

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

OA No.3980/2013

Order Reserved on :21.12.2015
Order Pronounced on:13.01.2016

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

Dr. R.S.Tyagi
S/o late Sh.Baljir Singh Tyagi,
Aged about 63 years,
R/o D-180, Saket,
New Delhi-110017. Applicant

(By Advocate: Shri Gaurav Bhardwaj)

Versus

All India Institute of Medical Sciences,
Ansari Nagar,
New Delhi-110029.
(Through: its Director) Respondent

(By Advocate: Shri R.K.Gupta)

ORDER

By Hon'ble Shir K.N.Shrivastava, M(A)

This OA has been filed by the applicant under Section 19 of the A.T. Act, 1985 against the order No.F.Vig./2-762/2007 dated 20.06.2013 passed by the respondents whereby and whereunder the penalty of withholding 10% pension and gratuity of the

applicant for a period of 2 years has been imposed. The specific reliefs sought in the OA read as under:-

- "(a) quash the impugned memorandum dated 20th June, 2013 issued by the respondent whereby penalty to withhold 10% of the pension and gratuity amount of the applicant is imposed;*
- (b) Award cost of this application and proceedings against the Respondent and in favour of the Applicant.*
- (c) Such other further order(s)/relief(s) as be deemed just and proper in the facts and circumstances of the case and to meet the ends of justice."*

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

The applicant joined the respondent – institute in the year 1973. While was working as Deputy Director (Computer Facility); in short DD(CF) in February, 2005, he placed an order for the procurement of 175 Desktop Computers with equal number of printers and other peripherals on M/s. Hewlett Packard (1) Sales Pvt. Ltd. The charge against the applicant is that he did not follow the laid down procedures for procurement and that the procurement has been done without obtaining the requisite administrative and financial approvals. For the said alleged irregularities in the said procurement, a memorandum of charges was issued to the applicant by the respondent vide their memo

No.F.Vig/2-762 dated 19.08.2010 The specific charge made against the applicant in the said memorandum reads under:-

"That Dr. R.S. Tyagi while working as Dy. Director(Computer Facility) purchased 175 P-IV computers and peripherals in the financial year 2006-07 from M/s. Hewlett Packard(1) Sales Pvt. Ltd., Gurgaon without the approval of the competent authority and without following the purchase procedure. In view of this, Dr. R.S. Tyagi failed to comply with the purchase procedure and acted beyond his powers.

Dr. R.S.Tyagi, Dy. Director (Computer Facility) is, thus, responsible for gross misconduct, failed to maintain absolute integrity, devotion to duty and has acted in a manner unbecoming of an Institute employee thereby contravening Rule 3(1) (i) (ii) & (iii) of the C.C.S. (Conduct) Rules, 1964, which is applicable to the employees of the Institute."

3. Pursuant to the said charge memorandum, an enquiry was ordered by appointing Shri Inder Singh, Deputy Secretary (Retd.)/CDI, CVC as Inquiry Officer (IO). The IO in his report has concluded that the charge leveled against the applicant is not proved.

4. The Disciplinary Authority did not accept the findings of the IO. After following laid down procedures of issuance of a disagreement note, obtaining the representation of the applicant on the disagreement note and giving due consideration to the representation, the respondents vide their impugned order No.F.Vig./2-762/2007 dated 20.06.2013 have imposed the

penalty of withholding 10% of pension and gratuity for a period of two years on the applicant. Aggrieved by the said order the instant OA has been filed.

5. Pursuant to the notice issued, the respondent entered appearance and filed their reply. The applicant, thereafter, filed his rejoinder. As the pleadings were complete, the case was taken up for final hearing on 21.12.2015. Shri Gaurav Bhardwaj learned counsel for the applicant and Shri R.K.Gupta learned counsel for the respondent argued the case.

6. The learned counsel for the applicant submitted that in a meeting held on 06.10.2005 under the chairmanship of Dean AIIMS and which was also attended by the applicant, a policy decision was taken for procurement of personal computers (PCs) for the faculty and staff of AIIMS. The said decision was duly approved by the Director, AIIMS on 08.11.2005 and a budgetary provision of Rs.6 crores, for the computer facility, was provided by the financial advisor, AIIMS. Learned counsel for the applicant also submitted that the applicant together with his team at the computer facility took into account the requirement, and after prioritizing the requirement, communicated the same to the finance division of the respondent on 30.08.2006 and thereafter on 05.09.2006 placed orders for the procurement of 175 computers with peripherals, at DGS&D rate contract, on M/s.

Hewlett Packard (1) Sales Pvt. Ltd and received the materials on 30.10.2006 through M/s. Amtrak Technologies Pvt. Ltd. for an amount of Rs.86 lakhs (Approx.) It was also submitted that the applicant had informed the finance division of the respondent that this expenditure is to be booked under the head M&E (Plan) budget-head for the year 2006-07 for which an allocation Rs.85 lakhs has been provided in the budget. Learned counsel further submitted that although the respondent made payment for the materials received in February, 2008 but surprisingly chose to issue a show cause notice to the applicant on 12.3.2010 for not following the prescribed procurement procedures in the said procurement. The applicant replied to the said show cause notice. Not satisfied with the reply, the respondent issued the charge memorandum dated 19.08.2010 pursuant to which disciplinary enquiry was conducted. Learned counsel submitted that the disciplinary authority before passing the impugned order dated 20.06.2013 did not take into consideration the fact that the procurement of computers has been duly approved by the Director, AIIMS and no discrepancy or any fault has been committed and that the procurement has been done strictly as per DGS&D rates. Learned counsel further submitted that IO has found the charge **not proved** and that the Disciplinary Authority has not given any cogent reason for not agreeing with the report of the IO and that

the impugned order is not a speaking order. Learned counsel drew our attention to the provisions of CCS Pension rules to say that mere misconduct is not a sufficient ground for imposing any penalty, and that the misconduct should be proved to be of grave in nature. Learned counsel also drew our attention to the judgment of Hon'ble Supreme Court in the case of ***M.L. Malhotra Vs. Union of India (2005) 8 SCC, 357*** wherein it has been held that the scope of term misconduct implies some degree of mens rea, which is not the case in the instant case. Concluding his arguments, the learned counsel argued that the charge has not been proved during the course of enquiry and that the Disciplinary Authority has not given sufficient reasons for not agreeing with the IO's findings and as such the impugned order is perverse and bad in law and hence is liable to set aside and quashed.

7. Per contra learned counsel for the respondent submitted that the procurement has been done by the applicant without obtaining administrative and financial approvals from the competent authority and without following the purchase procedures. He said that as per the procedures, prior administrative approval of the competent authority is to be obtained and funds are to be allocated from financial division before releasing the procurement order. It is also submitted that

DD(CF) functions only within the power delegated to him and that he cannot functions beyond his delegated powers. Learned counsel also submitted that a Committee under the Chairmanship of Dr. S.K.Acharya was constituted to conduct preliminary enquiry in the matter after finance division had reported that the prescribed procedures for procurement has not been followed. Thereafter, another Committee was constituted under the Chairmanship of Dr. G.K. Rath. These Committees clearly found that the rules and procedures have been flouted by DD(CF) and that the procurement has been done far in excess of the requirements. Learned counsel for the respondents further stated that the Disciplinary Authority namely, President AIIMS, after taking cognizance of the irregularities committed prima facie, decided to initiate disciplinary proceedings under Rule 14 of CCS (CCA) Rules, 1965 against the applicant. It was also submitted that first stage advice of CVC was called for in the matter who vide their letter dated 11.8.2010 recommended for initiating major penalty against the applicant. Accordingly, the Disciplinary Authority appointed Shri Inder Singh as Inquiry Officer and Shri Bhagirath Jha as the Presenting Officer vide order dated 02.12.2010. The enquiry was conducted in the prescribed manner in which the applicant had participated. Learned counsel said that no doubt the Inquiry Officer in his report has stated that

the charge against the applicant has not been proved but the Disciplinary Authority did not accept the findings and issued a disagreement note and the same was sent to the applicant on 02.07.2012 for submitting his representation against it. After considering the representation of the applicant dated 27.7.2012, the Disciplinary Authority decided to impose the penalty as mentioned in the impugned order. It has also been submitted that before passing the impugned order, the Disciplinary Authority had obtained 2nd stage advice from the CVC who in their advice vide OM dated 22.3.2013 had recommended for imposition of major penalty. The learned counsel also drew our attention to the decision of Hon'ble Supreme Court in the case of **Union of India Vs. Permananda** (1989) (2) SCC 177) wherein it has been held as under:-

" ... the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with

principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter.”

8. Buttressing his arguments, learned counsel for the respondents further brought to our notice the decision of the Hon'ble Supreme Court in the case of ***Regional Manager and Disciplinary Authority Vs. S. Mohammed Gaffar*** (2002 (7) SCC 168) wherein it has been held as under:-

“... in departmental proceedings, in so far as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or Appellate Authority is either impermissible or such that it shock the conscience of the High Court, it should not normally interfere with the same or substitute its own opinion and either impose some other punishment or penalty or direct the authority to impose a particular nature or category of punishment of its choice.”

Concluding his arguments, learned counsel for the respondents submitted that the applicant has flouted the laid down procedure for procurement, did not obtain administrative and financial approvals of the competent authority and placed the orders for computers far in excess than what was required and as such the punishment inflicted on him vide the impugned order is fully justified and hence the OA should be dismissed.

9. We considered the arguments put forth by learned counsel for both the parties including the case laws cited by them. We have also perused the pleadings and documents annexed thereto.

10. Admittedly, in a meeting held on 06.11.2005 under the chairmanship of Dean AIIMS, a decision was taken for computerisation in the AIIMS and for procurement of computers. The said decision was duly approved by the Director, AIIMS on 08.11.2005 and a budgetary allocation of Rs.600 lakhs was made for it by the finance division. The details in this regard can be seen at pg 30-31 of the paper book. Itemwise – allocation of funds can be seen at Annexure A-5. There is no specific mention as to how many PCs with peripherals are to be procured. The applicant apparently, being the head of computer facility as DD(CF), with the help of the team at his disposal came to a conclusion that 175 PCs with peripherals are required to be procured to meet the requirement of various departments of AIIMs for

which about Rs.86 lakhs was required considering that these items were going to purchased as per DGS&D rates. It is a standard practice followed in all the Govt. Organizations that before any procurement is to be made, a note is prepared for getting administrative and financial approvals from the competent authority. Simply because budgetary allocation is available, the concerned department cannot go ahead and place orders vis-a-vis the said budgetary allocation. Sometimes, the budgetary allocations might have been made but at the given point of time, the funds may not be actually available against the said budgetary allocation and the organization might be wanting to appropriate funds from one budget head to another for meeting any exigent situation. The financial rules of the organization, therefore, make it incumbent to obtain both administrative and financial approvals before placing the purchase – orders. In the instant case the applicant failed to obtained administrative and financial approvals and simply went ahead to place orders for the procurement of 175 PCs with peripherals thinking that the annual budgetary allocation is available for the procurement. We are not inclined to accept the contention of the applicant that the Director, AIIMS has subsequently approved the said procurement after satisfying himself that no irregularity has been committed. It is quite likely that in order to uphold the prestige and dignity of

the organization in the eyes of vendors, the Director, AIIMS might have accorded his approval to the said procurement later. After all he was delivered with a fait-accompli situation by the applicant. We also find that the respondents have followed the prescribed procedures for conducting the disciplinary enquiry against the applicant and have also given cogent reasons for not agreeing with the findings of the IO.

11. In view of the above, we are of the view that the OA is devoid of merits and is liable for dismissal. Accordingly, the OA is dismissed. No order as to costs.

(K.N. Shrivastava)
Member(A)

(A.K. Bhardwaj)
Member(J)

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