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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

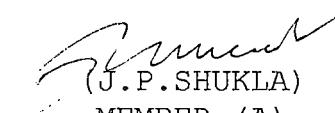
19.5.2008

OA 276/2007

Mr.R.N.Mathur, counsel for applicant.
Ms.Kavita Bhati, proxy counsel for
Mr.Kunal Rawat, counsel for respondents.

Learned proxy counsel for the respondents
prays for short adjournment on the ground of
personal difficulty of the learned counsel for
the respondents.

Let the matter be listed on 26.5.2008.


(J.P.SHUKLA)
MEMBER (A)


(M.L.CHAUHAN)
MEMBER (J)

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26.5.08 Shri R.N.Mathur, counsel for applicant.
Ms. Kavita Bhati, proxy counsel for
Shri Kunal Rawat, counsel for respondents.
Arguments heard.

Order reserved.

28/5/08
(J.P.Shukla)

M(A)

(M.L.Chauhan)

M(J)

order pronounced today
in the open court by the aforesaid Bench.

28/5/08
C.O.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 28th day of May, 2008

ORIGINAL APPLICATION NO.276/2007

CORAM :

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR.J.P.SHUKLA, ADMINISTRATIVE MEMBER

N.M.D.Jain,
Chief Engineer,
North Zone-III,
Jaipur.

... Applicant
(By Advocate : Shri R.N.Mathur)

Versus

1. Union of India through
Secretary to the Govt.,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.
2. Union Public Service Commission through
Secretary,
Shahjahan Road,
New Delhi.

... Respondents

(By Advocate : Ms.Kavita Bhati, proxy counsel for
Shri Kunal Rawat)

ORDER

PER HON'BLE MR.J.P.SHUKLA

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

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"It is, therefore, prayed that this Hon'ble
Tribunal may be pleased to allow this Original
Application and further be pleased to quash and
set aside the impugned memorandum of charge

sheet dated 11.4.2005 (Ann.A/2) and order dated 18.7.2007 (Ann.A/1)."

2. Briefly stated, facts of the case are that while posted as Project Manager (DS&CM) in PWD Delhi, the applicant was given additional charge of the post of Director (P&I) PWD Zone-I, a memorandum of charge-sheet was issued to him on 11.4.2005 (Ann.A/2) in relation to the work which he performed as Director (P&I). The applicant is presently holding the post of Chief Engineer, North Zone-III, Jaipur. On the basis of aforesaid charge-sheet, the respondents have now issued the order dated 18.7.2007 (Ann.A/1), whereby a penalty of stoppage of two increments without cumulative effect for a period of two years has been imposed upon the applicant. Being aggrieved by the same, the applicant has approached this Tribunal by filing this OA and praying for the aforementioned relief.

3. The respondents have filed their reply contesting the OA.

4. Heard learned counsel for the parties and perused the documents placed on record. Learned counsel for the applicant referred to the Articles of Charges and statement of imputation of misconduct against the applicant and brought out that supply orders approved and forwarded/recommended by the applicant in favour of M/s Goodlass Nerolac Paints Limited for procurement of water based road marking paints were at reasonable price and from the firm as per decision of the High Level Committee. It was submitted that the quotations obtained by the Executive Engineers who recommended to the applicant to approve or further forward for approval to the competent authority the supply orders and the same were comparable in rates with the supply orders placed by other PWD Units for the same period. In this regard, learned counsel for the applicant brought to the notice of this Tribunal contents of letter No.E-in-C/P/V-I/3/2004/105-C dated 10.6.2004 (Ann.A/8) from Engineer-in Chief, PWD, Government of

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Delhi, to the Chief Engineer (Vigilance), Directorate General of Works, CPWD, New Delhi, wherein it was clearly brought out in tabulation form that the rates at which the work of supply of paints were accepted in PWD Zone-I, II and III were comparable for the same periods of supply order for water based paint in PWD, Government of Delhi. It was also clearly mentioned in this letter that meetings were held at the level of Engineer-in-Chief to consider the matter of procurement of road marking paints and it was subsequently decided that paints manufactured by M/s Goodlass Nerolac, Berger Paints or Jensons & Nicholson shall be purchased. The attention was also drawn to the tabulation submitted at page-53 of the OA, wherein comparative position of procurement of water based road marking paint during October, 1999 to March, 2000 by various units of PWD and other private firms has been brought out clearly indicating therein that the rates procured by various units of PWD/firms during September, 1999 to March, 2000 are almost the same.

5. It was also submitted that it is not proper to compare rates of the year 1999 with the rates of subsequent years as rates fluctuate from time to time on demand and supply.

6. As regards the charge leveled against the applicant in failing to make sure to comply with the provisions of para 38.28 of CPWD Manual, Vol.II, 1988 Edition, before approving/recommending for approval the supply orders for procurement of road marking paints, it was submitted by learned counsel for the applicant that the applicant has not committed any misconduct whatsoever. The CPWD Manual is compilation of administrative instructions/orders and guidelines and the provisions contained in the Manual are not sacrosanct to meet the exigency of the situation. In the present case, in the meeting of Road Safety and Traffic Transportation Engineering Committee held under the Chairmanship of Chief Secretary, Government of Delhi, on 13.7.99, a high

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policy decision was taken that the water based paint should be directly purchased from the company. It was submitted by learned counsel for the applicant that in this particular case it was the direct responsibility and duty of the Executive Engineers and not of the applicant to follow the provisions of CPWD Manual to the extent practically possible under the urgent requirement as per High Level policy decision for obtaining quotations and the same was done in the interest of exigency of the work without causing any financial loss to the organisation.

7. Learned counsel for the applicant also brought to the notice of the Tribunal that UPSC suo-moto enlarged the allegation by inserting in the allegation that applicant showed undue favour to M/s Goodlass Nerolac as a son of a superior Shri S.P.Banwait, the then Chief Engineer, Zone-I, was a probationer in that company at that time. This was never an allegation against the applicant and thus the entire advice given by the UPSC is erroneous and unsustainable.

8. Learned counsel for the applicant also drew our attention to the fact that there has been abnormal delay in issuing the charge-sheet as well as in conducting the disciplinary proceedings in a minor penalty case. The delay in issuing the charge-sheet is of around six years and after issuing the charge-sheet, the impugned decision was taken by the disciplinary authority after a period of more than two years. Hence, the delay of two years in taking the decision is unreasonable and the delay has been caused with a view to deprive the applicant for promotion to the next higher post.

9. It was also submitted by the learned counsel for the applicant that the order of disciplinary authority is non-speaking because the impugned order imposing penalty upon the applicant does not contain reasons and the same is based solely on the advice given by the UPSC. In fact the order of penalty is

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by an outside authority, which has only an advisory jurisdiction.

10. Learned counsel for the applicant emphatically argued that there has been gross discrimination against the applicant as the then Chief Engineer Shri S.P.Banwait, against whom complaint was received on 24.5.2001 by the Ministry for investigation has been let scot-free and the case against him has been closed after obtaining approval of the Department of Personnel and Training, while the applicant has been penalized on the contrary, which is in violation of Article-14 of the Constitution of India.

11. Learned counsel for the applicant also placed reliance on a few decisions of the High Courts and the Apex Court to substantiate his claim viz. M.V.Bijlani v. Union of India & Ors., 2006 (2) SLJ 15, Narinder Mohan Arya v. United India Insurance Co. Ltd. & Ors., 2006 (4) SCALE 181, and Bank of India & Anr. v. Degala Suryanarayan, (1999) 5 SCC 762.

12. In the end, learned counsel for the applicant prayed for to allow the OA and to quash and set aside the impugned memorandum of charge-sheet dated 11.4.2005 (Ann.A/2) and the order dated 18.7.2007 (Ann.A/1).

13. Learned counsel for the respondents disputed and submitted that the applicant has violated the provisions of CPWD Manual and the respondents have followed the proper procedure in this case. It is absolutely incorrect to say that the charge-sheet has been issued against the applicant at the instance of the UPSC. Seeking advice of the UPSC is bonafide and the disciplinary authority has considered the advice of the UPSC for arriving at the decision for imposition of penalty.

14. At this stage, a query was made by the Bench to the learned counsel for the respondents as to why the respondents have adopted the discriminatory approach

and double standards by closing the case against Shri S.P.Banwait, the then Chief Engineer, against whom was the main complaint, and imposing punishment on Shri NMD Jain who had no ill motive in alleged favoritism. As per letter dated 16/21.3.2005 (Ann.A/16) from the Director and Deputy Chief Vigilance Officer to the Prime Minister's Office, it has been clearly mentioned that the complaint against Shri S.P.Banwait, Chief Engineer, CPWD, has been got investigated and the allegation of favoritism said to be shown by Shri Banwait to M/s Goodlass Nerolac Paints Ltd. because his son was working with that company, could not be *prima-facie* substantiated. It was also recommended that after taking into consideration the facts on record, a relatively minor nature of lapse on the part of Shri Banwait and absence of any motive or consideration, it was decided to close the complaint against Shri Banwait. This letter was written to the Prime Minister's Office based on the investigation report, wherein against Shri N.M.D.Jain, Chief Engineer, the then Director (P&I) PWD Zone-I, it was *been* concluded and specifically mentioned that supply orders placed were much less than the listed price of Rs.2730/- and Rs.2810/- per 20 litres respectively and the allegation that competitive call could have reduced the rate further could not be substantiated against Shri N.M.D.Jain. Thus, allegation of issue of supply orders at exorbitant rates could not be substantiated against Shri NMD Jain. It was also clearly concluded that no malafide intention or financial loss to the Government could be established and it was recommended to close the case against Shri NMD Jain, then why such gross discrimination and double standards for which the learned counsel for the respondents had no satisfactory answer and even the departmental officer from Vigilance was not in a position to satisfy the Bench.

15. After hearing learned counsel for the parties and perusal of the documents on record, it is observed that the respondents have adopted double

standards and contradictory stand. On one hand, in their investigation report submitted to the Prime Minister's Office vide letter dated 16/21.3.2005 (Ann.A/16) it was recommended to close the complaint against the then Chief Engineer Shri Banwait, which was subsequently closed, but at the same time punishment has been imposed upon Shri NMD Jain, Chief Engineer, the then Director (P&I), PWD Zone-I, although as per investigation report in case of complaint against Shri Banwait it was clearly concluded and recommended that there is no case of allegation of issue of supply orders at exorbitant rates against Shri NMD Jain and there is no malafide intention or financial loss to the Government and the case was recommended to be closed against Shri NMD Jain also. Therefore, it is a clear case of discrimination as the person against whom the complaint was made has gone scot-free and case has been closed against him while Shri NMD Jain has been penalized. It is also observed that the rates of the supply orders approved or recommended for approval by Shri NMD Jain are quite comparable and reasonable as adopted by other units of the PWD under the same circumstances and during the same period. Moreover, it is proper to compare the prevalent procurement rates and not with respect to the rates of subsequent years as the supply order rates may fluctuate during subsequent years depending upon demand and supply position. The reasonability of rates of the supply orders approved or recommended for approval by Shri NMD Jain is evident and adequately established and thus we observe that there is no case of any misconduct against Shri NMD Jain on this account.

16. We also observe that the Additional Secretary, Ministry of Urban Development, has recorded his observations/recommendations, as per page-120 of the case, without knowing and understanding the note and without application of mind, which is an indicative of his prejudiced mind and hostile attitude towards the applicant, as the proposal was to drop the charges against the applicant i.e. Shri NMD Jain, the

then Director (P&I), PWD, whereas he advised to issue major penalty in an arbitrary manner without recording specific and logical reasoning and ignoring DGW/CPWD's advice to drop the charges against the applicant and only a stern warning to the Executive Engineers. The same Additional Secretary (Ministry of Urban Development) backtracked his earlier advice for major penalty against Shri NMD Jain and agreed to proceed for minor penalty by changing his own arbitrary and unjustified noting which establishes the prejudiced mind and discriminatory approach on the part of said Additional Secretary who is decision maker on behalf of the Disciplinary Authority i.e. the Hon'ble Minister.

17. We also observe that UPSC has enlarged the charges against the applicant, which were never mentioned in the statement of imputation of misconduct and misbehavior and thus it is against the principles of natural justice.

18. At this stage, it will be useful to quote a decision of the Apex Court in the case of **Anand Regional Coop. Oil Seedsgrowers' Union Ltd. v. Shaileshkumar Harshadhbhai Shah**, 2006 SCC (L&S) 1486. That was a case where the respondent therein, alongwith his other colleagues, held a meeting in the lawn of the appellant without permission and leveled false allegation against his senior officer and behaved badly with him. Other allegation was that the respondent, alongwith other colleagues, forcefully entered into the cabin of Mr. Shreedharani, who was at that point of time in serious discussion with his Accountant, despite his raising objection to the same, beside other allegations. However, inquiry was initiated only against one person i.e. respondent ~~before the Apex Court~~ and subsequently he was dismissed from service. However, the order of dismissal was set aside by the Labour Court, upheld by the High Court and as such the matter was carried before the Apex Court. The

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Apex Court in para-27 of the Judgement has made the following observations :

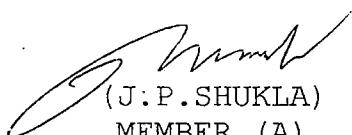
"27. There is, however, another aspect of the matter which cannot be lost sight of. Identical allegations were made against seven persons. The management did not take serious note of misconduct committed by six others although they were similarly situated. They were allowed to take the benefit of the voluntary retirement scheme."

The ratio as laid down by the Apex Court in the case of Anand Regional Coop. (supra) is squarely applicable in the facts and circumstances of this case. In the instant case, the respondents have proceeded not to initiate inquiry against Shri S.P.Banwait, who was the main culprit and against whom the complaint was lodged and matter investigated, which resulted into imposition of minor penalty so far as the applicant is concerned, whereas Shri S.P.Banwait was let scot-free and allowed to retire on superannuation. According to us, such a course was not permissible. The Apex Court has repeatedly held that the delinquent officer similarly situated should be dealt with similarly and if the charges against the employees are identical, it is desirable that they be dealt with similarly. Thus, beside on the merit of the case, as discussed above, the applicant is entitled to get relief on this account also.

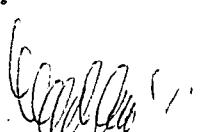
19. Under the facts and circumstances, as above, we find that it is a case of prejudiced approach on the part of the respondents with an evident discrimination against the applicant and violation of the provisions contained in Article-14 of the Constitution of India and thus, in the interest of justice, the OA is allowed and the impugned memorandum of charge-sheet dated 11.4.2005 (Ann.A/2) and the order dated 18.7.2007 (Ann.A/1), imposing penalty of stoppage of two increments without

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cumulative effect for a period of two years, are quashed and set aside. No order as to costs.



(J.P.SHUKLA)
MEMBER (A)



(M.L.CHAUHAN)
MEMBER (J)

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