. Not only that, the applicant has not only violated Rule 6 and Para 28 of Annexure to Chapter-8 of the General Financial Rules, 1963 but also Rule 60 of P&T Financial Handbook Volume-I. The explanation given by the applicant that he has made such purchase under the circumstances mention in his representation dated 4.9.2004 and such procedure was followed on the basis of purchase made in other units and was precedent with the department cannot be a valid ground to violate the statutory provisions as contained in the GFR as well as P&T Financial Handbook. Thus, we are of the view that the applicant has not made out any case for our interference. Thus, in exercise of power of judicial review, it is not permissible for us to interfere in the matter and it cannot be said to be a case of no evidence.

12. For the foregoing reason, the OA is bereft of merit, which is accordingly dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
Admv. Member


(M.L.CHAUHAN)
Judl. Member

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