

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No. 3766/2015

New Delhi, this the 23rd day of August, 2018

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Pradeep Kumar, Member (A)

Sunil Chopra
Son of Shri V. P. Chopra,
House No. 51-A,
First Floor,
Uday Park,
New Delhi – 110 049.

...Applicant

(By Advocate : Mr. Vikas Aggarwal)

Versus

1. Union of India, Service through the
Secretary,
Ministry of Defence,
Govt. of India,
South Block,
New Delhi – 110 011.

2. Joint Director General (Disc. & Vig.),
E-in-C's Branch,
IHQ of MoD (Army),
Kashmir House,
Rajaji Marg,
DHQ PO,
New Delhi – 110 011.

3. Union of India, represented by
Engineer-in-Chief,
Kashmir House,
Rajaji Marg,
New Delhi – 110 011.

4. Chief Engineer, Eastern Command,
PIN-908 542,
C/o. 99 APO.

...Respondents

(By Advocate : Mr. Vidya Sagar with Mr. Vijay Kumar
Sharma)

ORDER (O R A L)**Justice L. Narasimha Reddy, Chairman :**

The applicant joined the Military Engineering Services as Superintending Surveyor of Works (SSW) in the year 1985. In the year 1998 he was posted at a station in Allahabad. The works in various Military Establishments undertaken in Gwalior also came within his purview. One contract was awarded for construction of "Deficient Married Accommodation" for SNCOs and Airmen at Maharajpur near Gwalior. The applicant was a part of the contract Section, and he was required to submit his Notes about the works. In one such Note being no. 24 prepared on 11.01.1999, he interpreted the purport of clause 18 of the Contract and expressed his opinion. However, the then Chief Engineer was not in agreement and he made a Note to that effect. Subsequently, the next incumbent Chief Engineer is said to have convened a meeting on 08.07.1999 with the participation of the applicant, contractor and others, and in the light of the discussion that took place therein, the applicant prepared a Note No. 36 on 12.07.1999. The Chief Engineer examined the same and took the decision to make certain payment to the Contractor.

2. On the basis of an anonymous letter, the matter was examined once again and the amount paid to the contractor was recovered. As a sequel to that, a charge memo dated 18.04.2011 was issued to the applicant with certain allegations as to suppression of facts. The plea was that while preparing Note No. 36 the applicant did not take Note no. 24 into account. The applicant submitted his explanation. Not satisfied with that, the disciplinary authority ordered departmental inquiry. The inquiry officer submitted his report on 26.03.2012 holding charges in Articles I and II as proved and Article III as partially established. Once again the explanation of the applicant was called for, and on consideration of the same, the disciplinary authority passed an order dated 24.02.2015 imposing on applicant the punishment of compulsory retirement. The same is challenged in this O.A.

3. The applicant contends that he did not reopen the issue pertaining to interpretation of clause 18 of the Contract, but it was only because of the instruction given by the Chief Engineer at the meeting held on 08.07.1999 that another Note had to be submitted. He further contends that the ultimate decision for payment has been taken by the Chief Engineer, and the said Chief Engineer

has deposed in the disciplinary proceedings that he is aware of the entire background of the case. It is also pleaded that the punishment imposed against him is totally disproportionate.

4. The respondents filed counter affidavit opposing the O.A. According to them the applicant ought not to have submitted Note No. 36 dated 12.07.1999, once he had submitted Note No. 24 dated 11.01.1999. It is also stated that principles of natural justice have been followed at all stages of enquiry, and on the basis of the report submitted by the inquiry officer, the punishment was imposed on the applicant.

5. Heard Mr. Vikas Aggarwal, learned counsel for applicant and Mr. Vidya Sagar with Mr. Vijay Kumar Sharma, learned counsel for respondents.

6. The entire controversy turns around the preparation of Note No. 24 on 11.01.1999 and Note No. 36 on 14.07.1999 by the applicant, in relation to the work referred to above. It is also necessary to mention that the subject-matter of both the Notes was interpretation of the clause 18 of the agreement in relation to a contract. The immediate superior to the applicant, who was to take a

decision on the Note was the Chief Engineer of the Station concerned. With reference to Note No. 24 submitted by the applicant, the then Chief Engineer Brig. M. N. Khan made an endorsement as under :-

“Chief Engineer

1. I don't agree with your contention.
2. At no stage para 18 and 18.1 were deleted. Only description against the para deleted which has been subsequently included in the amendment 64. In case the para were deleted then what for amendment in subsequent stage were issue to these paras. CWE and SW to be warned not to create confusion by opening issue which was settled.”

7. The matter must rest at that. However, the Chief Engineer, who came in the place of Brig. M. N. Khan, i.e. Brig. S. N. Chatterjee, discussed the matter afresh, obviously, when the contractor approached him with a request to make payment. It is not in dispute that he convened meeting on 08.07.1999 wherein various officials as well as Contractor participated. Considering all this, the Chief Engineer, made following endorsement :-

“Chief Engineer :

1. Whilst arguments do exist as to the validity of clause 18 remaining operative these are minor compared to the grounds put forth here and during the discussion to prove its invalidity. The manner in which, large number of amendments have been issued on the same clause without going into adequate details also reflect on the way of functioning of our office as poor and uncoordinated. Confusion has been compounded at each stage.
2. I am therefore of the opinion that Clause 18 was no longer valid in CA and work carried out under its provisions be paid for under a plus DO order.

3. I find no opinion has been given at Note 36 dated 12 July, 99. Please note that notings without any recommendation would not be put to me in future. In case you do not agree with my directions please record your objections if any."

8. From sub-para 2 of the Note, it becomes clear that the decision was taken by the Chief Engineer regarding the purport of clause 18 and he ordered the payment.

9. The gravity of charge levelled against the applicant is that he did not make a reference to Note No. 24 when he submitted Note No. 36. In other words, the allegation is that had the Chief Engineer, Brig. S. N. Chatterjee been aware of the earlier background, he would not have accepted Note No. 36. This becomes unacceptable in view of the clear deposition made by Brig. Chatterjee in the disciplinary proceedings. In his deposition dated 04.07.2003 the Chief Engineer Brig. Chatterjee observed as under :-

"4. It may be pertinent here to go into a bit of the background of the case. The same issue had come up before the previous CE who had disallowed it. During the period of handing/taking over he had informally told me that he had basically done so as no money was available in the project and the matter could be reviewed after approval came of a Financial Concurrence case then under processing with the MOD. Soon after I took over, it did come through. The fact must have been disclosed to the contractor. He also felt that legitimate dues were being withheld from him and that he could not complete the married accommodation project, then nearing completion, unless the matter was reviewed in totality. Whilst the fear the project completion would be indefinitely postponed or that the project would go into risk the cost contract and

subsequent litigation was not what led to the ultimate decision, it was definitely a factor for deciding to reviews the case.”

10. The first part of the statement made by Brig. S. N. Chatterjee makes it very clear that he was aware of earlier background and he took the decision to make payment.

From the above narration it is clear that :-

- (i) The applicant did not make any specific recommendation for payment of any particular amount.
- (ii) Though, the Chief Engineer Brig. M. N. Khan did not take any decision as regards making of payment, his successor Brig. S. N. Chatterjee, took a decision for payment.
- (iii) Occasion to submit Note No. 36 arose only because of the meeting convened by the Chief Engineer on 08.07.1999.

11. This being the background, the basis to hold the applicant guilty of any grave misconduct becomes shaky and punishment of compulsory retirement is totally uncalled for.

12. It appears that this punishment was imposed without being aware of the statement made by the Chief

Engineer in his deposition, and we are sure that had the said deposition and Note of the Chief Engineer been taken into account, things would have been different altogether.

13. We, therefore, set aside the order of punishment, leaving it open to the disciplinary authority to pass a fresh order after taking into account, the relevant aspects of the matter, in particular the statement made by Brig. Chatterjee during the course of the inquiry. The applicant shall be reinstated forthwith, and the manner in which the period from the date of compulsory retirement till the date of his reinstatement be treated, shall depend upon the nature of order that the disciplinary authority may pass, as indicated above.

14. With the above direction, the O.A stands disposed of. There shall be no order as to costs.

(Pradeep Kumar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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