

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

O.A.No.3907/2014

Order reserved on 11th December 2017

Order pronounced on 8th March 2018

Hon'ble Mr. K.N. Shrivastava, Member (A)

Mohd. Salim Beg
Aged about 45 years
Working as Director
s/o Sh. Abdul Hakim
r/o Flat No.GH-72, Windsor Park
Indirapuram, Distt. Ghaziabad
Uttar Pradesh

..Applicant

(Mr. M K Bhardwaj, Advocate)

Versus

1. Secretary
Ministry of Communication & Information
Govt. of India, Sanchar Bhawan
20, Ashoka Road
New Delhi – 110 001
2. Director (VA)
Ministry of Communication & Information
Govt. of India, Sanchar Bhawan
20, Ashoka Road
New Delhi – 110 001

..Respondents

(Mr. Subhash Gosain, Advocate)

ORDER

Through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following main reliefs:-

“(i) To quash and set-aside the impugned order dated 27.06.2014 (A-1) and direct the respondents to give all consequential benefits

including due promotion / up-gradation etc from the date of juniors with all consequential benefits, without loss of seniority.

(ii) To declare the proceedings as initiated vide charge memo dated 08.11.2012 as illegal and unjustified and released all consequential benefits to the applicant from due date with all consequential benefits.”

2. The factual matrix of the case, as noticed from the records, is as under:-

2.1 The applicant is presently serving as Director, Telecom Engineering Centre, Department of Telecommunications, Delhi. During the period between 1998 to 2002, he was posted as DE/DGM in the office of General Manager Telecom District, Moradabad (UP).

2.2 Annexure A-2 charge memo dated 08.11.2012 came to be issued to the applicant leveling certain charges against him and proposing to start major penalty proceeding against him under Rule 16 of CCS (CCA) Rules, 1965. The statement of imputation of misconduct enclosed with the charge memo read as under:-

“That Shri Mohd. Salim Beg, the then DE/DGM and presently Director, TEC, New Delhi while posted and functioning as DE O/o GMTD Moradabad, during the period July 1998 to April 2002 and as DGM (A&P), O/o GMTD Moradabad, during the period April 2002 to March 2003 committed following irregularities:-

(I) During aforesaid period while working as DE, Shri Mohd. Salim Beg had executed following Civil works of partitioning / installation and approached and appended his signature on certificates of satisfactory execution of works without observing the formalities such as recording of measurement books, preparation of L-14 diagrams/layout plans etc. in respect of bills listed below:-

S.N	Bill No	Date	File No.	Name of Firm	Amount in Rs.
1	63	09/15/00	FF 2194D(b) 99-00	Istiaq Hussain Siddiqui	49343

2	64	9/16/00	FF 2194D(b) 99-00	Istiaq Hussain Siddiqui	43251
3	67	09/17/00	FF 2194 D(b) 99-00	Istiaq Hussain Siddiqui	13925
4	73	4/7/00	FF 2257 D(b) 99-00	Chandra Enterprises	46547
5	75	4/7/00	FF 2257 D(b) 99-00	Chandra Enterprises	48851
6	79	4/8/00	FF 2257D(b) 99-00	Chandra Enterprises	49644

(II) During aforesaid period while working as DGM (A&P), Shri Mohd. Salim Beg had processed and processed/passed various estimates and bills for execution of Civil works and failed to check maintenance of measurement books, L-14 diagrams in respect of bills listed below:-

S.N	Bill No	Date	File No.	Name of Firm	Amount in Rs.
1	256	04/22/02	FF 2403 D(b) 00-01	Chandra Enterprises	52188
2	257	5/1/02	FF 2403 D(b) 00	Chandra Enterprises	45390
3	258	05/14/02	FF 2403 D(b) 00	Chandra Enterprises	57384
4	259	05/15/02	FF 2403 D(b) 00	Chandra Enterprises	53124
5	260	05/18/02	FF 2403 D(b) 00	Chandra Enterprises	51843
6	261	06/25/02	FF 2404 D(b) 00-01	Chandra Enterprises	96720
7	262	6/25/02	FF 2404 D(b) 00-01	Chandra Enterprises	85460
8	1139	7/3/02	FF 2691 D(b) 01-02	Royal Engg. Works	202204
9	1145	8/9/02	FF-2816 D(b) 02-03	Royal Engg. Works	111298
10	162	03/27/02	GMTD/MRD/BPH-810/PW/01-02	Istiaq Hussain Siddiqui	49775
11	174	08/13/02	GMTD/MRD/BPH-811/PW/01-02	Istiaq Hussain Siddiqui	9039
12	165	03/28/02	GMTD/MRD/BPH-813/PW/01-02	Istiaq Hussain Siddiqui	33749
13	247	4/5/02	GMTD/MRD/BPH-820/PW/02-03	Chandra Enterprises	54590
14	248	4/8/02	GMTD/MRD/BPH-821/PW/02-03	Chandra Enterprises	50349

15	249	4/9/02	GMTD/MRD/BPH-822/PW/02-03	Chandra Enterprises	49934
16	1126	4/3/02	GMTD/MRD/BPH-823/PW/02-03	Royal Engg. Works	50552
17	1127	4/4/02	GMTD/MRD/BPH-824/PW/02-03	Royal Engg. Works	50232
18	250	4/10/02	GMTD/MRD/BPH-825/PW/02-03	Chandra Enterprises	55809
19	1138	7/3/02	GMTD/MRD/BPH-850/PW/02-03	Royal Engg. Works	187360
20	271	NIL	GMTD/MRD/BPH-820/PW/02-03	Chandra Enterprises	136992
21	272	8/5/02	GMTD/MRD/BPH-852/PW/02-03	Chandra Enterprises	196366
22	273	8/5/02	GMTD/MRD/BPH-853/PW/02-03	Chandra Enterprises	201033
23	1140	8/5/02	GMTD/MRD/BPH-854/PW/02-03	Royal Engg. Works	113172
24	87	8/5/02	GMTD/MRD/BPH-855/PW/02-03	Royal Engg. Works	266028
25	172	08/13/02	GMTD/MRD/BPH-856/PW/02-03	Mumtaz Hussain	96222
26	173	08/13/02	GMTD/MRD/BPH-859/PW/02-03	Istiaq Hussain Siddiqui	71508
27	1143	08/13/02	GMTD/MRD/BPH-860/PW/02-03	Istiaq Hussain Siddiqui	95259
28	1142	8/8/02	GMTD/MRD/BPH-863/PW/02-03	Royal Engg. Works	117901
29	274	8/7/02	GMTD/MRD/BPH-864/PW/02-03	Royal Engg. Works	164505
30	274	8/7/02	GMTD/MRD/BPH-865/PW/02-03	Chandra Enterprises	105125
31	275	8/8/02	GMTD/MRD/BPH-866/PW/02-03	Chandra Enterprises	142425
32	277	NIL	GMTD/MRD/BPH-870/PW/02-03	Chandra Enterprises	145125
33	276	9/12/02	GMTD/MRD/BPH-871/PW/02-03	Chandra Enterprises	112095
34	1146	9/12/02	GMTD/MRD/BPH-872/PW/02-03	Royal Engg. Works	129042
35	1154	10/2/02	GMTD/MRD/BPH-887/PW/02-03	Royal Engg. Works	188770
36	281	10/3/02	GMTD/MRD/BPH-888/PW/02-03	Chandra Enterprises	160760
37	1155	10/3/02	GMTD/MRD/BPH-891/PW/02-03	Royal Engg. Works	165478
38	4	10/13/02	GMTD/MRD/BPH-893/PW/02-03	Global Engg. Works	186914

39	5	10/13/02	GMTD/MRD/BPH-894/PW/02-03	Global Engg. Works	150160
40	3	10/13/02	GMTD/MRD/BPH-895/PW/02-03	Glo3bal Engg. Works	156104
41	3	NIL	GMTD/MRD/BPH-896/PW/02-03	Comet traders & builders	112909
42	4	NIL	GMTD/MRD/BPH-897/PW/02-03	Comet traders & builders	163500
43	5	10/10/02	GMTD/MRD/BPH-898/PW/02-03	Comet traders & builders	160800
44	288	11/14/02	GMTD/MRD/BPH-904/PW/02-03	Chandra Enterprises	137640
45	290	11/14/02	GMTD/MRD/BPH-906/PW/02-03	Chandra Enterprises	138635
46	289	11/14/02	GMTD/MRD/BPH-907/PW/02-03	Chandra Enterprises	138590
47	1160	12/5/02	GMTD/MRD/BPH-917/PW/02-03	Royal Engg. Works	200416
48	1161	12/10/02	GMTD/MRD/BPH-919/PW/02-03	Royal Engg. Works	147755
49	1167	2/4/03	GMTD/MRD/BPH-929/PW/02-03	Royal Engg. Works	49775
50	1166	2/4/03	GMTD/MRD/BPH-930/PW/02-03	Royal Engg. Works	154517
51	292	2/4/03	GMTD/MRD/BPH-931/PW/02-03	Chandra Enterprises	119355
52	291	2/4/03	GMTD/MRD/BPH-932/PW/02-03	Chandra Enterprises	89325

Thus, by his aforesaid acts, the said Shri Mohd. Salim Beg committed gross misconduct and failed to maintain absolute integrity, devotion to duty and acted in a manner which is unbecoming of a public servant thereby contravening provisions of Rule 3 (1) (i), (ii) & (iii) of CCS (Conduct) Rules, 1964.”

2.3 The applicant submitted his reply to the charge memo vide his Annexure A-4 representation dated 18.01.2013 denying all the charges. The applicant, *inter alia*, had stated in his representation as under:-

“There were already set procedures in place for execution of such works in the SSA as per instructions of the then GMTD. Therefore, as per prevailing practice in the SSA, the measurements were recorded/mentioned on the body of bills itself. It is further

submitted that the O/o GMTD Moradabad did not issue MBs to any one for said works that is why more than 30 officers (JE/SDE/DE) of Moradabad SSA recorded measurements on body of the bills itself.

The measurements of completed works which were recorded/mentioned on the body of the bills itself, is as good as MB, because they serve the purpose of checking and verifying the executed works under reference. No loss was either imputed or caused to the Department by indicating the measurements on the bills itself. Rather, it was subjected to greater scrutiny since all could peruse the measurements with ease on the face of bill. In fact, by recording measurements on bills is much more transparent and easy way for assessing the work done. Therefore, during investigation all said work were verified by expert vigilance committee of UP (W) circle and found in existence in terms of measurements mentioned on the face of bills. There were no deficiencies in either the quality or the quantity of work done.

This is also submitted that there was similar prevalent practice of the measurement in other SSAs also. Muzaffarnagar SSA or UPW Circle has informed under RTI Act that separate MB was not prepared for the petty civil works done by SSA. (Annexure-F).

The bills under reference were examined by account wing of SSA and approved by the then GMTD before payment. The adopted procedure of measurements was not objected by P&T audit team during the annual audits. (Annexure-G).

Regarding L-14 diagram, it is submitted that L-14 diagram is neither applicable for works under reference nor it used to be prepared by SSA. The L-14 diagram is applicable of Lines and Wires (L&W) etc works for connecting new trunk lines. (Copy of P&T VOL X, 9th Edition chapter VI enclosed as Annexure-H). That is why not only the account wing of O/o GMTD Moradabad but also the P&T audit team did not point out the same during the annual audits. It is also submitted that the civil wing of BSNL civil circle Meerut has informed under RTI Act that L-14 diagram are not used in BSNL civil works (Annexure-I)

Therefore, the charges contained in Para (II) that the works were certified for satisfactory execution without observing the formality is not proved.”

2.4 The disciplinary authority referred the matter to the Union Public Service Commission (UPSC) for its advice, who vide its Annexure A-5 memorandum dated 01.05.2014 advised as under:-

“4. The case records have been examined by the Commission thoroughly and their observations are as follows:

4.1 The Commission observe that the elements of charges are that the CO (i) failed to ensure maintenance of Measurement Books and (ii) failed to check preparation of L-14 diagram. It is evident from records that the payments to contractors and others for the work done or other services rendered are made on the basis of measurement recorded in the Measurement Book, which is also the basis of measurement recorded in the Measurement Book, which is also the basis of all accounts of quantities whether of works done by Contractors or by Labourers employed departmentally or materials received. Similarly, in terms of provisions under Rule 524 of Financial Hand Book Vol.1, the MBs should have been prepared for civil works amounting more than Rs.1000/- and the same should have been attached with the bills for the civil works amounting more than Rs.3000/-. Thus, maintenance of MB for civil work was mandatory as per provisions of CPWD Manual. The DA in their comments have stated that charges are specified in the Charge sheet, as procedures were not followed during processing of estimates and payment of bills while executing petty civil works. The CO being a senior Officer is supposed to know that civil works are being carried out as per the provisions contained in CPWD Manual. Hence, the contention of the CO that in the absence of mention of such rule position, the allegation is not sustainable, as it does not give an opportunity to him to offer his defence with reference to that rule, is not tenable. The provisions contained in CPWD Manual and Financial Hand Book Vol.I are specific and enjoins upon the CO to ensure checking and maintenance of Measurement Book. There is no substitute or alternate procedure in place of maintenance of MB. Prevailing practice at SSA is not an excuse for the CO. The CO should have pointed out it or ensured to maintain MB before passing the bills. The averments made by the CO that measurements were recorded on the bills, there is no loss to Department etc. are not tenable. The element of Charge that the CO failed to ensure maintenance of MB is proved.

4.2 The Commission further observe that regarding the other element of the Charge that the CO failed to check preparation of L-14 diagram, the submission of the CO is that in terms of para 405 of P&T Manual Vol.X, the L-14 diagram is neither applicable for works under reference nor it is used to be prepared by SSA. The L-14 diagram is applicable to lines, wires (L&W), works for connecting new trunk lines etc. This submission of CO has been accepted by the DA. Hence, this element of Charge is not proved. Thus, the Charge mentioned in the Statement of Imputations is partly proved.

5. In the light of the observations and findings as discussed above, and after taking into account all other aspects relevant to the case, the Commission consider that the ends of justice would be met in this case, if the penalty of “Withholding of one increment of pay for a

period of one year without cumulative effect” is imposed on the CO, Shri Mohd. Salim Beg. They advise accordingly.”

2.5 A copy of *ibid* advice of UPSC was sent by the disciplinary authority to the applicant for his comments, who submitted his representation against the UPSC’s advice vide his Annexure A-6 letter dated 20.05.2014.

2.6 Not satisfied with the explanation of the applicant and acting on the advice of the UPSC, the disciplinary authority (President of India), vide impugned Annexure A-1 order dated 27.06.2014, imposed the penalty of withholding of one increment of pay for a period of one year without cumulative effect on the applicant.

2.7 Since the penalty order was Presidential order, there is no provision of appeal. Accordingly, the applicant has approached this Tribunal in the instant O.A. against the impugned Annexure A-1 penalty order and has prayed for the reliefs as indicated in paragraph (1) above.

3. In support of the reliefs claimed, the applicant has pleaded the following important grounds:-

3.1 The applicant has been punished by the disciplinary authority without considering that no disciplinary action could be taken on the allegation of procedural lapse and that too after expiry of 12 years of the alleged incidence. The incident relates to the period from 1999 to 2002, whereas the charge memo was issued in the year 2012 without giving any justification for the inordinate delay in issuing the charge memo.

3.2 The General Manager, being the competent authority, had directed the concerned Sub Divisional Engineer (SDE) and other technical officers for mentioning the measurement of urgent nature of works in the bills itself. The applicant had no authority to object the same being the subordinate officer. As such, he has not committed any misconduct warranting disciplinary action.

3.3 The disciplinary authority has merely gone by the advice of UPSC and has not applied its own independent mind.

3.4 The disciplinary authority failed to notice that even the UPSC had accepted that in the absence of supporting documents, allegations cannot be held to be proved.

3.5 The Hon'ble Supreme Court in the case of **State of Madhya Pradesh v. Bani Singh & another**, (1991) 16 ATC 514 has held as under:-

“4. ...There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal.”

Similar view has been taken by the Hon'ble Apex Court in its judgment in the following cases”

- (i) **Secretary to Government, Prohibition and Excise Department v. L Srinivasan**, (1996) 2 SCC 157,
- (ii) **Food Corporation of India v. V.P. Bhatia**, (1998) 9 SCC 131,
- (iii) **State of A.P. v N. Radhakrishnan**, (1998) 4 SCC 154,

- (iv) **State of Punjab & others v. Chaman Lal Goyal**, (1995) 2 SCC 570; and
- (v) **P.V. Mahadevan v. Managing Director, T.N. Housing Board**, (2005) 6 SCC 636.

This Hon'ble Tribunal has also delivered judgments relying on the rulings of the Hon'ble Apex Court in the afore-mentioned cases.

3.6 The disciplinary authority has erred in holding that measurement book (MB) was required to be maintained as per CPWD Manual. It failed to refer to any rule or administrative order regarding applicability of CPWD Manual in BSNL and specific provision in CPWD for maintaining separate MB for urgent nature of works.

3.7 The disciplinary authority has acted without application of mind and has punished the applicant without any evidence against him. It has also failed to consider that initiation of proceedings after inordinate delay has caused grave prejudice to the interest of the applicant, as he was handicapped to defend himself against the allegation after 12 years when the original records were not available to him.

3.8 The case of the applicant is squarely covered by the judgment of this Tribunal in the case of **Deepak Sinha v. Union of India** (O.A. No.2672/2008 with connected case) decided on 21.08.2009. In that judgment, it was observed that the charge against the applicants therein was of procedural in nature and no loss had been caused to the Government, nor has there been any computation of loss. The said O.A. was

allowed and the charge memo was quashed and set aside. The *ibid* judgment of the Tribunal was challenged before the Hon'ble High Court of Delhi in W.P. (C) No.3657/2010 by the respondents therein, which was dismissed by the Hon'ble High Court vide order dated 25.05.2010.

4. The respondents in their reply have made the following important averments:-

4.1 The O.A. is liable for dismissal at the threshold stage itself, as the applicant has not availed the remedy of preferring a review against the minor penalty order, which is available to him under Rule 29 of CCS (CCA) Rules, 1965.

4.2 It is prerogative of the disciplinary authority to initiate disciplinary proceedings against the charges of misconduct of a government servant and the scope of judicial review in such matters is very limited unless there are instances of procedural lapses and violation of principles of natural justice.

4.3 The contention of the applicant that he had followed the prevalent practice in the office of General Manager Telecom District, Moradabad, UP. in not maintaining the MB is flawed. This cannot be a valid ground of defence.

4.4 The provisions contained in CPWD Manual are specific and enjoin upon the applicant to ensure checking and maintenance of MB.

4.5 The advice of UPSC and applicant's representation thereon have been duly considered by the disciplinary authority before passing the penalty order. It is wrong to say that the disciplinary authority got influenced by the

advice of UPSC or any extraneous authority and that it did not apply its own mind.

4.6 In **Union of India v. Raj Kishore Gupta**, 1995 Supp (4) SCC 235, the Hon'ble Supreme Court has held that delay in issuing a charge sheet is to be distinguished from delay in completion of inquiry proceedings.

4.7 It is trite law that the disciplinary proceedings must be conducted soon after the discovery of the alleged irregularities. The Courts should interfere in disciplinary proceedings by exercising their power of judicial review only if the delay involved in initiation of disciplinary proceedings has not been satisfactorily explained.

4.8 In case where the delay involved is explained, the Courts are not expected to interdict in the departmental proceedings. In this regard, reliance is placed on the judgment of Hon'ble Supreme Court in **Secretary to Government, Prohibition and Excise Department v. L Srinivasan** (supra) wherein it has been held that "where by reasons of the very nature of the charges (e.g. Embezzlement and fabrication of false records) it would take a long time to detect the offence, quashing of the proceedings for mere delay in initiation of the enquiry would not a proper exercise of powers of judicial review".

5. On completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties on 11.12.2017. Arguments of Mr. M K Bhardwaj, learned counsel for applicant and that of Mr. Subhash Gosain, learned counsel for respondents were heard.

6. The respondents have not denied in their reply that in the office of General Manager Telecom District, Moradabad, UP, the prevalent practice was that separate MB was not maintained for environment works of urgent nature done by SSA and that measurements were recorded on the bills of the contract itself. The applicant was working as DE/DGM in the office of General Manager Telecom District, Moradabad, UP. Hence, he was duty bound to follow the prevalent practice. If at all the respondents feel the MB in respect of urgent nature of works is required to be maintained, they ought to have first instructed General Manager Telecom District to apply the procedural correctives. The alleged irregularities have been pointed out by the audit, which has triggered issuance of the charge memo to the applicant. Nowhere in the imputation of misconduct, it has been stated as to what kind of financial loss has been caused by the applicant to BSNL in following the prevalent practice of non-maintaining the separate MB for the environment works of urgent nature and in recording the measurements on the bills themselves. Even the quantum of loss has not been computed. It would be appropriate, at this stage, to deliberate as to what constitutes misconduct, especially in the context of disciplinary proceedings entailing penalty. Code of conduct, as set out in the Conduct Rules, clearly indicates the conduct expected of a member of the service. A conduct, which is blameworthy for the government servant in terms of the Conduct Rules, would be misconduct. If a government servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (**Union of India v. J. Ahmed**, 1979 (2) SCC 286).

7. From the material placed on record, the alleged irregularity committed by the applicant does not fall within the meaning of misconduct. At the most, it can be said that the applicant has committed procedural irregularity without causing any financial loss to the BSNL. This Tribunal in **Deepak Sinha's** case (supra), vide order dated 21.08.2009, has held that procedural irregularity would not constitute misconduct. This view of the Tribunal has been upheld by the Hon'ble High Court of Delhi in W.P. (C) No.3657/2010 (supra).

8. The respondents have issued the charge memo dated 08.11.2012 for an instance that took place during 1999 to 2002, i.e., after a delay of over a decade. Their explanation that the irregularity was pointed out by the P&T audit team and thereafter the charge memo has been issued cannot be accepted on its face value. As a matter of fact, there ought to have been some internal mechanism in the BSNL to timely detect such irregularities. Since this has not been done by the internal mechanism of BSNL, the general impression would be that the practice of recording the measurements of urgent works on the bills themselves and not to maintain the separate MBs for such works, was the order of the day.

9. It is quite clear from the records that the applicant has not caused any financial loss to BSNL. The alleged irregularity is not of his own making. Hence, I am of the view that the applicant has been unnecessarily subjected to disciplinary inquiry proceedings and has been punished by the impugned order. Pertinent to note that even the UPSC, in its advice, has accepted that in the absence of supporting documents, allegations cannot be held to be proved.

10. The argument of learned counsel for respondents that the applicant has prematurely approached this Tribunal in the instant O.A. without exhausting the alternate remedy of filing review petition before the competent authority under CCS (CCA) Rules, 1965 is to be taken with a pinch of salt. Undisputedly, Rule 29 of CCS (CCA) Rules 1965 provides for revision and review of the penalty order by the competent authority. However, in the instant case, the revisional authority and reviewing authority is the President of India, who is also the disciplinary authority and has passed the impugned penalty order. The applicant, in his wisdom, must have felt that in such a situation no useful purpose would have been served by filing a review petition, which is well understandable.

11. In the conspectus of discussions in the foregoing paragraphs, I am of the view that the applicant had not indulged into any misconduct and the impugned penalty order dated 27.06.2014 (Annexure A-1) is illegal and liable to be quashed and set aside, and accordingly it is done. The O.A. stands allowed. No costs.

(K.N. Shrivastava)
Member (A)

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