

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application Nos. 040/00388/2016

Date of Order: This, the 16th day of February 2018

THE HON'BLE MR. UDAY KUMAR VARMA, ADMINISTRATIVE MEMBER

THE HON'BLE MR. S.N. TERDAL, JUDICIAL MEMBER

Mohd. Nasarullah Khan
Son of Late Muzaffar Hussain
House No. 334/1, Gali Hamman Akbari Gate
Chowk Road, Lucknow – 226003 (U.P.)

...Applicant

By Advocate: Mr. S.K. Sikidar

-Versus-

1. Union of India
Represented by the Secretary
To the Govt. of India,
Ministry of communication
And Information Technology
Department of Telecommunications,
Sanchar Bhawan, 20 Ashoka Road
New Delhi-110001.
2. Director (Vigilance)
Department of Telecommunication
Room No.903, Sanchar Bhawan
20 Ashoka Road,
New Delhi-110001.

... Respondents

By Advocate: Mr. S.K. Ghosh, Addl. CGSC

Date of Hearing: 14.02.2018

Date of Order: 16.02.2018

ORDER

MR. S.N. TERDAL, MEMBER (J):

This O.A. has been filed seeking the relief of setting aside the Charge Memo No.8-290/2004-Vig.II dated 21.03.2005 and the penalty order No.8-290/2004-Vig.II dated 19.02.2016.

2. Heard Mr. S.K. Sikidar, learned counsel for the Applicant and Mr. S.K. Ghosh, learned Addl.C.G.S.C. for the Respondents. Perused the pleadings and all the documents produced by both the parties.

3. The relevant facts of the case are that the Respondents initiated a Departmental Enquiry under Rule 14 of the CCS (CCA) Rules, 1965 against the Applicant with the following Article of Charge:-

Article

That the said Shri M.N. Khan while posted and functioning as Director (OFC), Guwahati during the period 1996 to 1997 failed to maintain absolute integrity and devotion to duty and committed gross misconduct inasmuch as he had conducted test checking of the work done in sub-section 15 of Imphal-Moreh route of the Contractor Sri Shadmadhar Radha before making final payment but silent about the non availability of RCC protections. He failed to deduct the proportionate amount as per the deficiencies found by them during their sample test check. The amount deducted was 10% of the final bill of Rs. 5, 56,042.00

i.e. Rs. 55,604.00 only. Moreover, in the test check report, they have mentioned that rocky soil has not been encountered all along the route, even then, he had not ordered for payment of trenching cost at the rate of hard soil instead of rocky soil, resulting in a huge pecuniary benefit to the Contractor.

Thus by his above acts, the said Shri M.N.Khan committed misconduct, failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Govt. Servant, thereby violated the provisions of Rule 3(1) (i) (ii), & (iii) of CCS(Conduct) Rules 1964.

By order and in the name of the President."

4. The Departmental enquiry was held and the Enquiry officer submitted enquiry Report on 26.12.2009 holding that charge was not proved. On 09.9.2010 the Disciplinary authority issued a disagreement Memo, disagreeing with the Enquiry Report. The Applicant submitted representation against the disagreement note on 30.10.2010. The Disciplinary Authority holding that charge was established sought the advice of UPSC. But however, in view of the order of the Hon'ble High Court of Delhi the final order was not passed and ultimately upon the dismissal of the Writ Petition filed by the Applicant, mainly Writ Petition (C) 324/2008 on 27.11.2015, the Disciplinary Authority after receipt of the advice of the UPSC imposed the penalty of withholding of 10% monthly pension for a period 10 (ten) years otherwise admissible to the Applicant-CO.

5. The learned counsel for the Applicant submitted that for the events which happened in 1996 the charge sheet was issued in

2005 after in-ordinate delay of nearly 8-9 years. As such, in view of the law laid down by the Hon'ble Supreme Court, in the case of **P.V.Mahadevan, Vs. M.D.Tamilnadu Housing Board reported in 20059(6) SCC 636**, the charge memo requires to be quashed.

6. To this submission, the learned Addl. CGSC for the Respondents submitted that there is no delay in initiating the departmental proceedings as the incident of misconduct came to notice of the Respondents only in 2005. As such, there is no delay in initiating the departmental enquiry and therefore, the law laid down by the Hon'ble Supreme Court in the case of **P.V.Mahadevan (supra)** is not applicable in this case.

7. The learned counsel for the Applicant submitted that while issuing disagreement note, the disciplinary authority has not recorded the reasons for disagreement and he has not recorded his own finding. As such, in view of the law laid down by the Hon'ble Supreme Court in the case of **Bank of India Vs. Dagala Suryanarayana**, reported in **1999 (4) SLR 292**, disagreement note is not valid. In this regard from the perusal of disagreement note, it is clear that the disciplinary authority has given reason for disagreeing with the finding of the Inquiry Officer and relied on the documentary evidence available in the departmental proceedings and he has

recorded his own finding and also that he had sent his disagreement note to CVC's advice and the CVC also concurred with the disagreement note. In view of these facts which are borne out by the impugned order dated 19.02.2016, the submission of the learned counsel for the Applicant is not sustainable.

8. The learned counsel for the Applicant further submitted that in view of the law laid down by the Hon'ble Supreme Court in the case of **Union of India and others Vs. S.K.Kapoor, (2011) 4 SCC 589**, the disciplinary authority should have furnished the advice of the UPSC to the Applicant before passing the order of the penalty.

9. From the record, it is seen that the UPSC advice was obtained on 14.05.2012 and it was relied upon by the Respondents. But however, it was not furnished to the Applicant. In view of the law laid down by the Hon'ble Supreme Court in the case of **S.K.Kapoor (supra)**, as submitted by the learned counsel for the Applicant, the Applicant was deprived the principle of natural justice and deprived of opportunity of furnishing representation against UPSC advice. Thus, in view of the law laid down by the Hon'ble Supreme Court, the penalty order No. No.8-290/2004-Vig.II dated 19.02.2016 requires to be set aside. However, the Respondents are at liberty to proceed as per law after furnishing a copy of the UPSC advice to the Applicant.

13. O.A. is disposed of accordingly. No order as to costs.

(S.N. TERDAL)
JUDICIAL MEMBER

(UDAY KUMAR VARMA)
ADMINISTRATIVE MEMBER

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