

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.4235/2011

Reserved on : 14.03.2017
Pronounced on : 04.09.2017

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

Sanjiv Gupta S/o J. N. Gupta,
R/o S-249, Greater Kailash-I,
New Delhi-110048.

... Applicant

(By Advocate: Mr. Som Dutt Sharma)

Versus

1. India Tourism Development Corporation
through its Chairman & Managing Director,
Scope Complex, Core 8,
6th Floor, 7, Lodhi Road,
New Delhi-110003.
2. Sr. Vice-President (HR-Admn.),
ITDC Limited,
Scope Complex, Core 8,
6th Floor, 7, Lodhi Road,
New Delhi-110003.
3. Vice President- Engineering,
ITDC Limited,
Scope Complex, Core 8,
6th Floor, 7, Lodhi Road,
New Delhi-110003.
4. Shri Vinod Madan,
Sector-B, Pocket-1,
Flat No.1323,
Vasant Kunj (Near Fortis Hospital),
New Delhi.

... Respondents

(By Advocates: Mr. Ujjwal K. Jha)

O R D E R

Justice Permod Kohli, Chairman :

Questioning the order imposing penalty of removal from service, the order passed by the appellate authority and the order passed in review, this OA has been filed seeking following reliefs:

- “i. to allow the present Original Application;
- ii. to quash the order dated 29.03.2010 passed by the Ld. CDA, the order dated 23.07.2010 passed by the Ld. Appellate Authority and the Order dated 08.11.2010 passed by the Revisionary Authority, being malafiee and legally unsustainable;
- iii. to issue appropriate directions to the Respondent for taking back the applicant in service with immediate effect after the payment of arrears of salary and other related dues for the intervening period, when he has been kept out of service illegally firstly under suspension and thereafter upon his illegitimate removal from service;
- iv. to restore the Applicant's service after granting him due promotions as per the original seniority list;
- v. to allow the costs for mental torture & humiliation;
- vi. pass such other order or orders as are deemed fit and proper in the facts and circumstances of the case.”

2. Briefly stated, the facts leading to the filing of the present OA are that the applicant was served with a major penalty charge-sheet dated 28.09.2007 with the following articles of charge:

“Article I

Shri Sanjeev Gupta, Sr. Manager (Civil) albeit never supervised the work, recorded measurements and recommended a payment to the tune of Rs.25 lacs(approx.) in respect of 2nd and final bill in favour of the contractor without authentication of the documents that formed basis of payment proposed by him. He relied on the documents/drawings prepared by the quantity surveyor, the services of whom were not hired by ITDC but by the contractor. These documents were submitted by the contractor and were not part of the inventory of files (in the charge of Shri Nehru) made by a duly constituted committee.

Article II

Shri Sanjeev Gupta did not check/verify the final levels that were available and existed on the ground/site, before recommending payment based on drawings supposedly signed by Shri Nehru, Site Engineer (signatures since denied as his by Shri Nehru).

Article III

Shri Sanjeev Gupta recorded extra items of value to the tune of Rs.9.82 lakh in the Measurement book without proper basis/justification and authentic record but on the basis of details forwarded by the contractor with his bill. He also got the measurements in the MB signed from the contractor. Although Shri Gupta later disallowed the said extra items yet the contractor has lodged a claim relating to such extra items with the Arbitrator. Thus, Shri Gupta has created an unjustified record that could favour the contractor in the Arbitration proceedings and cause financial loss to the Corporation/State.

Article IV

Shri Gupta mis-represented the position relating to approval of deviation while recommending payment relating to final bill vide his note stating ‘The deviation statement post comparative statement duly vetted by Scrutiny Cell & approval by C/A (Competent Authority) are enclosed’, whereas the deviation is yet to be approved as on date.

Article V

Shri Gupta deliberately and with an intent to favour the contractor brought on record letter dated 27.3.07 of the contractor addressed to the Arbitrator lodging his claim. The afore-cited letter was not marked to Shri Gupta but he processed the matter and forwarded the said letter to Sr.VP(Engg) vide his note dated 7.4.07. Since as per the letter of appointment of the Arbitrator, ITDC has been indicated as the Respondent through its General Manager (Engg-BD), Shri Gupta had no locus-standi to deal with the matter directly.

Thus, by the above acts, Shri Sanjeev Gupta, Sr. Manager (Civil) has violated the General Gules 3.1(i), 3.1(ii) and 3(iii) and has committed misconduct under Rule 4(iii), (iv), (xi), (xiii), (xxx), (xxxi) and (xxxvii) of ITDC Conduct, Discipline and Appeal Rules, 2002 (Revised, amended up to date) and accordingly chargesheeted."

The statement of articles of charge was accompanied by the statement of imputations, list of documents relied upon as also the list of witnesses, asking the applicant to submit his written statement of defence within fifteen days. The applicant submitted his detailed reply on 07.11.2007 disputing/denying the charges levelled against him being frivolous. The disciplinary authority vide order dated 18.01.2008 ordered conduct of inquiry into the charges against the applicant. On 14.05.2008 the Directorate of Forensic Sciences, MHA opined that the signatures of Mr. Nehru, former Project Engineer were forged. The applicant was placed under suspension vide order dated 03.10.2008 on the basis of the forensic report, and a corrigendum/addendum modifying the contents of articles of charge I & II was issued on 24.11.2008. The applicant furnished a detailed

representation in respect to the aforesaid corrigendum/addendum vide his representation/reply dated 27.11.2008. The inquiry was held into the articles of charge. On completion of the inquiry, the inquiring authority submitted its report dated 25.08.2009 holding article of charge I partly proved, charge II not established, whereas charges II, IV and V were held to be proved. The final findings of the inquiring authority are quoted hereunder:

"45. Findings:

Article-I Is established except that the charge that CO forged signatures of VK Nehru is not established.

Article-II Not established

Article-III Is established on the basis of totality of evidence.

Article-IV Is factually correct.

Article-V Is established."

3. The inquiry report was served upon the applicant on 08.10.2009. The applicant made a representation on 25.10.2009 in respect to the findings of the inquiry officer. The disciplinary authority vide the impugned order dated 29.03.2010 imposed the penalty of removal from service upon the applicant. The applicant preferred an appeal on 26.04.2010 against the order of penalty. The appeal was, however, dismissed vide order dated 23.07.2010. The applicant filed a review appeal before the respondent No.1 on

20.09.2010. The said review appeal also came to be dismissed vide order dated 08.11.2010.

4. The applicant has challenged the impugned order on the following grounds:

- (i) the findings of the inquiring authority are perverse;
- (ii) defence documents not furnished;
- (iii) the appeal decided without recording any reasons;
- (iv) penalty is disproportionate to the charge; and
- (v) the inquiry report is replete with manifest errors and suffers from illegality, and the inquiry officer was not technically qualified to understand the issues raised.

5. In the counter-affidavit filed on behalf of the respondents, it is stated that irregularities in the work of development of Quila Rai Pithora fortification wall were unearthed during vigilance investigation and the applicant was found mainly responsible for the same, and on the advice of CVC major penalty charge-sheet was issued to him on 28.09.2007. An inquiry was instituted after the response of the applicant. As per the findings of the inquiring authority, dishonesty, fraud and misrepresentation of facts were proved against the applicant. It is, however, stated that the allegation that the applicant forged signatures of Shri V. K. Nehru on the

drawings of levels of excavation of earth work could not be substantiated, though the Directorate of Forensic Sciences, Ministry of Home Affairs, vide its opinion/report confirmed forgery of the signatures of Shri Nehru on the drawings. The respondents have also stated that the applicant was put under suspension on 03.10.2008. The matter was also referred to CBI for investigation. Subsequently, CBI and CVC authorized the CVO, ITDC to investigate the matter and also opined that the department could obtain expert opinion on the purported forged signatures of Shri Nehru, the then Site Engineer. It is stated that consequently the questioned and authenticated (specimen) documents were forwarded to the Government Examiner of Questioned Documents (GEQD), Directorate of Forensic Sciences, MHA, Shimla, which observed that signatures supposedly of Shri V. K. Nehru, Manager (C), under suspension, appearing on the documents were forged. It is stated that these forged documents were used by the applicant while processing the 2nd and final bill of the contractor and recommended huge payment of Rs.23 lakhs, whereupon he was placed under suspension and a corrigendum/addendum to the charge-sheet was issued upon the opinion received from the GEQD.

6. The respondents have also denied the allegation of the applicant that the inquiry report suffers from manifest errors or that the inquiry officer was not technically qualified to understand the

issue. It is stated that the inquiring authority was highly qualified. It is accordingly mentioned that the applicant was found responsible for committing misconduct of very serious and grave nature involving dishonesty and moral turpitude on his part, whereupon the penalty of removal from service was imposed vide order dated 29.03.2010. It is stated that the applicant recommended payment of Rs.23.08 lakhs on the basis of certain documents/drawings prepared by the quantity surveyors, services of whom were not hired by ITDC but by the contractor. It is stated that the applicant misrepresented the fact that huge deviation of 199.94% had been approved by the competent authority while recommending the payment for the work in the proposal moved by him simultaneously. The applicant was also found responsible to have created unnecessarily a record relating to inclusion of extra items without any authenticated documents though same had been allowed later on. The respondents have further stated that it has been proved that the applicant deliberately brought on record the letter dated 26.03.2007 of the contractor lodging his claim in arbitration, which he did without having any *locus*.

7. Regarding the order passed by the appellate authority, it is stated that the then Director (C&M) being the competent appellate authority duly perused the appeal and found that no new facts were brought on record and the contentions raised by the applicant in his

appeal had already been considered by the inquiring authority during the inquiry proceedings, and also by the disciplinary authority while passing the penalty order. The appellate authority concluded that the order of the disciplinary authority dated 29.03.2010 imposing major penalty of removal from service is justified, the misconduct being serious and grave in nature involving dishonesty and moral turpitude, and hence the appellate authority vide its order dated 23.07.2010 disposed of the appeal confirming the order of the disciplinary authority. It is also stated that the review appeal before the C&MD, ITDC was also dismissed on consideration of the charge-sheet, inquiry proceedings, comments of the applicant, order of the disciplinary authority and the order of the appellate authority. The respondents have accordingly prayed for dismissal of the OA.

8. We have heard the learned counsel appearing for parties and perused the record.

9. During the course of hearing, learned counsel for the applicant laid much emphasis on the findings of the inquiry. However, from the relief claimed, we find that the inquiry report and the findings recorded therein are not under challenge. The applicant has only sought quashment of the order of penalty and the orders passed by the appellate and the reviewing authorities. In absence of

there being any challenge to the inquiry report and the findings recorded therein, it is not permissible in law to examine the validity of the findings of the inquiring authority.

10. Learned counsel appearing for the applicant has vehemently argued that after suspension of Shri V. K. Nehru, the earlier Project Manager, the applicant was appointed as the Project Manager in his place. At the time of appointment of the applicant, the work in the project stood completed and nothing remained to be executed on the site. It is stated that the applicant's role was merely limited to processing of the 2nd and final bill raised by the contractor, and such processing was carried out by the applicant strictly on the basis of the record/documents made available to him. Payments were released to the contractor after obtaining due approvals from the highest levels of hierarchy. It is also the case of the applicant that Shri V. K. Nehru was suspended pending CBI investigation and was later found guilty by CBI. The applicant has also levelled *mala fides* against respondent No.4 who was in-charge of the whole project right from its inception till the end. It is further stated that the payment proposed by Shri Nehru was sanctioned in favour of the contractor after revising the work done valuing Rs.12,14,444/-, which was almost 99% of the contract value. The said payment was made on the basis of approval sought from the respondent No.4, the project in-charge. It is also mentioned that the deviation was

approved by the competent authority. It is further stated that after Shri Nehru's arrest by CBI, a committee of four members, including the respondent No.4, was formed to force open the lockers/cabinets of Shri Nehru's offices to retrieve the files of the projects being handled by him, including the aforesaid project. Several files were retrieved, out of which the files/documents required by CBI were segregated by the respondent No.4. It is stated that a few files were handed over to CBI on 10.01.2005 and till then the respondent No.4 had complete access to each and every document pertaining to the project. It is also stated that the applicant despite being engaged as Project Manager was not handed over all files/record retrieved. The applicant is stated to have made a proposal dated 14.06.2005 for approval of deviation to the tune of 199.4% based on the drawings and other documents handed over to him by the respondent No.4. The respondent No.4 accorded approval to the deviation note prepared by the applicant on 15.06.2005, and the competent authority also approved the deviation note. It is stated that it was only after the approval of the deviation note that the payment was made to the contractor.

11. Though the inquiry report and the findings recorded have not been challenged, however, the learned counsel for the applicant having argued that the findings are without any evidence, we did peruse the inquiry report. The article of charge I against the

applicant was that he recommended payment of Rs.23.08 lakhs in respect of 2nd and final bill to the contractor M/s Bansal Enterprises without authentication of the documents that formed the basis of the payment proposed by the applicant. The applicant relied upon documents/drawings prepared by the quantity surveyor services of whom were not hired by ITDC but by the contractor. It was also found that these documents/drawings were not part of the inventory of files (in the charge of Shri Nehru) made by the aforesaid committee. It is also found that the signatures of Shri Nehru were forged on the documents/drawings. The allegation against the applicant was that he processed the 2nd and final bill based on initial level drawings dated 24.09.2004 and final level drawings dated 20.12.2004. The entire charge against the applicant was proved except that he had forged the signatures of Shri Nehru.

12. The second charge against the applicant relates to manipulation and tampering of the date of the final bill submitted by the contractor so as to match with the completion mentioned in the final level drawing bearing forged signatures of Shri V. K. Nehru. This charge was not established against the applicant.

13. The third article of charge relates to payment in respect to extra items which included approvals valuing Rs.9.82 lakhs. The applicant submitted the proposal for approval of deviation to the

tune of 189.14% in his note dated 14.06.2005. This charge was established in the inquiry. The proposal for deviation was to the tune of 189.14%. This deviation was disallowed. The charge is said to be proved.

14. The fourth charge against the applicant relates to proposal for approval of deviation to the tune of 199.94%. Even when the deviation was not approved, the applicant prepared a note recommending payment of Rs.23.08 lakhs to the contractor M/s Bansal Enterprises stating that the deviation statement was duly vetted by the scrutiny cell and approved by the competent authority, whereas there was no formal approval. This charge was also held to be proved.

15. Article of charge V pertains to the appointment of Arbitrator. The claim was lodged by the contractor M/s Bansal Enterprises. The letter dated 01.08.2006 appointing the Arbitrator was not endorsed to ITDC. The applicant, however, put-up this letter in his note dated 07.05.2007 suggesting that an advocate may be appointed to formalize replies. The allegation is that the applicant was not concerned with the arbitration proceedings and the aforesaid letter was never endorsed to him. Still he put up the claim of the contractor without any notification by the Arbitrator. This charge is also held to be proved during the inquiry.

16. It is settled law that the Tribunal cannot sit as a court of appeal over the findings of the inquiring authority. The conclusions derived by the inquiring authority are based upon evidence. The adequacy of the evidence cannot be looked into by the Tribunal so long the view of the inquiring authority is one of the possible view. The argument of the applicant's counsel that the findings are perverse cannot be accepted.

17. In order to establish that the defence documents were not furnished, the learned counsel referred to the inquiry report under the caption "Brief History". It has been recorded by the inquiring authority that the charged officer's letter dated 22.03.2008 containing list of defence documents was conveyed by him on 03.04.2008 and the inquiring authority advised the presenting officer to collect the permitted defence documents and give their copies to the charged officer by 22.04.2008. Further reference is made to the orders passed by the inquiring authority on four dates. The presenting officer reported that he had sent the defence documents to the charged officer. The inquiring authority, however, pointed out another order-sheet dated 19.11.2008 that the presenting officer had not given to the charged officer all permitted documents. On the basis of these observations of the inquiring authority, it is sought to be argued that the defence documents were not furnished. In this regard, it is pertinent to note that the charged officer has to establish that the

documents asked for by him are relevant to the issues involved in the inquiry and non-furnishing of such documents has caused prejudiced to him. Learned counsel for the applicant has not been able to point out any document was asked for and was relevant to the controversy, and its non-production has caused prejudice to the delinquent officer. These findings do not come to the rescue of the applicant, particularly when the inquiry report is not under challenge.

18. The applicant has relied upon a judgment of the Hon'ble Supreme Court in *Ranjit Thakur v Union of India & others* [(1987) 4 SCC 611]. This was a judgment on court martial. In this case it has been held that it is the essence of a judgment that it is made after due observance of the judicial process; that the court or tribunal passing it observes, at least the minimal requirements of natural justice; and is composed of impartial persons acting fairly and without bias and in good faith. The Apex Court further held that a judgment which is the result of bias or want of impartiality is a nullity and the trial *coram non-judice*.

19. The applicant also relied on a judgment of the Apex Court in *V. Ramana v A.P. SRTC & others* [(2005) 7 SCC 338]. In this case, the scope of judicial review and interference in disciplinary proceedings has been discussed. It has been held that the court should not interfere with the administrator's decision unless it is

illogical or suffers from procedural impropriety or is shocking to the conscience of the court in the sense that it is in defiance of logic or moral standards. 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 for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision. It is further held that unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/tribunal, there is no scope for interference.

20. The applicant has also relied on another judgment of the Hon'ble Supreme Court in *Manoj H. Mishra v Union of India & others* [(2013) 6 SCC 313]. In this case it has been held that once an unequivocal admission of the guilt is made by the appellant despite opportunity to deny the charges, at final stage cannot be permitted to resile from such admission.

21. The applicant relied upon yet another judgment of the Apex Court in *Bhagat Ram v State of Himachal Pradesh* [AIR 1983 SC 454], wherein it has been held that where the findings are utterly perverse, the High Court can always interfere with the same.

22. We have perused the aforesaid judgments. We fail to understand how these judgments can help the applicant in the facts

and circumstances of the case. As noticed by us hereinabove, there is no perversity in the findings recorded by the inquiry officer. The applicant has neither pointed out the relevancy of the documents nor any prejudice having been caused to him. We do not find any violation of the statutory rules. There is no specific allegation of bias against any person warranting interference in the impugned penalty order.

23. Insofar as the appellate order is concerned, it is said to be without reasons. The appellate authority has recorded sufficient reasons in paras 2 and 3 of the appellate order. Similarly, in review appeal also reasons have been recorded. The contention of the learned counsel for the applicant that the orders are without reasons is not correct. Suffice it to say that the administrative authority is not required to write a judgment, as is written by a court of law. The administrative authority, particularly when exercising appellate jurisdiction, is only required to disclose due application of mind to the issues raised, which has been done in the present case.

24. It is argued that the punishment is disproportionate to the charges against the applicant. In *Ranjit Thakur's* case (supra) relied upon by the applicant, the Hon'ble Supreme Court held as under:

“25. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to

conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction....”

25. Insofar as the question of quantum of punishment is concerned, the Hon’ble Supreme Court taking note of various earlier judgments, in *Jai Bhagwan v Commissioner of Police* [(2013) 11 SCC 187], held as under:

“10. What is the appropriate quantum of punishment to be awarded to a delinquent is a matter that primarily rests in the discretion of the disciplinary authority. An authority sitting in appeal over any such order of punishment is by all means entitled to examine the issue regarding the quantum of punishment as much as it is entitled to examine whether the charges have been satisfactorily proved. But when any such order is challenged before a Service Tribunal or the High Court the exercise of discretion by the competent authority in determining and awarding punishment is generally respected except where the same is found to be so outrageously disproportionate to the gravity of the misconduct that the Court considers it be arbitrary in that it is wholly unreasonable. The superior Courts and the Tribunal invoke the doctrine of proportionality which has been gradually accepted as one of the facets of judicial review. A punishment that is so excessive or disproportionate to the offence as to shock the conscience of the Court is seen as unacceptable even when Courts are slow and generally reluctant to interfere with the quantum of punishment. The law on the subject is well settled by a series of decisions rendered by this Court.”

Thus, it is for the competent disciplinary authority to impose the penalty as may be required on the basis of the material before it. It is

not for the court to interfere in the quantum of punishment unless it pricks the conscience of the court and is so disproportionate to the offence committed as to defy prudence. In the present case, we find that major charges against the applicant have been proved. The penalty of removal from service under the facts and circumstances of the present case cannot be said to be disproportionate. We do not feel that this is a fit case where the doctrine of proportionality is attracted.

26. The contention of the learned counsel for the applicant that the inquiry suffers from manifest errors is a general statement. Reference to correspondence in the OA is of no avail to the applicant. The inquiring authority has discussed the entire evidence adduced before it and thereafter arrived at a particular conclusion holding the charges proved against the applicant, except article of charge II and partly charge I. The findings seem to be absolutely logical. The contention of the applicant that the inquiry officer was not a technical person and thus the inquiry stands vitiated is also without any merit. No technicality was involved in the matter. The inquiry officer was only required to appreciate the evidence produced before it. It was purely an administrative matter and the inquiry officer has formulated opinion, which is not illogical. No specific instance has been pointed out which may lead to any finding contrary to the facts on record, illogical or perverse. As noticed hereinabove, all these

contentions are also otherwise not required to be gone into for the simple reason that there is no prayer for quashing the inquiry report and/or the findings therein.

27. Finding no merit in the OA, we dismiss the same. No costs.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/as/