

**Central Administrative Tribunal
Principal Bench**

OA No.2245/2012

Order Reserved on: 29.04.2016
Pronounced on: 26.05.2016.

**Hon'ble Mr. Justice M.S. Sullar, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Hari Shanker Sharma,
W/o late Shri Jwala Prashad Sharma,
R/o C-116, B-9/6, Telecom City,
Sector-62, Noida (UP).

-Applicant

(By Advocates Shri Nilansh Gaur)

-Versus-

1. Union of India through
Secretary, Ministry of Home Affairs,
North Block, New Delhi-110001.
2. MTNL through the
Director (Finance),
Jeevan Bharti Tower-I
Connaught Circus,
New Delhi-110001.

-Respondents

(By Advocate Mrs. Rachna Joshi Issar)

O R D E R

Mr. K.N. Shrivastava, Member (A):

This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985. The specific reliefs prayed for by the applicant in the OA, read as under:

“8.1 To set aside the order dated 17.05.2012 passed by the appellate authority to the extent of imposition of a minor penalty of censure on the applicant; and

8.2 Any other relief which this Hon'ble Tribunal may deem fit and appropriate, in the circumstances of the case."

2. The brief facts of the case are as under.

2.1 The applicant joined the respondent-organization (MTNL) on 01.11.1979 as a Time Scale Clerk. After getting his regular promotions, he became Accounts Officer (Civil) on 31.12.1996. During the period from September, 2000 to November, 2003, he worked as Accounts Officer (Civil-Cash). On 25.09.2007 Annexure R-1 charge-sheet was issued to him under Rule 25 of the MTNL (CDA) Rules, 1998 (in short, MTNL Rules). The following charge was levied against the applicant in the charge-sheet:-

"THAT Shri H.S. Sharma, while working as AO (Cash) Civil wing MTNL, Eastern Court, New Delhi during the period 2002 onward committed an act of gross misconduct in as much as he accorded financial concurrent for the work related to construction of compound wall at TE Building, Mangolpuri, which was split up into various sub head, without seeking the prior written approval of CGM MTNL who had sanctioned the estimate for construction of compound all at TE Building, Mangolpuri, for 16,52,700/-.

According to CPWD manual financial sanction was granted by CGHM, then bifurcation of the work was to be done only after seeking written approval of CGM.

That Shri H.S. Sharma, AO accorded financial concurrent, which are not in conformity with the sanctioned work for the entire estimate.

Thus by the above said act, Shri H.S. Sharma, Sr. AO (GO-88194) failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Company employee and thereby contravened the provision of Rule 4(1)(i),(ii) and (iii) of MTNL, CDA Rules, 1998."

2.1 A Disciplinary Enquiry (DE) was held by appointing an Enquiry Officer (EO). The applicant participated in the enquiry.

The EO submitted his Annexure R-2 report dated 09.06.2009 in which, in the Conclusion, he has stated as under:

“1. As discussed above in para 8.00, there is slight lack of devotion to duty on the part of the SPS that he did not pay any attention towards to obtain the answers to his quarries regarding submission/or sanction of estimates may please be ensured” from the EE (Civil) before releasing the payment of these anticipated bills through cheques.

2. No such documentary or oral evidence was adduced during the inquiry to sustain the component of this charge from the prosecution; hence in absence evidence this charge not sustain.”

2.2 In the Findings, however, the EO has said that the charge against the applicant that he failed to maintain absolute and thus contravened the provisions of MTNL Rules, is not proved.

2.3 Acting on the EO's report, the DA, i.e., Executive Director, MTNL vide his order dated 22.07.2010 imposed the following penalty upon the applicant:

“Reduction by one stage in the time scale of pay for a period of one year with cumulative effect and with further direction that during the period of such reduction Shri H.S. Sharma, Sr AO will not earn increment of pay and on expiry of the period the such reduction will have the effect of postponing his future increments of pay” upon him.”

2.4 The DA issued Annexure A-2 a disagreement note dated 09.08.2009 in which he has given the following reasons for disagreeing with the findings of the EO:

“Inquiry officer has concluded the charge in article-I as not proved and article-II as partially proved on the points that the prosecution has not provided any documentary or oral evidence before the inquiry to sustain the charges and the Disciplinary Authority has simply codified CPWD manual without specifying any specific role of CPWD Manual volume, its applicability to MTNL is not sustainable for the reasons.

That Inquiry Officer while concluding the report neither considered the listed documents nor tried to explain his report that without any finding as to what procedure was being adopted if CPWD procedure was not applicable and on what basis financial concurrence was accorded without any procedure. Whereas the evidence has to be weighed and evaluated very carefully, intelligently, dispassionately and impartially. Inquiry Officer concluded that inquiry on assumptions and failure of the production of the PWs or any other evidence as to applicability of CPWD rules by PO Inquiry Officer did not examine and bring the imputation made against the SPS in his report.”

In the said order the DA has passed the following order:

“Whereas powers as per Para 14.9.0 of delegation of financial powers to officers in Civil have been delegated to SE (C) to split the project costing Rs.6 lacs and above, tenders for split works has been invited and accepted by Executive Engineer (Civil) and Shri H.S. Sharma, AO accorded financial concurrence to award the work to L-1 without verifying the sanctioned estimate, competent authority to split and invite the tenders and provision of work in sanctioned project. Thus, the charge of accorded financial concurrence with ulterior motive is fully established to the extent.”

The applicant was called upon to represent against the disagreement note and after considering his representation, DA, vide his order dated 22.07.2010 (page 17 of the paper-book) imposed the penalty of reduction by one stage in the time scale for a period of one year with cumulative effect and with further direction that during the period of such reduction, the applicant will not earn increment of pay and on the expiry of the period the such reduction will have the effect of postponing his future increments of pay.

2.5 The applicant filed his statutory appeal before the Appellate Authority (AA), who vide his Annexure A-1 order dated 22.07.2010 reduced the quantum of punishment awarded by DA to ‘Censure’. The relevant part of the AA’s order reads as under:

“11. And now, therefore, I, Anita Soni, Director (Finance), MTNL, being the Appellate Authority, and in exercise of the powers conferred upon me under Rule 32 of MTNL, CDA Rules, 1998, am of the view that for the reason the said Shri H.S. Sharma Sr. AO (GO-88194) did not raise an alarm on the said action of floating several tenders in the work, the punishment imposed on the said Shri H.S. Sharma, Sr. AO (GO-88194) by the disciplinary authority is disproportionate, hence order to modify the penalty of reduction of pay by one stage in the time scale of pay with cumulative effect, into “CENSURE” on the said Shri H.S. Sharma Sr. AO (GO-88194) which will meet the ends of justice and fair play.”

2.6 A criminal case was also registered against the applicant and few others in CC No.31/11, for the same charge, which was tried on the file Unique ID No.02401R0584792006 of Special Judge (PC Act)-01 Saket Courts, New Delhi. The applicant was acquitted by the said Court vide order dated 09.12.2012. The relevant part of the said order is reproduced below:

“6.3 In the present case, prosecution has placed on record the initial estimate on which the financial concurrence has been accorded by A4 HS Sharma. If we go through these estimates which are on notesheets, Ex.PW32/DE, Ex.PW32/DF and Ex.PW32/DG, it would indicate that XEN has specifically mentioned that estimates have been made awaiting the formal sanction from the appropriate authorities. There is ample material on the record that accounts officer has no other role to play. There is no occasion for accounts officer to ascertain that whether the actual work has been executed or not. The verification of Inspection of work is to be done by JE-100%, AE-50% and XEN-10% as per rules. In the entire hierarchy, there is no place for accounts officer to conduct the verification of the inspection of work. In the circumstances, I consider that no case is made out against A4 HS Sharma.”

2.7 It is to be noted that the acquittal order passed by the Criminal Court dated 19.12.2012 was passed after the impugned Annexure A-1 order was passed by the AA on 17.05.2012.

2.8 Aggrieved by the impugned Annexure A-1 order passed by the AA, the applicant has filed the instant OA.

3. Pursuant to the notices issued the respondents entered their appearance and filed their reply. The applicant thereafter filed his rejoinder. With the completion of the pleadings, the case was taken up for hearing the arguments of the parties on 29.04.2016. Shri Nilansh Gaur, learned counsel for the applicant and Mrs. Rachna Joshi Issar, learned counsel for the respondents argued the case.

4. The learned counsel for the applicant submitted that the AA has wrongly observed in his impugned order that at the relevant point of time the applicant was functioning as an Acting AO (Works). He said that the Central Vigilance Commission (CVC) in its OM dated 28.12.2006 (page 20 of the paper-book) has clearly observed that Shri H.K. Bansal, SE (C) has facilitated the Executive Engineer in bifurcating the work for which CGM had the power and authority because financial sanction of the work was accorded by the CGM and therefore, this lapse on the part of Shri Bansal attracts minor penalty proceedings. The said OM does not lay any blame on the applicant.

4.1 The learned counsel argued that the criminal court in its acquittal order has clearly held that in the entire hierarchy there is no place for AO to conduct the verification of the Inspection of Works and as such no case has been made out against the

applicant. He stressed that even in the charge memo nowhere it is mentioned that the applicant was in fact working as Incharge AO (Works). Elaborating further, he said that the applicant was working only as AO (Cash) and was responsible for giving financial concurrence to the most competitive and lowest tenders and that the bills were pre-checked by AO (pre-check) as well as Executive Engineer (Civil) and that the applicant in his capacity of AO (Cash) was not required to carry out further scrutiny of any enclosure to the concerned bills. The learned counsel for the applicant submitted that the orders passed by the DA and AA are not reasoned orders and as such they are flawed. In support of his arguments, the learned counsel referred to the judgment of the Hon'ble Supreme Court in the case of **Roop Singh Negi v. Punjab National Bank & Others**, [(2009) 2 SCC 570, in which it has been stated as under:

“Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer

apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof."

4.2 Concluding his arguments, the learned counsel submitted that the applicant had no role to play in splitting of the work and that he has been wrongly implicated and hence the impugned Annexure A-1 order passed by the AA to the extent of imposition of minor penalty of Censure on the applicant may be set aside.

5. Per contra, the learned counsel for the respondents submitted that the applicant in fact was working as Incharge AO (Works). She produced an office order dated 20.05.2001, which indicates that the applicant in fact was working as AO (CW) – meaning thereby AO (Civil Work) in the office of SE (C) North. She vehemently argued that the respondents in reply to paras 5.2 to 5.5 of the OA have clearly stated that the applicant while holding the post of AO (Cash) was also acting as AO (Works) and that the said averments of the respondents have not been rebutted by the applicant in the rejoinder. The learned counsel placed reliance on the following judgments of the Hon'ble Supreme Court:

- i) **Damoh Panna Sagar Rural Regional Bank and another v. Munna Lal Jain, [(2005) 10 SCC 84]:**

Held:

"The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been

stated in the Wednesbury's case (supra) the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision."

ii) **B.C. Chaturvedi v. Union of India**, [(1995) 6 SCC 749]:

Held:

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court....."

5.1 She also relied upon the Full Bench judgment of this Tribunal in OA No.2816/2008 –**Sukhdev Singh & Anr. V. Govt. of NCT of Delhi & Ors.**, decided on 18.02.2011, in which this Tribunal held as under:-

"9. In view of the discussion made above, we hold that there is no bar, express or implied, in the Rules of 1980 for holding simultaneous criminal and departmental proceedings. However, in case departmental proceedings may culminate into an order of punishment earlier in point of time than that of the verdict in criminal case, and the acquittal is such that departmental proceedings cannot be held for the reasons as mentioned in rule 12, the order of punishment shall be re-visited. The judicial verdict would have precedence over decision in departmental proceedings and the subordinate rank would be restored to his status with consequential reliefs."

5.2 Concluding her arguments, the learned counsel stated that although in splitting of the work, the applicant's engineering boss, viz. SE (C), North had played major role but the applicant being AO (Works) Incharge of granting financial concurrence has also to take his share of blame. Hence, the punishment of Censure imposed by the AA vide Annexure A-1 order dated 17.05.2012 is perfectly in order and the prayers made in the OA may be denied.

6. We have considered the arguments put-forth by the learned counsel for the parties and have also perused the pleadings and the documents annexed thereto. Admittedly, the DE proceedings and criminal proceedings for the same offence were started against the applicant. During the pendency of the criminal case, the DA and AA have passed their orders. The applicant has been acquitted in the criminal proceedings in which the Court has held that the applicant's working as Accounts Officer has no place to conduct verification of the Inspection of Works and in the circumstances the Court came to the conclusion that no case has been made out against the applicant.

7. The learned counsel for the respondents, however, has produced office order dated 20.03.2001 in which it is clearly stated that the applicant was working as AO (Civil Works) in the office of SE (CW) and was also holding the additional charge of AO's post under SE (North). The said order also indicates that in addition to the additional charge of AO's post under SE (North), the applicant was also placed Incharge of the following:

“Additional charge of AO (CW)-II, AO (CN)-1, AO (CN)-II, AO (CE)-H, AO (CS)-I and AO (CS)-II.”

8. After perusing the said document produced by the learned counsel for the respondents and taking into account her submission that the applicant in the rejoinder has not rebutted the averments of the respondents in the reply to paras 5.2 to 5.5 of the

OA that the applicant, at the relevant time, while holding the post of AO (Cash) was also functioning as AO (Works), we hold that the applicant was in the additional charge of AO (Works) and thus was a party to the splitting of the work. Notwithstanding, the CVC's OM dated 28.12.2006 clearly stating that Shri H.K. Bansal, SE (Civil) and the Executive Engineer concerned were responsible for bifurcating the work, even though the authority for the same laid with the Chief General Manager, the applicant cannot be absolved of the charge since he was the one who accorded the financial concurrence. Therefore, we are of the opinion that the punishment of Censure imposed on the applicant by the AA vide impugned Annexure A-1 order dated 17.05.2012 is fully justified for the role of the applicant in the irregularities committed.

9. In view of the discussions in the foregoing paras, we do not find any illegality, infirmity or perversity in the impugned Annexure A-1 order dated 17.05.2012 passed by the AA and the same is upheld. The OA is dismissed.

10. No order as to costs.

(K.N. SHRIVASTAVA)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

‘San.’