

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.626/2013

Reserved on 1st August 2018

Pronounced on 11th October 2018

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

R K Verma s/o Shri Budhi Prakash Verma
aged about 47 years
presently working as
Divisional Engineer /HQ
DRM Office, Northern Railway, Ambala Cantt.

r/o Officers' Transit Camp, Rail Vihar
DRM Office, Ambala Cantt.

..Applicant

(Mr. A K Behera, Advocate)

Versus

1. Union of India through Secretary
Ministry of Railways
Rail Bhawan, New Delhi
2. Railway Board
Through Secretary
Rail Bhawan, New Delhi
3. General Manager
Northern Railway
Baroda House
New Delhi – 110 003
4. Shri A K Singh (Anand Kumar Singh)
Chief Engineer, on deputation to NHAI
C/o Railway Board
Through Secretary
Rail Bhawan, New Delhi
5. Secretary
Union Public Service Commission
Dholpur House
Shahjahan Road, New Delhi – 110 011

..Respondents

(Mr. V S R Krishna and Mr. Satpal Singh, Advocates)

O R D E R

Mr. K.N. Shrivastava:

At the relevant point of time, the applicant was posted as DEN/NDLS during the period 2002-2003 and was Incharge of supervising the work of “replacement of worn out pipeline along with laying of new pipeline etc”. For alleged irregularities committed by him in awarding the aforementioned work to M/s. N K Sharma & Co., New Delhi, he was issued Annexure A-15 charge memo dated 29.06.2005, in which the following articles of charges were leveled against him:

“Article-I

In the contract, which was awarded for replacement of existing CI/GI pipe lines, Sh. R.K. Verma, in connivance of Sh. S.K. Trehan, SE/NDLS, intentionally taken unwarranted, inexplicable and untenable supply of 4834 mtrs PVC pipe, only to give undue benefit to the contractor. This action caused a wasteful expenditure of Rs. 7.78 lacs by railway for which Sh. Verma is responsible.

Article-II

He failed even to ensure the quality of PVC pipe before accepting such huge quantity of 4834 meters. Thus Railways have suffered loss to the tune of Rs. 7.78 lacs on account of taking substandard quality material for which he is responsible.

Article-III

He in connivance of Sh. S.K. Trehan, SE/NDLS, attempted to take further unwarranted, inexplicable and untenable supply of 5393 mtrs PVC pipe through Running account bill CC-II, Payment of this work was not released due to vigilance check. This would have caused a loss of Rs. 8367 lacs to railway, but for vigilance check.

Article-IV

He, in connivance of Sh. S.K. Trehan, SE/NDLS, allowed execution of quantities much beyond the agreemental quantities (more than 10% variation) without approval of addendum and corrigendum by competent authority.

By the above acts of omission and commission the said Sh. R.K. Verma failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Railway Servant, thereby contravened the provision or Rule 3.1(i). (ii) & (iii) of Railway Service (Conduct) Rule 1966.”

2. Pursuant to the charge memo, the applicant was subjected to disciplinary enquiry (DE) proceedings. The enquiry officer (EO), in his report dated 03.05.2007, concluded as under:-

“Conclusion

After discussing the charges,. Analyzing the statements, procedure and practice on Railways, it is concluded that:

Article –I; There appears no connivance, the supply of 4834 m. of PVC pipe was taken against the agreement sanctioned by the then DSE-III/NDLS Competent authority in the case. There was no benefit to the contractor as the rates of items of this chapter were quoted lower by the contractor as concluded in T.C. minutes and approved by C.A. as such.

HENCE-ARTICLE-I IS NOT PROVED.

Article-II; The quality of the pipe accepted was strictly to the nomenclature and specification detailed in item (2145-j). Even as per IS-specification 4985, 6kg/cm. Sq. pressure is not applicable for 110 mm dia. 1.1 thick pipe. The letter issued wide no. 770-W/o/SOR/L/NS item dt. 17.05.05 is not applicable on date of supply i.e. 18.03.03. In view of contents of IS-4985, the applicability of 6 Kg/cu sq. pressure is only applicable to pipes up to 25 mm dia. And 1.1 mm thickness. As such the letter issued may be reviewed and S.O.R. item 2144 and 2145 be corrected accordingly.

HENCE ARTICLE-II IS NOT PROVED.

Article-III. No connivance is proved. The supply of 5393 mtrs f pipe was not the urgent requirement as the previous supply laws not yet utilized. It appears that the intention of C.O. was to procure it for Rain Harvesting. Since competent Authority, ‘did not approve setting aside any knowledge of or under standing with C.O. or joint decision. I understand that C.O. should have processed the requirement as per the extent Rules. There appears no mal-intention as he ordered the contractor to take back the material on the date when C.A. did not approve. As such no alleged loss occurred to Railway.

Article-III Proved to the extent that C.O. should have followed extent rules and procedure for procurement of 110 mm dia 1.1 mm thick UPVC.”

3. The disciplinary authority (DA), namely, the General Manager (Northern Railway) – respondent No.3, did not agree with the findings of the EO and accordingly, decided to issue Annexure A-16 memorandum of disagreement dated 05.09.2008. In respect of each articles of charge, the DA, in the disagreement note, gave reasons for not accepting the findings. The contents of the disagreement note are reproduced below:-

“Article of charge-I:

The charge against you was that you, in connivance with Shri S.K. Trehan, SE/W/NDLS, have intentionally taken unwarranted, inexplicable and untenable supply of 4834 m of PVC pipe supply, only to give benefit to the contractor, causing a waste full expenditure of Rs. 7.78 Lakhs.

The inquiry has not proved the charge mainly on the basis of following:

- The decision to take supply of PVC pipes appears to be collective as the agreement sent by field unit had the approval of the competent authority.
- Taking supply of PVC pipes on 18/19.03.03, even before signing of the agreement, was not irregular as the contractor was asked to start the work in Dec. 2002 itself.
- You merely submitted the estimate that was prepared before your joining.
- Supply of items in works contract against a sanctioned estimate is in vogue in Delhi Division.
- No undue benefit has been passed to the contractor as the rates quoted-by him were on the lower side and a rate analysis given in inquiry report shows that expenditure incurred in the supply was more than the payment received.

The findings of IP are not acceptable due to following reasons:

- The sanctioned estimate of the work did not have any provision for supply of PVC pipes. In the first agreement forwarded by the filed unit also there was no item for supply of PVC pipes. Only when the agreement was returned by DSE-III/NDLS with specific instructions to revise the value of items in Chapter-21, as the value of items in this chapter was not permissible for reduction. AT this stage the items of PVC pipe were added surreptitiously by the SE/W/NDLS with you. DSE-III/NDLS has specifically stated that the has signed the revised agreement in good faith. Hence, there is no evidence worth name to believe that the decision to take PVC pipe supply was collective decision. Further more, any lapse or otherwise on part of DSE-III/NDLS does not dilute the gravity of lapses on your part.
- When the item of PVC pipe supply was not provided in the sanctioned estimate of the work, it was highly irregular on your part to permit supply and write bill for this item, before agreement was approved and signed by competent authority. It amounts to usurping the powers of higher authority. This action was inexplicable and untenable.
- Since the estimate was submitted under your signature, it implies your acceptance of the contents, irrespective of the fact whether it was prepared before your joining or not.
- Supply of items against works contract was being taken only when it was included in the sanctioned estimate. In the present case there was neither any sanction nor proper justification for doing so.
- The rate analysis done by IP is with his own assumptions and presumptions. IO is not supposed to supplement the report with his personal knowledge. The rate analysis done by IO is riddled with so many assumptions/inputs, which are not standard in railways. Hence, this rate analysis is not acceptable.

In the detailed estimate for the work, no supply of PVC pipes was included in the scope of work. Supply of PVC pipes was also not included in the agreement submitted by you vide your letter No. 15/A/New Delhi/121 dated 21.12.2002. But supply of 4384 m PVC pipes was taken by you on 18 & 19.03.2003 even before approval of the items of the agreement by DSE-III on 27.03.2003. Supply of PVC pipes has drastically altered the scope of work, hence it required prior and specific approval of DSE-III which was not done by you. The PVC pipes taken against this work could not be used because these

were not according to the specifications and therefore the expenditure of Rs. 7.78 lakhs by the Railway was wasteful. Therefore this article of charge is considered as proved.

2. Article of Charge-II

The Inquiry Officers has not proved the charge mainly on basis of following:-

- Item 2145 (external usage) is not for pressure flow and therefore the IS code and prescribed pressure mentioned in item 2144 (internal sage) do not apply to it.
- Even if it is assumed, that IS code applies to 2145 the diameter and thickness mentioned in the NR specifications are not in conformity with IS code and therefore pipes taken as per NR specifications are bound to fail when tested for pressure as per the relevant IS code.

The reasoning given by IO is not acceptable due to following:-

- Item No. 2144 and 2145 are both given under the same category of “Unplasticised (Rigid) PVC pipes”, the only difference between the two items being that while item no. 2144 is for fixing PVC pipes in buildings, item No. 2145 is for laying PVC pipes below ground level. In both these items the PVC pipe remains same, so logically the specifications for PVC pipe also will remain same.
- Conditions of the contract agreement require that the item supplied to confirm IS Specifications. This makes it clear that the pipe should conform to IS-4985. So there is no doubt that the contractor was required to supply the PVC pipe conforming to IS-4985.

Hence this article of charge is considered as proved.

3. Article of Charge-III

The Inquiry Officer has partly proved the charge mainly on the basis of following:-

- Supply was taken from the contractor in anticipation of the sanctioned of the IInd A&C, as this is an established practice.
- The decision to take supply of PVC pipes appears to be justified as you were receiving many letters to implement rainwater harvesting.
- However, there was no urgency and you should have followed the normal procedure.

- No payment/undue benefit has been passed on to the contractor and no loss has accrued to Railways as you advised the contractor to take back the material after the CA refused to sanction the corrigendum.

Reasoning given by IO are not acceptable due to following:

- You were not empowered to take any action beyond your powers, in anticipation of higher authority's approval. In contract management such practices cannot be allowed. In fact, the competent authority (DSE-III) has denied ratify the said variations later on. This confirms the irregularity in your said action.
- Need of pipes in some other work, not covered by the sanctioned estimate and contract agreement, does not give any authority to you to incur large scale variations in any on-going contract agreement. Allowing such practices will lead to anarchy in contract management.
- By taking the unauthorized supply from the contractor, you have made Railways legally liable to pay for these supplies and your action of asking contractor to take back these supplies does not dilute the liability of Railways. In fact, the contractor has not taken back the supplies also.
Hence this article of charge is considered as proved.

4. Article of Charge-IV

The Inquiry Officers has not proved the charge mainly on basis of following:

- Almost 99% of the civil agreements on Railways do have variations, which are processed as addendum along with final bill.
- The variations in quantities were necessitated as per ground conditions. There was no connivance.

The reasoning given by IO is not acceptable because of following:

- The statement of IO that "99 % of the civil agreement on Railways do have variations" is a very general and unsubstantiated statement. As per GCC, the quantities given in agreement are likely to vary by 25 %. But any variation in excess of this requires approval of Competent Authority. Depending on the extent of variations. In this case, in the items pointed out in article of charges, there have been variations in excess of 100% without any approval. Allowing

such large-scale variations is a serious irregularity on your part.

- Need for any item of work not related to scope of work any contract agreement, does not justify the large scale, variations in an agreement without approval of competent authority.
- The unauthorized large scale variations, for item of work (PVC pipes 110 mm dia) where the rates were on higher side and quality of supplies was substandard; is a clear proof of connivance.

Hence this article of charge is considered as proved.”

4. The applicant submitted a detailed representation dated 23.09.2008 (Annexure A-18) against the disagreement note to the DA, who, however, was not satisfied with the representation of the applicant. Ultimately, the Railway Board, as competent DA, passed the impugned Annexure A-1 penalty order dated 06.04.2009 imposing the penalty of “reduction to a lower stage in the time scale of pay by two stages for six months without cumulative effect” on the applicant.

5. The applicant filed his statutory appeal dated 18.05.2009 before the departmental appellate authority (AA), namely, the President of India, who, vide his Annexure A-2 (colly.) order dated 28.03.2011, dismissed the appeal. The revision petition dated 27.06.2011 filed by the applicant was also dismissed by the President of India vide Annexure A-3 order dated 14.03.2012.

Aggrieved by the Annexures A-1, A-2 (colly.) & A-3 orders, the applicant has approached this Tribunal in the instant O.A. praying for the following reliefs:

“(a) set aside the impugned orders, Order No.E(O)I-2009/PU-2/NR/04 dated 06.04.2009 (Annexure A-1) and Order No.E(O)I-2009/AE-3/NR/19 dated 18.05.2011 [Annexure A-2 (Colly.)] and the impugned order dated 14.03.2012 [Annexure A-3] with all its consequences as if the said impugned orders had never been passed and with all consequential benefits including the benefit of promotion to the Gr. A in the Railways and seniority in that grade from the date any of his juniors was promoted to that grade.”

6. The applicant, in support of the reliefs prayed, has broadly pleaded the following grounds:-

6.1 The contractor, M/s. N K Sharma & Co. was awarded the contract by the 4th respondent for the execution of the work at a cost of ₹34.17 lacs through tender and not by the applicant.

6.2 The Section Engineer working under the applicant had checked the work to be executed and had found that a major part of the pipeline initially proposed to be replaced was in a reasonably good condition and as such, only the worn out patches were required to be replaced and not the entire pipeline.

6.3 The matter was discussed by all the concerned, including the 4th respondent and a unanimous decision was taken to replace the worn out parts of the pipeline and not the entire length included in the cost estimates. It was also decided that the resultant savings be diverted for procurement of PVC pipes to be utilized for replacement of down-take pipes and developing the system for rain water harvesting.

6.4 In view of the decision taken, the quantities of certain items in Chapter 21 of Schedule of Railways (SoR) were revised. The quantities of

CI/GI pipe earlier proposed to be procured were reduced and instead 5000 meters of 110 mm diameter PVC pipe corresponding to item No.2145 (j) of Chapter 21 was proposed to be procured. The draft agreement was accordingly revised and sent to the 4th respondent.

6.5 The revised draft agreement forwarded to the 4th respondent was examined in the Divisional Office with the assistance of the Accounts and Technical staff and was signed by the 4th respondent on behalf of the President of India on being satisfied that the agreement was in order.

6.6 After execution of the revised agreement, the first running account bill CC-1 for ₹11.64 lacs, which included an amount of ₹778 lacs towards supply cost of 4834 meters of PVC pipe was forwarded to the 4th respondent, who approved the bill and amount was released to the contractor on 30.03.2003.

6.7 A further supply of 5393 meters of PVC pipe was needed and received from the contractor. After the 4th respondent turned down the proposal for issuance of addendum and corrigendum to the agreement, the Section Engineer as well as the applicant asked the contractor to collect an additional PVC pipe of 5393 meters supplied, which the contractor did.

6.8 The 3rd respondent had accepted the explanation of the 4th respondent that the agreement was signed by him in good faith and that payment was released because financial year was closing. The applicant has been unfairly held guilty for the acts of omission and commission of others.

6.9 The supply of PVC pipe measuring 4834 meters could not have gone unnoticed when the 4th respondent passed the bill on 30.03.2003. It is not correct to say that the quality of PVC pipe supplied was of substandard quality and not conforming to IS-4985. As a matter of fact, the supply obtained was in accordance with the NR specifications and as per SoRs.

7. Pursuant to the notices issued, the respondents entered appearance and filed their reply, in which they have broadly averred as under:-

7.1 The DE proceedings have been conducted in accordance with the statutory rules and the applicant was given adequate opportunity to defend himself. The principles of natural justice have been observed in the conduct of the DE proceedings. Hence, the Tribunal may not like to interfere in the proceedings by way of judicial review. In this regard, the respondents placed reliance on the following judgments:-

- a) **Kuldeep Singh v. Commissioner of Police & others**, (1999) 2 SCC 10,
- b) **Damoh Panna Sugar Rural Regional Bank & another v. Munna Lal Jain**, (2005) 10 SCC 84,
- c) **Dr. Anil Kumar v. Union of India**, (1998) 9 SCC 47,
- d) **B. C. Chaturvedi v. Union of India & others**, (1995) 6 SCC 749
- e) **Govt. of Tamil Nadu & others v. S. Vel Raj**, 1997 (2) AISLJ 32,

- f) **Govt. of Tamil Nadu v. N. Ramamurthy**, AIR 1997 SC 3571,
- g) **Govt. of Tamil Nadu & another v. A. Rajapandian**, AIR 1995 SC 561,
- h) **R.S. Saini v. State of Punjab & others**, JT 1999 (6) SC 507,
- i) **Bank of India v. Digala Suryanarayanan**, (1999) 5 SCC 762; and
- j) **Parma Nanda v. State of Haryana & others** (SLP (Civil) No.6998/1988).

7.2 The applicant was required to inspect and check the work required to be executed pre-hand, i.e., prior to the preparation of work proposal and estimate. The applicant has failed to establish his *bonafides* in reducing the quantity of CI/GI pipes and diverting the resultant for providing PVC pipes.

7.3 The plea of the applicant regarding development of water harvesting system cannot be accepted. If the water harvesting system was to be implemented, then a separate contract for the purpose ought to have been worked out.

7.4 The applicant has failed to produce any evidence to establish that the decision for decreasing the quantity of CI/GI pipeline and diverting the resultant sending for providing PVC pipes was taken collectively along with the 4th respondent.

7.5 As per the extant Rules as well as practice, the reasons for change in quantities of items of work should have been recorded on such proposal

sent from the DEN office to DSE/III for approval. In the absence of any such reasons for change in the quantities, the proposal was subjective and unjustified.

7.6 No supply of PVC pipe was included in the agreement submitted by the applicant vide letter dated 21.12.2002. The applicant took supply of 4384 meter PVC pipe on 18/19.03.2003 even before the approval of Senior DEN/III, NDLS on 27.03.2003. Since the supply of PVC pipe had drastically changed the scope of work, it required prior and specific approval of Divisional SE-III.

7.7 No documentary evidence has been produced to establish the claim that, in principle, approval of the 4th respondent for additional requirement for PVC pipe was obtained.

7.8 The President, being the AA, had consulted the Union Public Service Commission (UPSC) and finally, came to a conclusion that article 2 of the charge against the applicant was not substantiated, whereas the remaining three charges stood proved. Accordingly, as per the recommendations of the UPSC, the AA disposed of the appeal filed by the applicant.

8. On completion of pleadings, the matter was taken up for hearing the arguments of the parties on 01.08.2018. Arguments of Mr. A K Behera, learned counsel for applicant and Mr. V S R Krishna with Mr. Satpal Singh, learned counsel for respondents were heard.

9. Mr. A K Behera, learned counsel for applicant submitted that the applicant had no authority to approve any tender. The competent authority

was the Divisional SE-III/N.R. The tender for the work was floated in November 2001 with the approval of Divisional SE-III and was accepted by him on 29.10.2002. An agreement with the contractor, M/s. N K Sharma & Co., New Delhi was signed on 07.03.2003. The rates prescribed in the agreement were as per the SoRs and not ISI. The revised agreement before forwarding to 4th respondent was examined with the assistance of Accounts & Technical staff of the Divisional office. On being satisfied with all aspects, including the requirement of 5000 meters of 110 mm diameter PVC pipe, the 4th respondent executed the agreement with the contractor on behalf of Government of India. The applicant was not a member of the tender committee either. Against the order of 5000 meters of PVC pipe, supply was received for 4834 meters.

10. Mr. Behera emphatically argued that the EO, in his findings, has clearly indicated that the change in the scope of contract was a collective decision and not that of applicant individually. The EO has given clear findings that the articles of charge against the applicant are not proved. He vehemently argued that the additional supply of 5393 meters PVC pipe was ordered for developing the system for rain water harvesting, in terms of general directives of the Chairman, Railway Board as per the letter dated 06.06.2002 (p.64). However, after it was objected to by the 4th respondent, the additional supply of 5393 meters PVC pipe was returned to the contractor and no money was paid for that, as such there has been no loss to the exchequer.

11. Mr. Behera strenuously argued that the General Manager, NR has unnecessarily tried to find fault with the contract agreement comparing the rates mentioned therein with the sanctioned estimate. He stated that the sanctioned estimate has no relevance and that the rates mentioned in the contract agreement are to be taken into consideration for execution of the work and release of any payment therefor.

12. Mr. Behera further submitted that the General Manager, NR has wrongly compared the rates as per IS specifications forgetting that the contract agreement is actually based on the SoRs. He also submitted that the Department had gone in arbitration against the execution of work in question, but the Arbitrators have ruled in favour of the contractor, and thus, the stand of the applicant is vindicated.

13. Concluding his arguments, Mr. Behera submitted that the issues raised by the applicant in his representation against the disagreement note have not been analyzed and dealt with by the competent DA (Railway Board) in its Annexure A-1 penalty order dated 06.04.2009, and even the AA has failed to deal with these issues in its Annexure A-2 (colly.) order dated 28.03.2011.

14. *Per contra*, Mr. V S R Krishna, learned counsel for respondents submitted that the sanctioned estimate of work did not have any specifications for supply of PVC pipes. Even first agreement forwarded by the field unit did not have this item, but surreptitiously the SE/NDLS connived with the applicant and they persuaded the Senior DEN/III, NDLS

to sign the revised agreement, which he did in good faith. As such, it cannot be said that the decision for supply of PVC pipe was a collective decision.

15. Mr. Krishna vehemently argued that items against the work contract are to be taken only if they are included in the sanctioned estimate. In the instant case, neither there was any sanction, nor any justification for doing so. The EO, on the basis of his own assumptions, presumptions and personal knowledge, has gone ahead to analyze the rates, which was not within his domain.

16. Mr. Krishna further stated that the General Manager, NR has given cogent reasoning for not agreeing with the findings of the EO against each articles of charge. He concluded his arguments by submitting that the penalty order passed by the DA is based on verified facts, the misconduct of the applicant has been fully established and that the AA, after consulting the UPSC, has also passed a reasoned and speaking order dealing with all the relevant issues.

17. We have considered the arguments of learned counsel for the parties and have perused the materials placed on record.

18. From the records, it is quite evident that the 4th respondent has been integral to the decision taken for changing the scope of work in terms of replacing only the worn out pipeline and laying of new pipeline. Hence, the respondents cannot take a plea that the Senior DEN, who was the competent authority to accept the tenders and who signed the agreement, did not know as to what he was doing and got carried away by the proposal

of his subordinate officers, including the applicant. As such, it is not fair on the part of the respondents to find fault with the applicant. Furthermore, the action to obtain additional supply of 5393 meters PVC pipe for water harvesting measure has to be viewed in good faith. The concerned Divisional officials, including the Senior DE, might have felt that action is urgently required to be taken in terms of the directives of the Chairman, Railway Board, referred to hereinabove. However, after this additional supply was objected to by respondent No.4 the applicant and his subordinates persuaded the contractor to take the back supply, which it did, and as such, no loss was caused to the exchequer.

19. In practical life, the Government officers, particularly those, who are Incharge of construction/maintenance/ development works, are required to take certain decisions even though the documentary formalities in respect of them may not have been put in place at that point of time. They do so in good faith and obtain the approval of the competent authority in the due course *ex post facto*. We are of the view that the action taken by the applicant and other junior officers of the Civil Engineering Wing of the Division was one such act.

20. There is no allegation against the applicant of any corruption or ulterior motive. The EO has also analyzed the matter based on the available evidences, including documentary evidences, and has concluded that the decision to change of the scope of work was a collective one and not that of the applicant individually

21. In the conspectus, we are of the opinion that the applicant has not committed any misconduct and he has been unfairly punished and the ends of justice would meet by allowing the reliefs that he has claimed in the O.A.

22. Accordingly, we quash and set aside the impugned Annexure A-1 penalty order dated 06.04.2009, Annexure A-2 (colly.) order dated 28.03.2011 and Annexure A-3 order dated 14.03.2012. The O.A. stands allowed. No order as to costs.

(S.N. Terdal)
Member (J)

(K.N. Shrivastava)
Member (A)

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