

15/09/2011

OA No. 445/2010

Mr. Punit Singhvi, Counsel for applicant.

Mr. Mukesh Agarwal, Counsel for respondents.

Heard.

The O.A. is disposed of by a separate Order on the separate sheets for the reasons recorded therein.

Anil Kumar
[Anil Kumar]
Member (A)

K. S. Rattan
[Justice K. S. Rattan]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 15th day of September, 2011

Original Application No.445/2010

CORAM:

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

Praveen Kumar Agarwal
s/o Shri Virendra Kumar Agarwal,
r/o Flat No.19, Nirman Vihar-II,
Sector-2, Vidhyadhar Nagar, Jaipur,
Presently posted as Executive Engineer (Civil),
Central Public Works Department,
Jaipur.

.. Applicant

(By Advocate: Shri Punit Singhvi)

Versus

1. Union of India
through Secretary,
Ministry of Urban Development
(AV Unit), Nirman Bhawan,
New Delhi.
2. Union Public Service Commission,
Represented by
Secretary, Dholpur House,
Shahjahan Road,
New Delhi.

.. Respondents

(By Advocate: Shri Mukesh Agarwal)

ORDER (ORAL)

Brief facts of the case are that the applicant while working as Assistant Executive Engineer under Lucknow Central Division II, Central Public Works Department (CPWD) was in charge of the work of 42 numbers type-IV quarters at Janki Puram, Lucknow executed under agreement No.3/EE/LCD II/95-96 from 11.11.1997 till the completion of work. There were several inspections of the work by senior officers i.e. CE, CE (CSQ), SE (Allahabad), SE (QA) and they had been repeatedly pointing out the defects in the work right from the beginning of the work. The applicant has taken over the charge of work on 1.11.1997. The Superintending Engineer, Allahabad had written DO letter dated 17.9.1998 and 24.08.1998 wherein he had mentioned about the poor quality of bricks, bad workmanship of brick work and RCC work being executed at site. The work was also inspected by CE (CSQ) on 8.9.1998 during the tenure of the applicant and he had pointed out the similar defects. Further, the work was inspected by Superintending Engineer (QA) in details during December, 1998 wherein location wise defects were pointed out.

2. After preliminary investigation, explanation of the applicant was called by vigilance unit for the lapses on his part and after receipt of reply, the investigation report was sent to

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the Chief Vigilance Commission (CVC) for their advice vide UO note dated 4.4.2006. The CVC after examining the case advised for major penalty proceedings against, EE, AE, AEE and JE vide OM dated 2.6.2006. The Disciplinary Authority after considering all the facts and evidence on record and advice of the CVC, initiated disciplinary proceedings against the applicant under Rule 14 of the CCS (CCA) Rules, 1965 vide Memo dated 7.12.2006. The Enquiry Officer after conducting the enquiry as per procedure prescribed under the CCS (CCA) Rules submitted report dated 29.11.2007 holding the charges as partly proved. The report was sent to the CVC for second stage advice and the CVC after taking into account overall facts and circumstances advised for imposition of major penalty upon the applicant.

3. Copy of the enquiry report was also made available to the applicant along with advice of the CVC to enable him to make representation in the matter. The applicant submitted his representation dated 23.12.2008 against the enquiry report. The representation of the applicant was examined by the Disciplinary Authority and his case was sent to the Union Public Service Commission (UPSC) for advice. The UPSC after examining the matter, conveyed its advice vide letter dated 25.5.2010.

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4. The Disciplinary Authority after considering the inquiry report, all the facts and evidence on record, representation of the applicant and advice of the CVC and UPSC passed final order dated 21.6.2010 and imposed penalty of reduction in pay by two stage in the time scale of pay for a period of two years with the further direction that he will not earn increments of pay during the period of reduction, and on expiry of that period, the reduction will have the effect of postponing his future increments of pay.

5. The applicant has claimed relief to quash and set aside the penalty order dated 21.6.2010 (Ann.A/1) and Memorandum of chargesheet dated 7.12.2006 (Ann.A/2) on the ground that the chargesheet issued to the applicant vide memorandum dated 4/7.12.2006 in respect of the work alleged to have been performed from 1.11.1997 to 27.8.2000 is unreasonable on the ground of delay in initiation of department inquiry after a period of six years. Further challenged on the ground that the department enquiry initiated in the month of December, 2006, penalty order was passed on 21.6.2010 and accumulative delay of initiating the inquiry and conclusion of the same is of 10 year, if counted from 27.8.2000. The alleged incident relate to the year 1998 and prior to that. The applicant also challenged the findings given by the Enquiry Officer against the applicant that he



failed to check cement godown as per stipulations contained in CPWD Manual Vol-II, and failed to ensure proper arrangements of storage of cement, resulting into setting/partial setting of 169 bags of cement which became unusable. The Enquiry Officer has given a definite finding that there were two custodians of these cement bags and the loss of the cement has been recovered and the Government has not sustained any loss. Further, the Enquiry Officer has given a definite finding that large number of entries made in the site book order were regarding the period when the applicant was not posted at the relevant post. Therefore, these shortcomings cannot be attributed to the applicant, hence this allegation is not substantiated.

6. The learned counsel appearing for the applicant referred to the CPWD Manual stating that the Superintending Engineer is the final authority for deciding quantum of defects in any work and for passing the RR statement. When the applicant asked the SE-in-charge, who had passed the RR statement that how he could decide about the quantum of alleged defect i.e. whether he had conducted any site visit or whether he had taken any sample of any material used in the work or whether he had conducted any tests etc. to arrive at any independent conclusion. The SE simply replied that he had

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not conducted any site visit and he had neither taken any sample nor conducted any test.

7. Besides this, the learned counsel raised various ground to challenge the punishment order as well as the chargesheet and placed reliance upon the judgment dated 27th April, 2011 rendered by this Tribunal in OA No. 89/2007, M.N.Verma vs. UOI and ors. whereby this Tribunal quashed and set aside the chargesheet and submitted that the same ratio is applicable to the facts and circumstances of this case.

8. Per contra, the learned counsel appearing for the respondents submitted that the ratio decided by this Tribunal in OA No.89/2007 is not applicable in the facts and circumstances as the facts of Shri M.N.Verma were altogether different. In the instant case, the Enquiry Officer has conducted enquiry thoroughly and the charges leveled against the applicant were partially found proved and on the basis of the enquiry report submitted by the Enquiry Officer, the Disciplinary Authority passed the order dated 21.6.2010 by which the applicant has been awarded a penalty of reduction in pay by two stage in the time scale of pay for a period of two years with the future direction that he will not earn increments of pay during the period of reduction and on expiry of that period, the reduction will have the effect of postponing his future increments of pay.

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9. We have also perused the memorandum of charges. As per memorandum of charges, the applicant while posted and functioning as Assistant Executive Engineer under Lucknow Central Division-II, CPWD Lucknow (UP), during the period from 11.11.1997 to 27.8.2000 got executed the work of construction of GPRA in Pocket B at Sultanpur Road, Lucknow. As per article-I, even against the directions of the senior officers, the applicant while working as AEE continuously allowed execution of sub-standard work and recommended payment at nearly full agreement rates from 5th to 9th RA Bill of the said work in contravention of Para 7.30 of CPWD Manual Vol. II. As per article-II, the applicant while working as AEE failed to check cement godown as per stipulations contained in CPWD Manual Vol.II and failed to ensure proper arrangements of storage of cement, resulting into setting/partial setting of 169 bags of cement, thus making them unusable and as per article-III he failed to ensure compliance of the instructions entered in the site order book regarding bad quality of bricks, brick work, RCC and steel shutters from the Contractor and take note of these entries and their compliance before recommending payment of various running account bills in terms of para 26.2. of CPWD Manual Vol.II.

10. The Enquiry Officer thoroughly examined the allegations and having considered the submissions made on behalf of the

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applicant, the charges were found partially proved against the applicant. The Disciplinary Authority rightly considered the material available on record and after considering the enquiry report, advice of the CVC and UPSC and looking to the gravity of the charges leveled against the applicant awarded penalty of reduction by two stage in the time scale of pay for a period of two years with further direction that he will not earn increments of pay during the period of reduction and on expiry of that period, the reduction will have the effect of postponing his future increments of pay.

11. Upon careful perusal of the penalty awarded to the applicant, in our considered view, there is no illegality in the penalty order and same requires no interference by this Tribunal. Consequently, the OA being devoid of merit fails and is hereby dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
Admv. Member


(JUSTICE K.S.RATHORE)
Judl. Member

R/