

**Central Administrative Tribunal
Principal Bench**

**OA No.433/2018
MA No.5079/2018**

New Delhi, this the 7th day of January, 2019

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

Anil Kumar Makkar
Aged 57 years, Group 'A'
Executive Engineer(Civil)
S/o Late Shri Bhagat Ram
R/o House No.26, Punjabi Bagh (West)
New Delhi-110026. ... Applicant

(By Advocate: Shri Ashish Nischal)

Versus

Union of Inida
Through its Secretary
Ministry of Urban Development
Nirman Bhawan
New Delhi-110018. ... Respondent

(By Advocates: Shri P.K. Singh for Shri Rajeev Kumar)

ORDER (ORAL)

Justice L. Narasimha Reddy:-

The applicant is working as Executive Engineer in the CPWD and from 26.04.2006 to 09.07.2010, he worked at Pathankot. A charge memo was issued to him on 26.10.2017. It was alleged that two contracts for construction of buildings at Pathankot were awarded to M/s Ram Dayal Khatri, in the year 2006, the work

was to be completed by 2008, and when the progress was not satisfactory, the applicant recommended for determination of the contract in the year 2009. It is stated that accepting the recommendations of the applicant, the contracts were determined but the bank guarantees aggregating to Rs.3,20,03,690/- were found to have lapsed. It was alleged that the applicant did not take steps for validation of bank guarantees by the time, he recommended for cancellation of the contract and on account of his lapse, the department stood to huge loss.

2. The statement of imputation for the only article was also enclosed. The applicant submitted his explanation on 20.12.2017. This OA is filed by him challenging the charge memo.

3. The principal contention urged by him is that there is undue delay in initiating the disciplinary proceedings and that the same has seriously prejudiced him. It is stated that the charge memo was issued at a time when he became due for promotion to the post of Superintending Engineer(C) and there is absolutely no basis for issuing the charge memo, on facts also.

4. Reliance is placed upon the Judgment dated 04.11.2008 rendered by this Tribunal in ***Awadesh Shukla v. Union of India, 2009 (101) SLJ 344 (CAT)***.

5. The respondents filed a counter affidavit opposing the OA. It is stated that the charge against the applicant is serious in nature and on filing of explanation by him, the Inquiry Officer and Presenting Officer were appointed. It is stated that a charge memo was issued soon after the misconduct on the part of the applicant was noticed and that no prejudice is caused to him.

6. We heard Shri Ashish Nischal, learned counsel for the applicant and Shri Rajeev Kumar, learned counsel for the respondents.

7. The applicant challenges the charge memo dated 26.10.2017 issued to him. The only ground raised by him for challenging the charge memo is the one of delay. According to him, the event of failure to validate the bank guarantee, if at all, has taken place in the year 2009 and issuance of charge sheet, eight years thereafter is totally unjustified.

8. We have gone through the charge and other relevant record. It was the applicant who was directly in the control of two contracts awarded to M/s Ram Dayal Khatri in the year 2006. The work was to be completed by January 2008. However, the applicant recommended the determination of both the contracts in the year 2008. Accepting his recommendations the contracts were determined. However, since the applicant did not take steps for keeping the bank guarantees alive, huge exercise had to be undertaken by higher officials, to salvage the situation.

9. In the statement of imputation a detailed account of the actions and omissions on the part of the applicant are furnished. The entire issue is shrouded in so many complexities, that it assumed finality only in the recent past. The department had to endeavor a lot, to get the work executed by the same contractor after more than five years. The order of cancellation of contract, passed at the instance of the applicant had to be revoked. The work was ultimately completed on 31.03.2016. The respondents could not have taken any steps before that date, lest the matter is further

complicated. In our view it cannot be said that there was any delay on the part of the respondents.

10. This Tribunal discussed the issue at length in the judgment referred to above and held that in case there is undue delay in issuing charge memo, the Tribunal or Court can interfere. However, the distinction is made between the cases where the employee did not participate in the proceedings by submitting explanation on the one hand and those in which the charge memo is challenged without participation, on the other hand.

11. In the first category of cases, the judgment of the Hon'ble Supreme Court in **Govt. of Andhra Pradesh v. Appala Swamy**, (2007) 3 SCALE 1, becomes relevant. It was held that if the employee has participated in the inquiry, the ground of delay needs to be urged before the Inquiry Officer and not through a separate challenge.

12. We are of the view that the same situation obtains in the instant case. The applicant has already filed his explanation. The IO and PO are appointed. We are not inclined to interfere with the charge memo. The OA is

accordingly dismissed. However, the respondents are directed to conclude the disciplinary proceedings within a period of six months from the date of receipt of a copy of this order. It is needless to mention that the applicant shall cooperate in the proceedings and if there is no resistance from the applicant and the proceedings are not completed within six months, the Tribunal would not be inclined to extend the time.

13. There shall be no order as to costs.

(Pradeep Kumar)
Member(A)

(Justice L. Narasimha Reddy)
Chairman

/vb/