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**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

29.03.2012

MA 289/2011 (OA No. 46/2007)

Mr. R.P. Sharma, Counsel for applicant.
Mr. T.P. Sharma, Counsel for respondents.

MA No. 289/2011

This MA has been filed by the applicant for restoration of the OA, which was dismissed in default.

In view of the reasons stated in the MA, we restore the OA to its original number and position.

The MA stands disposed of accordingly.

OA No. 46/2007

Heard learned counsel for the parties.

The OA is disposed of by a separate order.

Anil Kumar

(Anil Kumar)
Member (A)

ahq

K. S. Rathore

(Justice K.S.Rathore)
Member (J)

Revd. 7 files (seven)
containing record of
Case
Ref. No.
23/4/13
(BKR/PALEEK)
Advocate
for (Mr. T.P. SHARMA
Advocate)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 29th day of March, 2012

Original Application No.46/2007

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

Bhagirath Prasad,
Retired Chief General Manager,
BSNL, B-11, Hanuman Nagar,
Sirs Road, Jaipur

.. Applicant

(By Advocate: Shri R.P.Sharma)

Versus

1. The Secretary,
Telecom, Government of India,
Ministry of Communication,
Sanchar Bhawan,
New Delhi.
2. The Chairman,
Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi.

.. Respondents

(By Advocate: Shri Tej Prakash Sharma)

ORDER (ORAL)

Facts given rise to the present OA is that while the applicant was working on the post of General Manager, Telecom,



Marathwada Area, Headquarter at Nanded then a matter pertaining to purchase of land was processed by the technical as well as competent authority like Telecom District Engineer, Nanded and Executive Engineer (Civil).

2. At the relevant point of time the applicant was posted as General Manager, Marathwada Area, Nanded and he approved purchase of the land having been processed at various levels and after completion of necessary formalities taken possession of the land and at the same time, the matter was sent to the Chief Architect for preparation of plan etc. for construction of General Manager Office, Telephone Exchange and Staff Quarters.

3. Thereafter, it was found that the land so purchased would not be sufficient for staff quarters, thus, it was recommended that existing neighbouring land may also be purchased. After purchase of land, it was found that a very small piece of land is having some dispute on account of its being reserved for school, but later on the State of Maharashtra cleared that issue and the entire land was given to the department and presently the same is in possession and occupation with the department.

4. The controversy arose when the applicant was served with a charge sheet on 29.7.2003 with regard to the matter referred to above whereas the applicant was retiring on 31.7.2003 on attaining



the age of superannuation, which ultimately culminated into imposition of penalty of 20% cut in pension of the applicant for a period of 10 years vide order dated 3.3.2006 (Ann.A/1).

5. Thus, by way of the present OA, the applicant claims the following reliefs:-

"i) by an appropriate order or direction, the impugned order of punishment dated 3.3.2006 (Annexure A/1) passed by the respondents whereby the applicant is being punished with the stoppage of 20% pension of his pension for a period of 10 years with cumulative effect, be declared null and void and be quashed and set aside;

ii) by further appropriate order or direction, the respondents be directed to release full pension of the applicant which has been withheld by the respondents arbitrarily;

iii) by further appropriate order or direction, the respondents be directed to release the pension which has been held by the respondents i.e. 20% pension with interest;

iv) by further appropriate order or direction, the respondents be directed not to deduct the pension of the applicant and give full pension of the applicant;

v) by further appropriate order or direction, the respondents be directed not to take any adverse action during the pendency of the O.A.



vi) any other relief which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may kindly be granted in favour of the applicant."

6. The order impugned dated 3.3.2006 (Ann.A/1) is challenged by the applicant on the ground that it is perse illegal, arbitrary, unjustified and clear contravention to the provisions of Article 14 and 16 of the Constitution of India. It is stated that the applicant has not committed any mistake as after examining the matter and looking to all the recommendations etc., approved the proposal for purchase of said land and after taking necessary steps and completing of formalities taken possession of the land, and at the same time, the matter was sent to the Chief Architect for preparation of plan.

7. The impugned order is assailed by the applicant on the ground that the impugned order of punishment is not legally sustainable in the eyes of law because so far as the Executive Engineer (Civil) is concerned, he has been totally exonerated after taking note of justification of his action but a discriminatory treatment has been taken and the applicant has been punished for the same matter, though the official duty to make the proposal and recommendation was of all the three officials.

8. The learned counsel appearing for the applicant referring to the enquiry report submitted that, according to the Enquiry Officer's



report, a better and proper land was purchased for establishment of office because the land so purchased and existing with department is on main High Way Road going towards Mumbai and was otherwise existing near a optical fibre cable whereas a comparative land was not only away from the National High Way but existing in slum area at the distance of around 6 kms. from the load centre of telephone connections for diversion and extension of lines requiring additional underground cable to the distance of 6 kms. which was to cost around Rs. 60 lacs to the department.

9. It is also stated by the learned counsel appearing for the applicant that the land was purchased at the rate of Rs. 70 per sq.ft. which cannot be said to be exorbitant, as the Life Insurance Corporation of India had also purchased nearby the land @ Rs. 51 per sq. ft in 1991 and in view of the land purchased by the Life Insurance Corporation 4 years back, the purchase at the rate of Rs. 70 per sq. ft cannot be said to be exorbitant rate.

10. It is also contended that the applicant retired after serving the charge sheet, thus the matter was initially sent to the CVC for its recommendations and as per information, the CVC opined for passing of minor punishment against the applicant but later on seems to have recommended for major punishment. Though the UPSC while examining the matter, recorded the finding that it would be folly to return the land. Thus, on the one hand, the UPSC



stated that not to return the land and on the other hand, the department stated that the approval as given for purchase of land is on higher side.

11. Per contra, the learned counsel appearing for the respondents has strongly controverted the submissions made on behalf of the applicant. In reply to para 4.12 of the OA it is stated that the allegation of the applicant that discriminatory treatment was meted out to him is not correct. There is no merit in the submission of the applicant. Each case is decided on its merit keeping in view the facts and the nature of irregularities and have also given details regarding action taken against the officials involved in the case as under:-

Sr. No.	Name of Officers	Penalty imposed
1.	B.Prasad (applicant)	Penalty of 20% cut in pension admissible to him for 10 years.
2.	B.Jagdeesh Kumar DGM	Penalty of reduction by three stages in the time scale of pay of the Charged Officer for a period of three years is imposed on Shri B.Jagdeesh Kumar with the direction that the Charged Officer will not earn increments of pay during the period of such reduction and on expiry of this period, the reduction will have the effect of postponing his future increments of pay.
3.	K.V.Reddy, Sr.AO	Penalty of reduction of pay in



the time scale of pay by one stage till his retirement.

4. S.R.Srivastava, EE Exonerated, as charge against him not proved."

12. It is also submitted that investigation in this case was conducted by the CBI and after investigation it reveals that there were irregularities in the purchase of land for the department for which the applicant gave his approval and a charge sheet was issued to the applicant after due consideration and in consultation with the CVC and after following the procedure prescribed in the statutory rules. The Disciplinary Authority also consulted the CVC and UPSC as required under the provisions of the rules and thereafter having considered the record of the case, submission of the applicant, advice of the CVC and UPSC took a conscious decision to impose the penalty vide order dated 3.3.2006. It is further stated that advice of the Commission was sought by the Ministry of Communication in the departmental proceedings against the applicant under Rule 14 of the CCS (CCA) Rules, 1965. After careful consideration and taking into account all the relevant aspects of the case, the Commission had advised the penalty of 20% cut in the monthly pension for ten years. The advice of the Commission was communicated to the Ministry of Communications vide letter dated 19.1.2006. Subsequently, Ministry of Communications vide order dated 3.3.2006 imposed penalty accepting the advice of the UPSC as the UPSC is only an advisory body and their advice had been sought in the case in accordance



with the requirement of consultation with them as laid down in Article 320(3) (C) of the Constitution of India read with regulation 5(1) of the UPSC (Exemption from Consultation) Regulations, 1958.

13. In the rejoinder to the reply, the learned counsel appearing for the applicant reiterated the oral submissions made and the grounds taken in the OA and in support of his submission placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of Union of India and others vs. J.Ahmed reported in (1979) 2 SCC 286 and judgment rendered in the case of M/s Mahabir Prasad Santosh Kumar vs. State of U.P. reported in AIR 1970 SC 1302.

14. During the course of arguments, this Tribunal directed the respondents to place the original record for perusal of this Tribunal and the original record was submitted for our perusal.

15. We have heard the rival submissions of the respective parties and carefully perused the material available on record as well as the original record produced and the judgments relied upon by the parties. We have also perused the order impugned dated 3.3.2006 whereby after careful consideration of the submissions made by the applicant in his representation dated 14.9.2004, the advice tendered by the UPSC vide letter dated 19.1.2006 and all relevant facts and circumstance of the case, the President, the competent authority imposed penalty of 20% cut in pension of the applicant, otherwise



admissible to him for a period of 10 years and gratuity of the applicant was ordered to be released. This penalty order was passed way back in the year 2006 which is under challenged by way filing the present OA.

16. Upon perusal of the articles of charge leveled against the applicant and the findings given by the Enquiry Officer it reveals that an irregularity was found in purchase of land measuring 1,27,441 sq.ft. at Survey No.34, Assdullabad, Nanded at the exorbitant rate of Rs. 70 per sq.ft. on the basis of the proposal submitted by Shri B.Jagdeesh Kumar, though the said land was unsuitable and the proposal had earlier been rejected by the predecessor of the applicant and a more suitable piece of land at Survey No.62/4, Wazirabad, Nanded was available for purchase at the rate of only Rs. 40 per sq.ft., thereby caused a loss of Rs. 38,22,230 to the department.

17. We have also perused the original record produced by the respondents which reveals that respondents have proceeded absolutely in accordance with the provisions of law and able to prove the charges during the course of enquiry. The applicant was afforded full opportunity of being heard and to defend his case. The CBI conducted investigation regarding irregularities in purchase of land and after the irregularities were brought to the notice of the department by the CBI and after consultation with the CVC and



after following due procedure prescribed, the chargesheet was issued and during the disciplinary proceedings, the respondents were able to prove the charges against the applicant. It is evident that the land which was also available at the rate of Rs. 40 per sq. ft. was not purchased but the land at the higher rate of Rs. 70 per sq. ft. was purchased thereby the state exchequer was put to a loss to the tune of Rs. 38,22,230.

18. We have also gone through the judgments relied upon by the applicant in the case of Union of India and others vs. J.Ahmed which dealt with the meaning of 'misconduct' and definition of 'devotion to duty' wherein the Hon'ble Supreme Court observed that the charges leveled at a glance would convey the impression that the respondent was not a very efficient officer. Some negligence is being attributed to him and some lack of qualities expected of an officer of the rank of Deputy Commissioner are listed as charge and the Hon'ble Supreme Court in the aforesaid case further observed that some charges were framed none of which could constitute misconduct in law. Some charges were mere surmises. Substance of the allegations was that he was not a very efficient officer and lacked the quality of leadership and was deficient in the faculty of decision making. These deficiencies in capacity would not constitute misconduct. If the respondent were a young man and was to continue in the post for a long period, such an inquiry may be made whether he should be retained in the responsible post. He may or



may not be retained but to retain him in service beyond the period of his normal retirement with a view to punishing him was wholly unjustified.

19. Upon careful perusal of the ratio decided by the Hon'ble Supreme Court, we are of the view that the ratio decided by the Hon'ble Supreme Court in the case of J.Ahmed is not applicable to the facts and circumstance of the present case. Further, the judgment in the case of M/s Mahabir Prasad Santosh Kumar (supra) is also not applicable in the facts and circumstances of this case.

20. As discussed hereinabove, we are of the view that the respondents have thoroughly considered each and every aspect of the matter after affording ample opportunity to the applicant and able to prove irregularity on the part of the applicant and, in such eventuality, imposition of penalty of 20% cut in pension for a period of 10 years vide impugned order dated 3.3.2006 (Ann.A/1), cannot be faulted and, in our considered view, the same requires no interference by this Tribunal.

21. Consequently, the OA being devoid of merit fails and the same is hereby dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
Admv. Member

J.C. S. Rathore
(JUSTICE K.S.RATHORE)
Judl. Member

R/