

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No.3470/2015

This the 19th day of August, 2016

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

Jagdeep Singh,
Aged 50 years,
Group 'A'
Executive Engineer (Civil),
S/o Shri Ram Kishan,
R/o E-79, Second Floor,
East of Kailash
New Delhi-110065.

... Applicant

(By Advocate: Shri Ashish Nischal)

Versus

Union of India
Through It's Secretary,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi-110011.

... Respondent

(By Advocate: Shri Ashok Kumar)

ORDER(ORAL)

Hon'ble Mr.Justice Permod Kohli

The applicant before us is working as Executive Engineer (Civil) in the Ministry of Urban Development. The memorandum of charge dated 07.03.2007 was served upon him for initiating disciplinary proceedings for major penalty under Rule 14 of the CCS (CCA) Rules, 1965 for his response. The applicant submitted his reply and denied the articles of charge. The Disciplinary Authority, however, appointed inquiry officer to inquire into the charges initiated against the applicant. The Inquiry Officer, on completion of inquiry, submitted his report dated 06.01.2010

holding the charge No.1 as proved. The Central Vigilance Commission (CVC) while tendering second stage advice, advised imposition of suitable penalty vide its opinion dated 20.04.2010. The Union Public Service Commission (UPSC) also tendered its advice for imposition of penalty of censure vide its report dated 02.02.2011. Since the opinion of CVC and UPSC were at variance, the matter was referred to the DOP&T. Consequently, the disciplinary authority imposed minor penalty withholding of increment of pay for a period of three years without cumulative effect vide order dated 23.11.2011.

2. Aggrieved by the aforesaid order, the applicant filed OA-4644/2011. The said OA came to be decided vide judgment dated 04.01.2013 with the following observations/directions:-

"14. Considering all aspects of the matter and in the facts and circumstances of the case, we are of the views that the penalty order suffers from the non-application of mind and also being infraction of principle of natural justice as the report/advice of DoP&T and UPSC which has been relied on while inflicting punishment, yet not been given to him inviting his explanation/comments, therefore, the penalty order deserves to be quashed. We order accordingly, and the matter is remitted back to the Disciplinary Authority to invite the comments of the applicant on the UPSC advice and DoP&T report, and thereafter consider the same dispassionately and pass a final order by recording reasons."

3. The Tribunal set aside the order of imposition of penalty for non-application of mind and also violation of principle of natural justice on account of non-furnishing of the report/advice of CVC and UPSC relied upon by the Disciplinary Authority. Consequent upon the aforesaid directions, the advice of the UPSC and DOP&T was furnished to the applicant for his response vide order dated 16.04.2014. The applicant, on receipt of the advice of DOP&T and UPSC, submitted his detailed representation dated 13.05.2014 (Annexure A-14). The respondents on consideration of the response of the applicant, advice of the UPSC and

DOP&T, passed the impugned order dated 16.04.2015 (Annexure A-1) again imposing the minor penalty of withholding of increment of pay for a period of three years without cumulative effect. It is against this order that the applicant has again invoked jurisdiction of the this Tribunal under section 19 of Administrative Tribunal Act, 1985.

4. Shri Ashish Nischal, learned counsel for the applicant has assailed the order of imposition of penalty primarily on two grounds:

(i) that the complainant on whose complaint the disciplinary proceedings were initiated against the applicant has not been cited as a witness in the lists of witnesses furnished to him along with memo of charge, nor was the complainant examined during the course of the inquiry, resulting in violation of principles of natural justice.

(ii) that the charge per se does not amount to misconduct or misbehavior under the service jurisprudence.

5. In support of his first contention, Shri Ashish Nischal, learned counsel for the applicant has referred to a complaint dated 18.06.2004 filed by one Shri A.K. Goel, listing various acts of omissions and commissions attributable to the applicant in the matter of inviting tenders by him in his capacity as Executive Engineer and accepting authority. This complaint is listed as one of the documents at S.No.6 in the list of documents furnished to the applicant along with memo of charge. He has further referred to the list of witnesses furnished to him along with memo of charge where only two witnesses were named namely, Sh.N.K.Jain Executive Engineer (Civil) CPWD and Dr. K.M. Soni Supdt. Engineer DCC-IX CPWD.

6. According to learned counsel for the applicant, non-production of the complainant as a witness during the inquiry has deprived the applicant

of his basic right to cross examine the complainant to test the veracity of complaint and thus resulted in gross violation of principles of natural justice.

7. We have considered the above submissions. The charge against the applicant reads as under:-

" ARTICLE-I

Tenders of the aforesaid works were invited by the said Shri Jagdeep vide tender notice No.24(Misc)/2003/L-Divn/1699 dated 30.09.2000 as showing details:-

at	Estimated cost	Time allowed	Last date of receipt of application(11.00 am)	Last date of receipt & opening of tender(12.00 noon)	Date of receipt & opening of tender (3.00 pm)
	609997/-	5 months	6.10.2003	6.10.2003	6.10.2003
	982243/-	5months	6.10.2003	6.10.2003	6.10.2003
	982243	5 months	6.10.2003	6.10.2003	6.10.2003

As per provisions of para 16.7 of CPWD Works Manual 2003, receipt as per applications for issue of tenders should be stopped four days before the date fixed for opening of tenders and their sale is to be stopped three days before the date fixed for opening of tenders. In contravention to the above provisions, last date of receipt of the application, sale of tenders their receipt and opening were all scheduled by the said Shri Jagdeep Singh, Executive Engineer on the same date.

(iii) As per provision of para 10.1.2 of CPWD Works Manual 2003, a brief advertisement inviting tenders should be inserted in the press in the classified category for the works estimated to cost more than Rs/2.00 lakhs. In violation to the above provision, publicity through press was not resorted to by the said Shri Jagdeep Singh, Executive Engineer.

By his above acts of omission and commission, the said Shri Jagdeep Singh, Executive Engineer (Civil exhibited lack of devotion to duty, thereby contravening Rule 3(1)(ii) of CCS (Conduct) Rules, 1964."

8. From the perusal of the articles of charge, we find there are two specific allegations against the applicant :

(a) he has violated para 16.7 of CPWD Works Manual 2003, and instead of fixing minimum 10 days time for inviting and opening of tenders in respect to work costing up to Rs. 10 lakhs, he has reduced the time to 6 days only.

(b) in contravention to provision of para 17.14 of CPWD Works Manual 2003 the applicant has not published the tenders in the print media for wider publicity.

(c) The applicant has also violated para 16.12 of CPWD Works Manual, 2003, which, inter alia, requires publishing of the advertisement in press in respect to works estimated cost more than Rs.2 lakhs.

9. As a matter of fact, the complaint against the applicant also contain these allegations. It is not disputed that the complainant was not listed as witness in the list of witnesses accompanying the charge memo served upon the applicant. It is also an admitted position that the said complainant was never produced as witness during the course of inquiry. However, the fact remains that the substance of allegations against the applicant relate to the record and were/are verifiable from the record of the department even without oral testimony of the complainant. The complaint was not in isolation of the record. Under such circumstances, non-production of the complainant, when the allegations in the complaint were verifiable from the official records, does not, in any manner, caused any prejudice to the applicant.

10. Shri Ashish Nischal has relied upon the judgment of Hon'ble Supreme Court in the case of **Hardwari Lal vs. State of U.P. and Ors.**

reported in (1999) 8 SCC 582 wherein the following observations are made:

" 3. Before us the sole ground urged is as to the non-observance of the principles of natural justice in not examining the complainant, Shri Virender Singh, and witness, Jagdish Ram. The Tribunal as well as the High Court have brushed aside the grievance made by the appellant that the non-examination of those two persons has prejudiced his case. Examination of these two witnesses would have revealed as to whether the complaint made by Virender Singh was correct or not and to establish that he was the best person to speak to its veracity. So also, Jagdish Ram, who had accompanied the appellant to the hospital for medical examination, would have been an important witness to prove the state or the condition of the appellant. We do not think the Tribunal and the High Court were justified in thinking that non-examination of these two persons could not be material. In these circumstances, we are of the view that the High Court and the Tribunal erred in not attaching importance to this contention of the appellant.

11. The facts of the said case are totally distinct from the facts of the present case. In the said case, the allegations against a police constable were that he abused under the influence of liquor and the complaint was made in respect to the said incident. It was under these circumstances, non-production of the witnesses who had witnessed the incident, was found by the Hon'ble Supreme Court to have caused grave prejudice to the charged official. Such incident could only be testified by the oral evidence of the witness.

12. In the present case, the facts are verifiable from the official records independent of the statement of complaint and in fact have been verified by the two engineers, who have appeared as witnesses. Apart from that, the applicant has not disputed the allegation of the charge against him so far the facts are concerned. It is admitted by him that no advertisement was made in the press, as required under provisions of para 16.1.2. of CPWD Works Manual 2003. He has also admitted that 6 days' time was given for opening of the tenders, which is again in contravention to para

16.7 of CPWD Works Manual 2003. It has also come on record that only two tenders were received in respect to all the three tenders invited by him. Hence, it cannot be said that the applicant was prejudiced in any manner or principles of natural justice have been violated.

13. Coming to the next argument of Shri Nischal that the allegations do not constitute any service misconduct warranting any kind of penalty upon him. The service misconduct or misbehavior has not been specifically defined. However, the CCS (Conduct) Rules ,1964 defined the duties and obligations of the government servant. Rule 3 (xvii) provides:

"refrain from doing anything which is or may be contrary to any law, rules, regulations and established practices."

14. Even though, the CPWD Manual cannot be construed to be statutory in nature, nevertheless, the CPWD Manual contains covenants, which are regulatory in nature and are established practices to be followed and observed by the Department concerned. The applicant has violated the CPWD Manual, thus guilty of service misconduct or misbehaviour.

15. In this view of the matter, we do not find any valid ground to interfere with in the imposition of penalty against the applicant. This OA is accordingly dismissed. No order as to costs.

(K.N. Shrivastava)
Member(A)

(Permod Kohli)
Chairman

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