

OA.No.170/00170/2017/CAT/Bangalore Bench

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00170/2017

DATED THIS THE 25th DAY OF JUNE, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

G.Hanumantharaya
S/o.Gangadhappa
Aged about 51 years
Assistant Engineer (Civil)
NITK Surathkal Project Sub Division-II
CPWD, R&D Centre, NITK Campus
Surathkal, Mangalore-575 025
Resident of No.502, Beckon Apartment
Hosabettu, Surathkal, Mangalore-575 025.Applicant

(By Advocate Sri B.Veerabhadra)

Vs.

1. The Director General
CPWD, Nirman Bhavan
New Delhi-110 108.
2. The Secretary and Appellate Authority
Ministry of Urban Development
Nirman Bhavan
New Delhi-110 011.
3. The Executive Engineer, V-1
CPWD, Nirman Bhavan
New Delhi-110 108.Respondents

(By Advocate Sri.V.N.Holla)

O R D E R

(PER HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (ADMN)

The applicant has filed the present OA seeking the following relief:

- i. *Call for the relevant records from the respondents and on perusal;*
- ii. *Quash and set aside the impugned memorandum No.10-V7/(A141) 2014 VS I dt.08.04.2015 issued by the 3rd respondent (Annexure-A11); Memorandum No. 10-V7/(A141)/2014 VS I dt.30.11.2015 issued by the 1st respondent (Annexure-A13), order No.1/7/D-1/2016-VS II dt.31.03.2016 issued by the 1st*

respondent (Annexure-A15); Memorandum No.2(2)/D1/2016-VS II/AV II dt.21.10.2016 issued by 2nd respondent (Annexure-A17) and order No.2/2/D-1/2016-VS II/AV II dt.07.02.2017 issued by the 2nd respondent (Annexure-A20) as arbitrary and discriminatory and violative of Article 14 and 16 of Constitution of India.

- iii. *Consequently direct the respondents to restore the pay which has been reduced in pursuance of the punishment order dtd.31.03.2016(Annexure-A15) and draw the arrears within the time limit with interest.*
2. According to the applicant, he was appointed as JE Civil w.e.f.22.4.1991 and he became Asst. Engineer(Civil) on promotion w.e.f. 20.4.2001. He was in charge of Bagalkot Central Sub Division and vide order dtd.15.4.2010 he was directed to take additional charge of Hubli Central Sub Division. Both the Sub Divisions have different Headquarters which is situated about 150 kms away from each other. The work place spread over 6 Districts and the work sites are around 100-300 kms away from each other. While he was holding the charge of Hubli Central Sub Division, a specific work pertaining to providing Wire Gauge Shutters to doors, windows of Dormitories, Kitchen, Dining and Residential Building for JNV at Dharwad was rescinded since the contractor was not willing to respond and 2 RA bills had been paid. Thereafter, joint measurement was taken along with Junior Engineer and Contractor. He has submitted measurements to the Executive Engineer vide letter dtd.11.10.2010 pointing out excess payment and also pointed out that entire work is not in acceptable condition. Thereafter, he handed over the charge of that Sub-division to Assistant Engineer on 11.10.2010. Long after the said work, he was issued with a memorandum dtd.08.04.2015(Annexure-A11) in response to which he submitted an explanation on 14.05.2015(Annexure-A12). Thereafter a memorandum dtd.30.11.2015(Annexure-A13) was issued wherein an enquiry was proposed under Rules 16 of CCS(CCA Rules 1965). In response to the same, the applicant submitted his explanation on

OA.No.170/00170/2017/CAT/Bangalore Bench
21.12.2015(Annexure-A14). Thereafter, an order was issued on 31.03.2016
whereby the punishment of 'reduction to a lower stage in the time scale of pay
by one stage for a period not exceeding three years without cumulative effect
and not adversely affecting his pension' is imposed on the applicant.
Aggrieved by the punishment imposed upon him, the applicant preferred an
appeal on 17.05.2016(Annexure-A16). However, vide order dtd.07.02.2017,
the appeal was rejected(Annexure-A20). Hence the present application.

3. The applicant has referred to the preliminary enquiry report submitted by the Superintending Engineer dtd.07.01.2014(Annexure-A10) in which he had mentioned that there appears to be no lapses on the part of the applicant. The said report also primarily established that the applicant responded in line with the predecessor, the earlier Assistant Engineer and indicated the excess cost paid to the contractor and sought for further action by the authority. Further the cause of action arose in April 2010 and the punishment under Rule 16 of CCS(CCA) Rules 1965 was imposed during April 2016 i.e. after 6 years when the applicant is under zone of consideration for promotion. According to the applicant, he was neither involved in the work nor is any way responsible in the matter. Therefore, he prayed for granting the relief sought by him.

4. The respondents in their reply statement submitted that during the joint measurement on 28.05.2010 after recession of the contract on 29.04.2010, the applicant had noted about poor quality of work and payment of excess measurement of item No.2.1.1 by his predecessor. However, he kept the measurement jointly recorded with him in spite of knowing very well about the discrepancy and overpayments to contractor despite reminder from the Executive Engineer(EE) and finally reported to EE, HCD, Hubli on 11.10.2010 with a delay of 5 months, causing benefit to the contractor and loss to the

Government. Thereafter, on detailed investigation and adopting laid down procedure including seeking representation from the applicant and advice of CVC, charge sheet was issued to the applicant for minor penalty under Rule 16 of CCS(CCA) Rules, 1965 vide memorandum dtd.30.11.2015. After going through all the records and circumstances of the case, the disciplinary authority held the charges levelled against the applicant as proved and imposed a minor penalty vide order dtd.31.3.2016. The appeal dtd.17.05.2016 of the applicant was examined by the Appellate Authority and the same was rejected.

5. The respondents submitted that even though the Executive Engineer asked the applicant vide his letter dtd.08.07.2010 to submit measurement reports and final bill, applicant kept mum for more than 5 months and did not send the detailed measurement report to EE till 11.10.2010. The applicant was relieved from the charge of Hubli Central Sub Division on 11.10.2010 and on the same day, he forwarded his report on said work along with measurements which was received in Division Office on 23.11.2010. Moreover, opportunity was offered to the applicant to explain the reasons recording delaying the information of bad quality workmanship and excess measurement done by his predecessor based on which payment was already made, in spite of reminder by EE. In his representation, the applicant failed to submit any convincing reasons to justify the time lag of 5 months in sending the measurement recorded on 28.05.2015. The case was examined in totality and Disciplinary Authority was initially decided to initiate major penalty proceedings against him and referred the matter to CVC to tender its first stage advice. Based on their advice, minor penalty proceedings under Rule 16 of CCS(CCA) Rules 1965 against the applicant was instituted. He was offered the opportunity to make further representation to the proceedings. After going through all the

OA.No.170/00170/2017/CAT/Bangalore Bench records and circumstance of the case, the Disciplinary Authority imposed a minor penalty. The appeal filed by the applicant was also duly examined in consultation with UPSC and the same was rejected.

6. Referring to the enquiry submitted by the Superintending Engineer vide his letter dtd.07.01.2014, the respondents submitted that since *prima facie* some lapses appear to have been committed by the concerned officials, the matter was referred to the Vigilance Unit of CPWD to further investigate regarding fixing responsibility against the officials. During investigation lapses were noticed against the applicant and hence the proceedings was initiated. Since all the required procedure was followed, there is no merit in the contention made by the applicant.
7. A rejoinder was filed by the applicant and an additional reply was filed by the respondents. However, both of them did not bring out new facts on issues which are already covered in the OA and reply statement.
8. We have heard the Learned Counsel for both the parties. The Learned Counsel for the applicant while reiterating the submission already made in the OA highlighted the fact that the work clause was not rescinded by the applicant. He had only undertaken the joint measurement after the work was rescinded. He had pointed out the excess measurement indicated earlier and advocated about the poor quality of material. He further mentioned that the applicant was in charge of two sub divisions which is spread over 6 Districts and had to visit various work sites which are around 100-300 kms away from each other. Moreover, he asked for guidance from the Executive Engineer Shri M.Bose but he did not get any inputs. Therefore, there was no intentional delay on the part of the applicant and he did not stand to gain in anyway in the matter. He also referred to the preliminary enquiry of the Superintending

Engineer in which he held that there appears to be no lapses on AE/JE's part in the matter. He further mentioned that even though this happened in 2010, the proceedings was initiated in 2015 and the penalty order was issued in 2016 i.e. after 6 years that too when the applicant is due to be considered for promotion. He further mentioned that the points made in his reply have not been taken by the Disciplinary Authority rather than simply saying that he has taken the entire matter into consideration. Therefore, he prayed for granting the relief sought by him.

9. The Learned Counsel for the respondents, on the other hand, submitted that the applicant kept the measurement jointly recorded with him in spite of knowing very well about the discrepancy and overpayments to contractor. Despite reminder from the Executive Engineer, he did not submit his report for nearly 5 months. On a query as to how this resulted in loss to the Government, there was no satisfactory answer. However, he mentioned that the applicant was given all opportunities and his reply was taken into consideration when order was passed by the Disciplinary Authority. The Appellate Authority also considered the matter and passed a detailed order. After taking entire facts into consideration the minor penalty was imposed on the applicant and he is not entitled to any further relief.

10. We have carefully considered the facts of the case and submissions made by either side. It emerges from the records and the preliminary enquiry report that for providing wire gauge shutters to doors etc. for JNV at Dharwad, a work was awarded in June 2008 with the stipulated date of completion of work on 19.12.2008. Due to slow progress of work, show cause notice under Clause-3 of the agreement was issued by the Executive Engineer and in spite of that the work was not completed. The Principal JNV also reported that the

OA.No.170/00170/2017/CAT/Bangalore Bench material used is not durable. Thereafter, work was rescinded on 29.04.2010. When the applicant was holding the additional charge of Sub Division, a joint measurement was taken on 28.05.2010. The report was submitted by the Assistant Engineer only on 11.10.2010 with the remark that the wire mesh provided for all the windows are not as per the agreement conditions and the workmanship is very poor in quality. There was a communication by the Executive Engineer to the Superintending Engineer dtd.29.10.2013 in which the entire fact was enumerated. This was followed by the preliminary enquiry report by the Superintending Engineer, Mysore on 07.01.2014. The Superintending Engineer held that 'from the available records and also with reference to the written submission during the enquiry, there appears to be no lapses on AE/JE's part.

11. When the show-cause notice was issued to the applicant, he submitted a detailed reply on 14.05.2015(Annexure-A12) in which he highlighted the fact that he was holding the charge of two divisions. Hubli Division is his additional charge and there are several works like compound wall and semi-permanent structure works of ITBP at Belgaum and ASI staff quarters at Aihole, Bagalkot District under Belgaum Central Sub Division where work was going on in full swing. Therefore, he had to travel extensively between the Headquarters to two Sub Divisions and work sites scattered at different places. He had further mentioned that after noting the actual measurement available at site and already paid in 2 RA Bills, he had verbally informed the then Executive Engineer Shri M.Bose in Division office as well as during his site visits seeking clarification about what to do, but no clear cut instruction was given to him. More over this was his first experience of handling a rescinded work and further that the entire work of Steel Wire Gauge Shutters executed was not in acceptable condition and he felt that no MB entry can be made of such

substandard work. Since no directives were forthcoming from the Executive Engineer, he submitted the details of joint measurement along with the facts to the Executive Engineer on 11.10.2010. In reply to the charge memo, he again referred to the earlier submission dtd.14.05.2015 reiterating the same stand saying that in his report he had brought out the defects/shortcomings in the work and a savings of Rs.5.20 lakhs to the Government by the way of excess measurement.

12. The Disciplinary Authority in his order have simply mentioned that after going through the charge memo, reply and circumstance of the case, he held the charge as established and imposed the penalty. He did not specifically address the facts highlighted by the applicant in his reply that he had two charges and he had to supervise many works. Further, it was his first experience of handling a rescinded work more so when quality of work was not of an acceptable standard and he did not get any guidance to proceed in the matter. The Disciplinary Authority decided the penalty without dealing with the points highlighted by the applicant in his submission. We note that there have been long delays in dealing the matter at various levels. When the preliminary report was submitted in Jan 2014 issuance of charge memo in Nov. 2015 i.e. after 22 months points out to inordinate delay on the part of the respondents as well. When the respondents hold a person guilty only on account of delay in sending the reports without considering the reasons cited by him and delay on the part of respondents is also unexplainable. Further there is also no convincing reason in the order or in the reply statement as to how the delay in submission of report incurred loss to the Government exchequer when no material facts were suppressed by the applicant and he has brought out the entire facts and shortcomings in his reply. It is also to be borne in mind that it was the same Executive Engineer M.Bose who had

OA.No.170/00170/2017/CAT/Bangalore Bench issued work order and overall in charge the work at Dharwad. Obviously he might have any vested interest in not giving any advice to the applicant as mentioned by him.

13. The only lapse pointed out against the applicant was delay in submission of the measurement report by nearly 4 ½ months. However, there appears to be no motive or irregularity on the part of the applicant in the said work. The delay has been explained by the applicant on various accounts such as holding of two additional charges, extreme pressure of work due to several works undergoing in the two sub-divisions under his charge and his limited experience in handling the rescinded work and lack of guidance. This has not been refuted by the respondents or taken into consideration while passing the orders by the Disciplinary as well as Appellate Authorities.

14. In our view, the explanation given by the applicant appears to be worthy of consideration and in that perspective, it will be unfair to attribute a wrong motive to the applicant and imposing him a penalty even if it is minor penalty. We also take note of the preliminary report of the Superintending Engineer who did not find any lapse on the part of the applicant. The Disciplinary Authority in its order did not address the points highlighted by the applicant in his defence. Even the Appellate Authority does not appear to have taken into consideration the facts highlighted by the applicant while passing orders.

15. Therefore, on detailed consideration of the facts and circumstances of the case, we hold that the penalty order imposed by the Disciplinary Authority and the order of the Appellate Authority upholding the penalty order does not appear logical and justified. Accordingly, we quash the order dtd.21.10.2016 passed by the Disciplinary Authority and order dtd.07.02.2017 passed by the Appellate Authority. The respondents are directed to restore the pay of the

applicant and give the consequential benefits within a period of two(2) months from the date of receipt of a copy of this order.

16. The OA is allowed accordingly. No order as to costs.

(P.K.PRADHAN)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/00170/2017

Annexure A1: Handing over on 15.04.2010
Annexure A2: Letter dtd.11.10.2010
Annexure A3: Handing over on 11.10.2010
Annexure A4: Letter dtd.26.11.2010
Annexure A5: Letter dtd.19.04.2013
Annexure A6: Letter dtd.23.04.2013
Annexure A7: Letter dtd.19.12.2013
Annexure A8: Representation dtd.30.12.2013
Annexure A9: Letter dtd. .10.2013
Annexure A10: Letter dtd.07.01.2014
Annexure A11: Memorandum dtd.08.04.2015

OA.No.170/00170/2017/CAT/Bangalore Bench

Annexure A12: Representation dtd.14.5.2015
Annexure A13: Memorandum dtd.30.11.2015
Annexure A14: Representation dtd.21.12.2015
Annexure A15: Order dtd.31.03.2016
Annexure A16: Representation Appeal dtd.17.5.2016
Annexure A17: Memorandum dtd.21.10.2016
Annexure A18: Memorandum dtd.05.12.2016
Annexure A19: Representation dtd.30.12.2016
Annexure A20: Order dtd.07.02.2017

Annexures with reply statement:

Annexure-R1: Copy of letter dtd.29.10.2013
Annexure-R2: Copy of letter dtd.22.05.2014
Annexure-R3: Copy of UO No.10/V-7/(A-141)/2013-VS-I dtd:23.09.2015
Annexure-R4: Copy of letter dtd.25/26.11.2013

Annexures with rejoinder:

-NIL-

Annexures with additional reply statement:

-NIL-
