

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

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ORIGINAL APPLICATION No. 060/00280/2014

**Date of filing: 26.03.2014
Order reserved on: 09.05.2016**

Chandigarh, this the 16th day of May, 2016

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**CORAM: HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER (J) &
HON'BLE SMT. RAJWANT SANDHU, MEMBER (A)**

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Ajit Singh, son of late S. Atma Singh, presently working as Deputy Director, Sports Authority of India, Regional Centre (Hockey Stadium), Sector 42, Chandigarh and resident of House No. 687/B, MIG (Super), Phase XI, S.A.S. Nagar, Mohali, Punjab.

....APPLICANT

BY ADVOCATE: SHRI SANJAY K. GUEVERA

VERSUS

1. Union of India, Ministry of Youth Affairs & Sports, Shastri Bhawan, New Delhi through its Secretary (Sports).
2. Secretary, Sports Authority of India, Jawaharlal Nehru Stadium Complex (East Gate), Gate No. 10, Lodhi Road, New Delhi.
3. Director General, Sports Authority of India, Jawaharlal Nehru Stadium Complex, Lodhi Road, New Delhi.

....RESPONDENTS

BY ADVOCATE: SHRI ARVIND MOUDGIL FOR RESPONDETS NO.2 & 3.
NONE FOR RESPONDENT NO. 1.

ORDER

HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER(J):-

Instant O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985 by applicant Ajit Singh claiming the following relief:

"a) For quashing the impugned orders dated 12/4/2012 (Annexure A-8 based on the perverse Inquiry Report at Annexure A-6.

b) To set-aside the Appellate Order rejecting the appeal of the Applicant communicated to the Applicant vide letter dated 21/3/2013 at Annexure A-10.

c) To grant all the consequential benefits to the applicant."

2. Case of the applicant is that he was selected and appointed as Assistant Director in the Sports Authority of India (SAI) on 14.8.1991.

He was promoted as Deputy Director on 6.8.2007 and posted at Northern Regional Centre (NRC), Ludhiana. In the year 2008, the applicant was transferred to NRC, Sonepat. The post of Deputy Director is an ornamental post. He was not Incharge of the Centre. His duty was merely administrative under the supervision and command of the Director Incharge who was over all Incharge of the Centre. The duty of the applicant was mainly to execute the orders given by Director Incharge and also to move the files from higher authorities to lower authorities.

3. Vide memorandum dated 22.1.2010 (Annexure A-2), charge-sheet for major penalty was served on the applicant containing 3 Articles of Charges. Crux of the charge was that the applicant did not follow the proper procedure in the procurement of material as laid down in the General Financial Rules (GFR), 2005 and recommended the procurement of material, release of payment of Rs. 27,42,209/- to the contactors without realizing sanctioning capacity of Director Incharge under delegated financial powers, and recommended the booking of expenditure under the Head CWG/Schemes to the Director Incharge who was not competent to divert the funds. Case of the

applicant is that the entire power was of the Director Incharge and it was he who exercised the said powers whereas the role of the applicant was just of the Postmaster. Tender was of the items with estimated cost of less than Rs. 25 lac and it could be floated under Rule 151 of the GFR by Limited Tender Enquiry (LTE). The actual cost could vary by 10% of the estimated cost. Actual cost was also between Rs. 22 lac – 23 lac, but the extra amount was paid due to unforeseen expenses including transportation, labour, local taxes etc. DDO/Accounts Officer being financial experts had calculated the amount. Duty of the applicant was to inspect the items received and to inform his superiors. The tender was floated on the instructions of the Director Incharge. The applicant neither sent any proposal nor recommended the purchase or release of payments.

4. The applicant filed reply dated 21.04.2010 (Annexure A-3) to the charge-sheet and controverted the charges. During enquiry, the applicant gave his defence statement dated 19.8.2010 (Annexure A-5). Enquiry report dated 24.11.2010 was sent to the applicant vide letter dated 01.12.2010 (Annexure A-6). In the enquiry report, charges 1 & 3 were held proved against the applicant whereas charge no. 2 was found not substantiated. The applicant filed representation dated 14.12.2010 (Annexure A-7) against the enquiry report.

5. The Disciplinary Authority vide order dated 12.4.2012 (Annexure A-8) imposed penalty of reduction by two stages from Rs. 26,610/- to Rs. 24640/- in the Pay Band of Rs. 15600-39100+Grade Pay of Rs. 6600/- for a period of two years on the applicant. On expiry of the penalty period, the reduction will not have the effect of postponing the

future increment(s) of pay. The applicant filed appeal dated 13.06.2012 (Annexure A- 9) against the penalty order. The Appellate Authority vide order dated 11.3.2013 communicated by forwarding letter dated 21.3.2013 (Annexure A-10) rejected the appeal of the applicant. Feeling aggrieved, the applicant has filed the instant O.A.

6. Main ground of attack of the applicant on impugned punishment order (Annexure A- 8) and appellate order (Annexure A-10) is that everything was done by the Director Incharge and on his orders and the applicant was acting only as messenger for transmitting the files from lower authority to higher authority and vice versa. Another ground is that there was no violation of GFR nor there was any misconduct on the part of the applicant.

7. Respondents nos. 2 & 3 in their reply while not disputing the disciplinary proceedings against the applicant culminating into impugned punishment order (Annexure A- 8) and appellate order (Annexure A- 10), defended the said orders to be legal and valid. It was pleaded that there was no defect in the enquiry or disciplinary proceedings. The applicant has himself admitted the irregularities in the procurement of goods/items/equipments. There was deviation and violation of the rules and procedures made by the applicant. Grounds pleaded by the applicant including factual background to assail the impugned orders were controverted in detail. It has been pleaded that charge nos. 1 & 3 were duly proved against the applicant and accordingly penalty has been rightly imposed on him.

8. Applicant filed rejoinder wherein he controverted the stand of the respondents and reiterated his own version.

9. Vide M.A. No. 060/00249/2016, the applicant has placed on record order dated 12.4.2012 (Annexure A-13) whereby, relating to same procurement, penalty of withholding of retirement Gratuity of A.K. Sharma, the then Director NRC, Sonipat (since retired) for a period of five years was imposed.

10. We have heard counsel for the parties and perused the case file.

11. Counsel for the applicant reiterated that goods upto Rs. 25 lac could be procured by LTE under Rule 151 of the GFR and in the instant case, estimated cost of the goods to be procured was less than 25 lac and, therefore, LTE procedure was followed. It was also pointed out that in case of urgency, for sufficient reasons to be recorded by the Competent Authority, purchase procedure of LTE could be adopted even for estimated value of procurement being more than 25 lac. It was submitted that the applicant as Deputy Director was not the Competent Authority. It was the Director who was the Competent Authority and who directed following of LTE procedure for procurement and granted sanction for payment of the amount to the Contractors. It was submitted that the applicant had no role to play in the whole procurement procedure and he was acting only as messenger for transmitting the files from lower authority to higher authority and vice versa. It was pointed out that for the same Articles of Charge, lesser punishment of withholding of retirement Gratuity for five years has been imposed on the then Director A.K. Sharma and, therefore,

penalty imposed on the applicant who acted under the direction of the Director is excessive and disproportionate.

12. Counsel for the respondents contended that there was no procedural lapse in the disciplinary proceedings including the inquiry. It has been found in the enquiry report that proposals were submitted by the applicant. The grounds now sought to be raised were not even raised in statutory appeal (Annexure A-9) by the applicant.

13. We have carefully considered the matter. Counsel for the applicant could not refer to any procedural lapse in the disciplinary proceedings. Charge-sheet was issued to the applicant. He submitted his reply thereto! Enquiry Officer was appointed and enquiry proceedings were held. The applicant participated in the enquiry proceedings and was given full opportunity to defend himself. On receipt of enquiry report, finding Articles of Charge No. 1 & 3 to be proved against the applicant, he was provided with enquiry report vide forwarding letter dated 1.12.2010 (Annexure A- 6) giving him opportunity to make representation or submission on the enquiry report. The applicant made representation (Annexure A-7). The same was considered and thereupon the Disciplinary Authority passed the impugned penalty order (Annexure A-8). Applicant's statutory departmental appeal (Annexure A-9) was also duly considered by the Appellate Authority. But the appeal was rejected by impugned reasoned order dated 11.3.2013 conveyed to the applicant vide letter dated 21.3.2013 (Annexure A-10). Thus the applicant was given opportunity of defending himself at every stage.

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14. As regards the contentions raised by the counsel for the applicant, the same cannot be accepted. The plea of the applicant that he acted as Post Master or messenger only for transmitting the files from lower authority to higher authority and vice versa cannot be accepted. It is clearly stated in the statement of imputation of misconduct annexed with the charge-sheet that the applicant submitted various proposals. It has also been so found in the enquiry report. Even the applicant in his reply (Annexure A- 3) to the charge-sheet did not plead that he was acting only as messenger or Post Master to transmit the files either way. He rather admitted that he also processed the files. Even otherwise, the files were routed through the applicant so as to get his views, comments and recommendations. Being a senior officer, it does not lie in his mouth that he was acting only as a messenger or Post Master to transmit the files. It was his duty to go through the proposals and to give his inputs. In reply to Article 3 of the charge, the applicant has specifically stated that the proposal for purchase of the items was initiated as per instructions of the Director. The applicant in the entire reply (Annexure A-3) has nowhere pleaded that he had no role to play in the procurement of goods in question. Even in the forwarding letter of the reply (Annexure A-3), the applicant has pleaded that he performed his duty with full devotion and as per instructions for the development of the Centre in public interest and during the process of procurement, neither Director Incharge nor DDO has pointed out to any short comings of the applicant in the purchase procedure. A bare reading of the entire reply of the applicant clearly reveals that he was fully involved in the procurement procedure as Deputy Director. This fact is also crystal clear from the statement of imputation annexed with the

memorandum of charge-sheet (Annexure A-2) and also from the enquiry report. Consequently plea of the applicant that he was only a messenger or Post Master for transmitting the files from lower authority to higher authority and vice versa is completely devoid of substance.

15. It also cannot be said that there was no deviation or violation of GFR in the procurement in question. If estimated cost of the articles was Rs. 22 – 23 lac only so as invoke LTE procedure, the cost could not have gone to Rs. 27,42,209/- which is much more than variation of 10% over the estimated cost. There is also no provision in the GFR relating to 10% variation in the estimated cost. Besides it, the expenditure was booked under the Head CWG/Scheme and the amount was paid to the Contractors on the recommendations of the applicant although the Director Incharge was not authorized to do so as per delegated financial powers and approved budgetary provisions. Even otherwise, the Court is not to reappreciate the evidence and to arrive at its own finding. The Court cannot substitute its finding in place of the finding of the Enquiry-Officer. There may be exception. For example, if the finding of the Enquiry officer is based on 'no evidence', it may be interfered with by the Courts. However, in the instant case, it is not so.

16. As regards the quantum of penalty, it cannot be said that the penalty imposed on the applicant is disproportionate to the gravity of charge proved against him. On the other hand, since there was possibility that the applicant was acting under the influence/direction of his superior officer i.e. Director, lenient view has been taken while

imposing penalty on the applicant. Minor penalty of reduction by two stages for a period of two years only without having postponement of future increments has been imposed on the applicant. The same also cannot be said to be harsher than the penalty imposed on the Director A.K. Sharma since retired.

17. For the reasons aforesaid, we find no infirmity or illegality in the impugned penalty order (Annexure A-8) and Appellate order (Annexure A-10). The O.A. is thus found to be devoid of merit and is accordingly dismissed with no order as to cost.

