

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 23.08.2012

OA No. 408/2011

Applicant is present in person.

Mr. Mukesh Agarwal, counsel for respondent nos. 1 to 3.

Mr. Neeraj Batra, counsel for respondents no. 4.

Written submissions have been filed on behalf of the respective parties.

Arguments heard.

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. Rathore

(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 23rd day of August 2012

ORIGINAL APPLICATION No. 408/2011

CORAM:

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

Om Prakash Gupta
s/o Shri Madan Mohan Gupta
r/o Type V/40, Door Sanchar Colony,
Bajaj Nagar, Jaipur,
presently working as G.M.,
Bharat Sanchar Nigam Limited,
Rajasthan Circle, Jaipur

... Applicant

(By Advocate: Shri R.N.Mathur, Sr. Counsel with Shri S.Srivastava and
applicant present in person.)

Versus

1. The Union of India through its Secretary to the Government of India, Ministry of Communication & information Technology, Department of Telecommunications, Govt. of India, Sanchar Bhawan, 20, Ashoka Road, New Delhi.
2. Union Public Service Commission through its Director, Dholpur House, Shahjahan Road, New Delhi.
3. Central Vigilance Commission through its Director, Satarkta Bhawan, G.P.O. Complex, Block-A, I.N.A., New Delhi.
4. Bharat Sanchar Nigam Limited through its Chairman & Managing Director, B.S.N.L. Headquarter, Registered and Corporate Office, Bharat Sanchar Bhawan, H.C. Mathur Lane, Janpath, New Delhi.

... Respondents

(By Advocate : Shri Mukesh Agarwal for resp. Nos. 1 to 3 and Shri Neeraj Batra for resp. No.4)

ORDER (ORAL)

Brief facts of the case are that the applicant was served with a major penalty chargesheet dated 13.9.2004 for holding enquiry under Rule 14 of the CCS (CCA) Rules, 1965 in respect of tender work of the year 2000 while he was working as TDM, Chittorgarh, Rajasthan Telecom Circle and after serving the memorandum of chargesheet, disciplinary proceedings were initiated against the applicant. Enquiry Officer was appointed and the Enquiry Officer proceeded with the enquiry proceedings.

2. The Enquiry Officer after considering facts, relevant record and oral submissions as well as documentary evidence produced by the prosecution and the applicant partly proved charge No. I, III and VII against the applicant and submitted the report dated 6.12.2006 to the Disciplinary Authority. Copy of the enquiry report was also served to the applicant vide memorandum dated 25.5.2007.

3. The Disciplinary Authority vide its order dated 3.11.2008 (Ann.A/6) having considered the enquiry report and other material available on record imposed penalty of "reduction of pay by two stages in the time scale of pay for a period of three years with further directions that he will not earn increments of pay during the



period of such reduction and on the expiry of such period, the reduction will not have the effect of postponing the future increments of his pay" upon the applicant.

4. Aggrieved and dissatisfied with the order dated 3.11.2008 passed by the Disciplinary Authority, the applicant preferred OA No.4/2009 before the Central Administrative Tribunal, Ahmedabad Bench. The Ahmedabad Bench vide its order dated 30.10.2009 set-aside the order of the Disciplinary Authority dated 3.11.2008 and the matter was remitted back to the Disciplinary Authority with direction to reconsider the representation of the applicant uninfluenced by the subsequent CVC and UPSC advice and again obtain CVC and UPSC advice, who will give their opinion uninfluenced by the earlier advice and the whole exercise had to be completed within 8 months. In pursuance to the direction issued by the CAT-Ahmedabad Bench, the impugned order of penalty dated 18.7.2011 (Ann.A/2) has been passed by the Disciplinary Authority, which is under challenge in the present OA.

5. The CAT-Ahmedabad Bench while quashing the earlier order 3.11.2008 passed by the Disciplinary Authority vide order dated 30.10.2009 issued the following directions:-

"We accordingly, quash and set aside the orders of Disciplinary Authority. The matter is remitted back to the Disciplinary Authority to reconsider the representation of the applicant uninfluenced by subsequent CVC and UPSC advice. They will thereafter obtain the CVC/UPSC



advice who will give their opinion uninfluenced by earlier advice. The forming of tentative opinion be done in a month, advice of the CVC be obtained in two months and UPSC in four months. The exercise should be completed within eight months. Other contentions are left open."

6. The main grievance of the applicant is that as the Ahmedabad Bench of the Tribunal directed to reconsider the representation of the applicant uninfluenced by subsequent CVC/UPSC advice and again obtain the CVC/UPSC advice who will give their opinion uninfluenced by earlier advice and forming of tentative opinion be done in a month. Further, the advice of the CVC be obtained in two months and UPSC in four months and the whole exercise should be completed within eight months, but the respondents have not complied with the direction given by the Tribunal within 8 months. It is also alleged that despite of complying the direction within the stipulated period, the respondents had asked for extension of time which was granted by the Tribunal vide order dated 1.12.2010. The extended time also lapsed and the respondents again sought extension of time but the same was rejected vide order dated 27.6.2011. Thus, the order passed by the Disciplinary Authority is without jurisdiction and deserves to be quashed and set-aside.

7. Further challenged on the ground that the respondents have not considered the representation of the applicant dated 29.6.2007



afresh and virtually copied the earlier order without dealing with the grounds and reasons so delineated by the applicant in his representation.

8. The learned counsel appearing for the applicant with regard to charge no.I, viz. that the applicant issued NIT dated 25.5.2000 for purchase of R.C. pipes without finalizing the mandatory tender requirement, submitted that there is not even a whisper as to the documents that are to be finalized before issuance of NIT and non compliance by the applicant of the specific and express guidelines that have been issued by the department for the said document and its finalization and by whom the finalization of the same has to be done. As regards charge no. III, that the NIT dated 25.5.2000 was not given wide publicity to avoid free and fair competition, it is submitted that the UPSC in its advice gave finding that component No. 1 and 2 is proved. Regarding component No. III which has been wrongly mention as component II in the report of the UPSC, the finding is that applicant has followed past practice which was consistently followed by his predecessors and factually wide publicity has been given but on technical ground held that it is mitigating factor and dilutes the severity of charge.

9. As regards charge no VII, that the applicant malafidely reduced requirement from 45838 meters in NIT dated 25.5.2000 to 37251. meters in NIT dated 1.8.2000 and that the applicant on 8.9.2000 once again reiterated before Shri Arun Kumar the then



G.M. (S), Udaipur the scope of requirement as 45838 meters, it is stated that the Disciplinary Authority based on advice of the UPSC has traveled beyond the scope of the chargesheet to prove the charge in question on the ground that the C.O. failed to mention the fact that the negotiated rate of Rs. 76 per meter was much higher rate than the estimated rate of Rs. 65 per meter and that the C.O. failed to inform GMT (S) that in case of return of EMD to the firm and fresh NIT further negotiation was not possible.

10. The learned counsel appearing for the applicant further contended that Shri Arun Kumar, the then General Manager (S) was also charge sheeted in the same case and one of the charges was that Shri Arum Kumar with ulterior motive reviewed the case of purchase of R.C.C.Pipes for Chittorgarh SSA and directed Shri O.P. Gupta, the then TDM-Chittorgarh to go in for second stage negotiations with M/s Sun Construction Udyog. It is also contended that as per terms and conditions, the TDM-Chittorgarh was fully competent to cancel the tender and he did so and in pursuance of the said cancellation the EMD was also refunded to M/s Sun Construction Udyog and, as such, the said tender could not be reviewed. Thus, the direction given by Shri Arun Kumar to TDM to go in for second stage negotiation with M/s Sun Construction Udyog is ultra vires. It is further submitted that by bare perusal of the entire enquiry dossier it is quite clear that reduction in quantity was not with malafide intention nor reiteration of earlier quantity i.e. 45838



meters was with ill intent, inasmuch as, it was purely at the dictate of the GM(S), the then higher authority of the applicant.

11. The learned counsel appearing for the applicant submitted on the legal aspect that the findings of the Disciplinary Authority with respect to charge No.III is that the applicant has followed the past practice which was consistently followed by his predecessors and factually wide publicity has been given but on technical ground held that it is mitigating factor and dilutes the severity of charge. The findings amount to exoneration because no definite finding has been given. The charge has to be held either as proved or not proved. There is no middle course as held in the case of Ram Das Singh vs. Union of India and others in OA No.235/1988, decided on 14.2.1990 by CAT-Jodhpur Bench, reported in (1990) 13 ATC 136.

12. The learned counsel also referred to the judgment in the case of Nagaraj Shivarao Kariagi vs. Syndicate Bank, Head Office, Manipal and Anr. reported in 1991 AIR (SC) 1507 wherein the Hon'ble Apex Court has clearly laid down the law that the authorities dealing with the departmental enquiry cases has to exercise their own quasi-judicial discretion alone, having regard to the facts and circumstance of each case. The advice of CVC should not be accepted in a mechanical manner. That the punishment to be imposed whether minor or major depends upon the nature of every case and the misconduct proved. The authorities have to exercise their judicial discretion having regard to



the fact and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or the Central Govt.

13. Further submits that the misconduct has not been proved in view of the ratio decided by the Hon'ble Supreme Court in the case of Union of India and Ors. vs. J.Ahmed reported in 1979 AIR (SC) 1022. 'Misconduct' means misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct and in this case no misconduct has been proved. Further, the Disciplinary Authority has placed reliance on the document to prove charge No.I which per-se has not been approved and authorized by the BSNL and most disheartening to state that in respect of the charge no. VII, the Disciplinary Authority traveled beyond the scope of chargesheet and punished the applicant for the reason and on the ground and allegation which were not the part of the chargesheet.

14. Per contra, the learned counsel for the respondents strongly controverted the submissions made by the applicant and submitted that the Disciplinary Authority after carefully considering the allegation leveled, findings of the Enquiry Officer, submission made by the applicant in his representation in the light of direction of CAT-Ahmedabad Bench, the advice tendered by the UPSC and all relevant facts and circumstances, imposed penalty upon the applicant vide order dated 18.7.2011. Further stated that the order



of the Disciplinary Authority is well reasoned and speaking, which is based on evidence and relevant rules and instructions. Since the matter was remitted back to the respondents by the CAT-Ahmedabad Bench for reconsideration of representation and passing speaking order and in view of the direction given by the Ahmedabad Bench, the Disciplinary Authority having considered the enquiry report submitted by the Enquiry Officer, relevant documents and the advice given by the UPSC passed reasoned and speaking order based on evidence, relevant rules and instructions, but again on same reasons and ground, the applicant tried to challenge the order passed by the Disciplinary Authority. The Enquiry Officer in his report has considered the evidence and relevant documents submitted by the applicant for his defence and thereafter found proved charge no. I, II and VII. The Disciplinary Authority, in addition to the findings given by Inquiry Officer, has also considered other facts and circumstances and strictly followed the direction issued by the CAT-Ahmedabad Bench and only after obtaining fresh advice of the UPSC, order of punishment has been passed as per provisions of law. It is further stated that the applicant again approached in the second round of litigation on the basis of same grounds which have already been considered by the Ahmedabad Bench. Since the matter was remitted back to the respondents for reconsideration of representation, as stated hereinabove, the respondents have strictly followed the direction issued and reconsidered the matter afresh and also sought advice of the UPSC afresh and thereafter after



examining each and every aspect of the matter punishment order has been passed in accordance with the provisions of law.

15. Having heard the rival submissions of the respective parties and upon careful perusal of the material available on record and the relevant provisions of law as well as the judgments cited by the respective parties, it is not disputed that vide order dated 3.11.2008 the Disciplinary Authority after considering the enquiry report and other material available on record imposed penalty of "reduction of pay by two stage in the time scale of pay for a period of three years with further direction that he will not earn increments of pay during the period of such reduction and on the expiry of such period, the reduction will not have the effect of postponing the future increments of pay. This order has been assailed by the applicant by filing OA No.4/2009 before the CAT-Ahmedabad Bench and the Ahmedabad Bench vide its order dated 30.10.2009 set-aside the order of the Disciplinary Authority dated 3.11.2008 and the matter was remitted back to the Disciplinary Authority with direction to reconsider representation of the applicant uninfluenced by subsequent CVC and UPSC advice. They will thereafter obtain the CVC/UPSC advice who will give their opinion uninfluenced by the earlier advice. The forming tentative opinion to be done in the month, the advice of the CVC be obtained in two months and UPSC in four months. Pursuant to the above direction of the Ahmedabad Bench, it is not disputed that the Disciplinary Authority reconsidered representation of the applicant



and sought fresh advice of the UPSC and after obtaining advice and having considered the same and after going through the enquiry report and representation of the applicant passed fresh order dated 18.7.2011, which is now challenged by the applicant in the present proceedings.

16. We have carefully gone through the order passed by the Ahmedabad Bench as well as the fresh order passed by the Disciplinary Authority and the advice given by the UPSC. Upon careful perusal of the enquiry report dated 6.12.2006, we are fully satisfied with the reasoning given by the Enquiry Officer while proving the charge No. I, II and VII against the applicant. We have also considered the order passed by the Disciplinary Authority, which reveals that the Disciplinary Authority has considered the direction issued by the Ahmedabad Bench and the advice of the UPSC and after having considered all relevant facts and circumstances, imposed the penalty upon the applicant vide order dated 18.7.2001, which, in our considered opinion, requires no interference by this Tribunal.

17. We have also perused the judgments referred to by the learned counsel for the applicant. After careful perusal of these judgments, it reveals that these are not applicable in the facts and circumstances of the present case.

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18. In view of above discussions and observations, in our considered view, the order dated 18.7.2011 passed by the Disciplinary Authority requires no interference by this Tribunal. Consequently, the OA being bereft of merit fails and the same is hereby dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
Admv. Member

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

R/