

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.70/2006

Order reserved on 15th January 2018

Order pronounced on 1st March 2018

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)

J.M. Sharma,
S/o late Shri C.R. Sharma
Retd. Assistant Engineer,
Irrigation & Flood Control Department,
Government of NCT of Delhi,

Residential Address:-

J.M. Sharma,
House No.E-186, East of Kailash,
New Delhi-110065

.Applicant

(Mr. Padma Kumar S, Advocate)

VERSUS

Union of India, through

1. The Secretary,
Ministry of Home Affairs,
Government of India,
New Delhi.
2. The LT. Governor,
Govt. of N.C.T. of Delhi,
Raj Niwas, Delhi.
3. The Chief Secretary,
Govt. of N.C.T. of Delhi,
Delhi Sachivalaya,
I.P. Estate, New Delhi.
4. The Secretary,
Irrigation & Flood Control Department,
Govt. of N.C.T. of Delhi,
5/9, Under Hill Road,
Delhi.

..Respondents.

(Mrs. P K Gupta, Advocate)

O R D E R

Mr. K.N. Shrivastava:

The background of this case is succinctly described as under:

2. The applicant was charge-sheeted under Rule 14 of CCS (CCA) Rules, 1965 (hereinafter referred to as “Rules 1965”) vide Memorandum dated 08.06.1998. The charge against him was that while working as an Assistant Engineer, Supplementary Drainage No. V in Irrigation & Flood Control Department of Government of NCT of Delhi (GNCTD) during the period 27.06.1991 to 24.02.1992, he was in-charge of execution of construction of bridge at RD.30825 meter on the supplementary drain (near Ranhola village). Cracks developed in the said bridge and one span of bridge collapsed. The applicant was thus held guilty of violation of Rule 3 of the Rules 1965 for his failure to devotion to duty and absolute integrity as well as failure to devotion to duty of the Government servants working under his control and authority. Similar charge-sheets were issued with minor variations to S/Shri R.M.P. Swamy, R.C. Sood, S.R. Vasudeva, G.S. Arora, N.K. Sharma, R.N. Sharma, Farooqui, Upender Agnidev and S.C. Gupta, who purportedly were also associated with the execution of the bridge project. S/Shri S.C. Gupta and Upender Agnidev filed O.A. Nos.452/2002 and 453/2002 respectively before this Tribunal, challenging the penalty orders passed in respect of them by their disciplinary and appellate authorities. Both the O.As. were allowed by the Tribunal by a common order dated 06.04.2004 with a direction to the concerned authority to reinstate those two applicants in service forthwith. However, liberty was

given to the respondents to proceed against them, if so advised, from the stage of supplying copy of CVC report since the Tribunal had held that non-supply of CVC report had vitiated the proceedings in the light of decision of Hon'ble Supreme Court in **State Bank of India v. D.C. Aggarwal**, JT 1992 (6) SC 673.

3. Against the said order of the Tribunal, the respondents had filed R.A. Nos.214/2004 in O.A. No.453/2002 and 215/2005 in O.A. No.452/2002. Both these R.As. were also dismissed vide order dated 10.08.2004.

4. The respondents challenged the Tribunal's aforesaid order dated 06.04.2004 passed in O.A. Nos.452/2002 and 453/2002 as well order passed in R.A. Nos.214/2004 and 215/2005 before the Hon'ble High Court of Delhi in C.W.P. Nos.18387/2004 and 18395/2004 respectively. The High Court, vide order dated 29.09.2010, remanded both the O.As. to the Tribunal for fresh adjudication on the ground that "The Tribunal has dealt with only two pleas, i.e., the two technical pleas and the rest of them have not been considered". However, during the pendency of the aforesaid C.W.Ps., the Tribunal had decided to adjourn the instant O.A. *sine die* until the disposal of the C.W.Ps.

5. After the remand, O.A. Nos.452/2002 and 453/2002 were re-adjudicated by the Tribunal and both of them were allowed vide order dated 04.07.2011. The prime reason for allowing the two O.As., as noted by the Tribunal in its order dated 04.07.2011, was that following the collapse of one span of bridge, the contractor, Mr. Khem Chand had raised a dispute before an Arbitrator, who, after adjudicating the dispute, came to a

definitive finding that the collapse of the bridge was due to failure on account of inadequate and defective designs and the drawings supplied to the GNCTD by M/s. Project Consultants and not because of the poor workmanship and use of substandard material by the contractor. The arbitral award was upheld by the Hon'ble High Court of Delhi. The Tribunal had noticed that the inquiry officer in the departmental inquiry proceedings had come to entirely opposite conclusion in complete contrast with the findings of the Arbitrator. Thus, the Tribunal held that the charges against the applicant were not based on rationale, and consequently allowed the two O.As. and ordered for reinstatement of the applicants therein in service.

6. During the consideration of the instant O.A., the Tribunal found complete similarity between the instant O.A. and O.A. No.452/2002 & O.A.No.453/2002, and in accordance with its order dated 04.07.2011 in those two O.As., the instant O.A. was also allowed by the Tribunal; the operative part of the order reads as under:-

“6. Admittedly, this O.A is also an identically placed one as the O.As 452/2002 (supra) and 453/2002 (supra). There is no dispute with regard to the similarity of these cases by the parties. Only difference in the charge sheet is with regard to the designations and the duties of the officers concerned. The learned counsel for the respondents Mrs. P.K. Gupta has also admitted that the legal issues raised in all these O.As are the same.

7. In view of the above facts and circumstances of the case, in our considered opinion, it is not necessary for us to go into the details of this case once again. Rather, we are inclined to allow this O.A on the very same premises on which O.A 452/2002 (supra) and O.A 453/2002 (supra) have been allowed by this Tribunal vide its order dated 04.07.2011. Accordingly, this O.A is allowed. The impugned disciplinary authority's order dated 23.04.2003 and the appellate authority's order dated 11.04.2005 are quashed and set aside. As in

the case of the aforesaid two O.As O.A 452/2002 (supra) and O.A 453/2002 (supra), the respondents shall reinstate the applicant in service with all consequential benefits except back wages. They shall also issue appropriate orders in this regard within a period of two months from the date of receipt of a copy of this order. However, as regards the question of treating the suspension period from 06.04.1994 to 15.05.1995 in terms of FR 54-B (6) is concerned, the respondents shall consider the entire facts and circumstances of the case and communicate the decision to the applicant within the aforesaid period. There shall be no order as to costs.”

7. The Tribunal’s aforesaid order dated 04.07.2011 passed in O.A. Nos.452/2002 & 453/2002, together with the order dated 21.02.2012 passed in the instant O.A., was challenged by the respondents in three different Writ Petitions, being W.P. (C) No.1065/2012 *titled Govt. of NCT of Delhi v. S C Gupta*, W.P. (C) No.1228/2012 *titled Govt. of NCT of Delhi v. Upendra Agnidev* and W.P. (C) No.5792/2012 *titled Govt. of NCT of Delhi v. J M Sharma*. All these Writ Petitions were disposed of by the Hon’ble High Court by a common judgment dated 22.04.2013, quashing the orders of the Tribunal passed in O.A. Nos.452/2002 & 453/2002 and the instant O.A., and restoring these O.As. for fresh adjudication by the Tribunal. The operative part of the said judgment dated 22.04.2013 reads as under:-

“24.....we dispose of the writ petitions quashing the impugned orders dated July 04, 2011 and February 21, 2012. OA No.70/2006, OA No.452/2002 and OA No.453/2002 are restored for fresh adjudication by the Tribunal with a direction that all issues required to be decided keeping in view the decision dated September 29, 2010 passed by this Court would be decided.”

8. As per the above directions of Hon’ble High Court, the Tribunal re-adjudicated the O.A. Nos.452/2002 and 453/2002 and the instant O.A., and placing reliance on the judgments of Hon’ble Supreme Court in **State**

Bank of Patiala v. S K Sharma, JT 1996 (3) SC 722, **Bank of India & another v. Degala Suryanarayana**, (1995) 5 SCC 762 and **B C Chaturvedi v. Union of India**, (1995) 6 SCC 749 dismissed all the three O.As.

9. A Review Application, being R.A. No.133/2015 in the instant O.A. was filed by the applicant, in which, *inter alia*, it was mentioned that the Tribunal while disposing of O.A. No.70/2006, together with O.A. Nos.452/2002 and 453/2002 by a common order dated 05.12.2014, did not consider the following ground raised in it:

“(a) It is the established Principle of Law that no penalty, overlapping the superannuation/retirement date can be imposed. The applicant retired on 30.04.2003, while the penalty of reduction by two stages cumulatively has been awarded without any period and ultimately the same adversely affects the applicant’s pension and practically the same is a penalty of not only reduction in the time scale, but is a cut in pension (Ground 5.4).”

10. After verification of the records, the Tribunal came to a conclusion that the above ground has indeed not been considered while passing the common order dated 05.12.2014 in the aforesaid three O.As. As a result, the Tribunal allowed R.A. No.133/2015 in the instant O.A. vide its order dated 06.09.2017. Thus, the instant O.A. was restored to its original number.

11. We heard the learned counsel for the parties on 15.01.2018. From the perusal of records, it is noticed that the disciplinary authority (Lt. Governor of Delhi), vide his order dated 23.04.2003, had imposed the penalty of reduction of pay by two stages in the time scale of pay with cumulative effect. The operative part of the order reads as under:-

“4. In the totality of facts and circumstances of this case I am of the considered view that the charges have been established against the charged official beyond any doubt. He has committed gross misconduct by acting in an irresponsible manner in total disregard to his responsibilities, with mala fide intent. Keeping in view the fact that Shri J.M. Sharma is to superannuate on 30.04.2003, I feel that the penalty of reduction of pay by two stages in the time-scale of pay with cumulative effect is warranted. I order accordingly.”

12. The applicant had filed appeal dated 05.06.2003 against the penalty order passed by the disciplinary authority. The appellate authority (President of India), vide order dated 11.04.2004, rejected the appeal and confirmed the order of the disciplinary authority. The operative part of the appellate order reads as under:-

“Now therefore, in exercise of the powers conferred upon him under Rule 27 of the CCS (CC&A) Rules, 1965, the President hereby rejects the appeal of Shri J.M. Sharma and confirms the penalty of reduction of pay by two stages in the time-scale of pay with cumulative effect imposed upon Shri J.M. Sharma by the disciplinary authority, i.e. the Lt. Governor, Delhi vide order dated 23.04.2003.”

13. From the penalty order dated 23.04.2003 of the disciplinary authority, it is evident that the applicant was to superannuate from service on 30.04.2003. We find that reduction of pay to a lower stage in the time scale of pay is a major penalty. Rule 11 (v) of the Rules 1965 in regard to this penalty reads as under:-

“11(v) save as provided for in clause (iii) (a), reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay.”

14. From the reading of Rule 11 (v) of the Rules 1965, it is quite clear that the penalty of reduction to a lower stage in the time scale of pay has to be for a specified period. Unfortunately, the penalty order of the disciplinary authority is completely silent on this issue. Considering the fact that the applicant superannuated on 30.04.2003, the period for this penalty could only be specified from the date of the penalty order (23.04.2003) and till the date of applicant's superannuation (30.04.2003), i.e., for a period of just one week. Consequently, on the date of his superannuation, the impact of the penalty imposed must vanish. The issue of earning any increment in this short period did not arise. Hence, even though there is no mention with regard to earning / postponement of increment in the penalty order, this issue had become irrelevant.

15. In the conspectus, we dispose of this O.A. in the following terms:-

- i) The penalty order dated 23.04.2003 passed by the disciplinary authority shall stand modified to the extent that the penalty imposed would operate only for the period from 23.04.2003 to 30.04.2003. Consequently, the pay of the applicant shall get restored on the date of his superannuation, i.e., 30.04.2003.
- ii) The pension of the applicant shall be fixed in accordance with (i) *supra* and he would be entitled to all consequential benefits.

No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

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