

**Central Administrative Tribunal
Principal Bench**

**OA No.2824/2016
MA No.3129/2016**

New Delhi, this the 9th day of October, 2019

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

Ved Pal Singh,
Aged 60 years, Group 'A',
Executive Engineer (Civil),
Retired,
S/o Late Shri Charan Singh,
R/o P-48, Sector-XI, NOIDA,
Uttar Pradesh-201301.

...Applicant

(By Advocate : Shri Ashish Nischal)

Versus

Union of India,
Through it's Secretary,
Ministry of Urban Development,
Nirman Bhawan,
New Delh-110108.

...Respondent

(By Advocate : Shri K.M. Singh)

ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman :-

The applicant joined the service of CPWD as Junior Engineer (Civil) on 10.03.1981. He was promoted to the post of Assistant Engineer (Civil) in the year 1989 and as Executive Engineer (Civil) in the year 2006. He retired

from service on 31.07.2016, on attaining the age of superannuation.

2. On 26.05.2016, the applicant was issued a charge memo. In Article 1, it was mentioned that the applicant was Incharge of the works of CISF Complex, Indrapuram, Ghaziabad between 26.05.1992 and 31.10.1998 and that while calling of tenders for work, estimating to Rs.33,940/- in the year 1993, he did not follow the prescribed procedure for opening of the tenders. Article 2 was also in respect of the same work and tender. In the Article 3, it was mentioned that the applicant made extra payment of Rs.7,613/-, in respect of finishing of the quantity of 349 sqm red stone flooring. The last article was in respect of non deduction of alleged amount of Rs.52,291/- for not rubbing the sand stone of 1630 sqm.

3. The applicant submitted his explanation to the charge memo, denying the charges. It is stated that the charge memo was issued in respect of so called irregularity, refererable to the year 1992, just before his retirement, with malafide intention. It is stated that the allegations themselves are trivial in nature and at no

point of time, in more than two decades any objection was raised at the audit or other levels.

4. The respondents filed counter affidavit opposing the OA. It is stated that the acts and omissions on the part of the applicant, contained in the charge memo, need to be inquired into. It is also stated that the Inquiry Officer and Presenting Officer have already been appointed and there is no basis for interfering with the charge memo at this stage.

5. We heard Shri Ashish Nischal, learned counsel for applicant and Shri K.M. Singh, learned counsel for respondents.

6. The challenge in this OA is to the charge memo dated 26.05.2016. We are aware of the limitations on the judicial review of the charge memo, issued to an employee. The basic norm is to permit the disciplinary proceedings to culminate, in accordance with the relevant provisions of law. It is only in exceptional cases, such as where the proceedings were initiated by the authority not vested with the power or where the issue is so stale and trivial, that no useful purpose would be served, that the

Tribunal would consider the feasibility of interfering in the proceedings. It is with a rider that even if the amount involved is small, the proceedings can take place, if there is an allegation of fraud or other malafide intention on the part of the employee.

7. The applicant was due to retire on 31.07.2016. About two months before his retirement, the impugned charge memo was issued, wherein the following articles of charges are contained :-

“ARTICLE-I

The said Shri Ved Pal Singh, Executive Engineer (C) {the then Assistant Engineer (C)}, had issued CPWD-6 (NIT) on 18.12.1993 and opened the tender after 3 days i.e. on dated 22.12.1993 of above work. He failed to make proper publicity of tender by not allowing 10 days time limit as prescribed under Para 18.6 of CPWD Manual Vol-II-1988 and thus, acted in contravention of the said para.

ARTICLE-II

Two tenders were sold to M/s D.R. Mehendiratta & Sons and M/s Vijay Const. Co. on 18.12.1993 and same has been entered on the Page no.31 of the Tender Sale Register. Page No.33-41 and 43-56 of Tender Sale Register were left blank and no entry has been made. At Page No.42, sale of tender of one work of date 04.10.1993 has been entered, which was not correct as

because the sale of 04.10.1993 should have been entered before the sale of 18.12.1993. Thus, it is evident that Shri Ved Pal Singh, Executive Engineer (C) {the then Assistant Engineer (C)}, was not properly maintaining the Tender Sale Register which is a vital document for maintaining transparency in tendering process and acted in contravention of Para 19.24 (d) and (e) of CPWD Manual Vol.II-1988.

ARTICLE-III

An extra payment of Rs.7613.43 has been made to the contractor as an extra item (1/5) on account of extra for red stone flooring rubbed finish for the quantity of 349.08 sqm. @ 21.81/-sqm. in 2nd and final bill, whereas, this component of rubbing was included in the item of above said Agreement item no.4. Due to above act of Shri Ved Pal Singh, Executive Engineer (C) {the then Assistant Engineer (C)}, undue benefit has been extended to the contractor amounting to Rs.7613.43 which is a loss to the Government exchequer.

ARTICLE-IV

Undue benefit of Rs.52291.41 has been extended to the contractor by not deducting the component of “rubbed” from the agreement item no.4 in the shape of minus extra item. The total quantity of 1979.62 sqm. has been executed in Agreement item no.4, out of which 349.08 sqm. was only rubbed, as aforesaid in Article-III. Thus, 1630.54 sqm. (1979.62 sqm.-349.08 sqm.) red sand stone flooring was not rubbed. The component of “rubbing” was included in the Agreement item no.4, but no deduction of Rs.52291.41 (1630.54 sqm. @ Rs.32.07/- sqm.) has been made from the contractor’s bill. Due to above act

of Shri Ved Pal Singh, Executive Engineer (C) {the then Assistant Engineer (C)}, undue benefit has been extended to the contractor amounting to Rs.52291.41 which is a loss to the Government exchequer.”

8. The respondents have obtained the first stage advice from the CVC. It is important to note that the CVC itself took note of the fact that there is undue delay in the entire issue. The letter dated 12.04.2016, reads as under:-

“OFFICE MEMORANDUM

Subject: Over payment in case of C/o CISF Campus at Indirapuram, Ghaziabad (U.) SH: Providing red sand stone on parade ground. Agmt. No.32/EE/SCD/(93-94.

MoUD/CPWD may please refer to their UO No.11/7/3/2003-VSI dated 28.03.2016 on the above subject.

2. After examining the reference received from MoUD, the Commission in agreement with DA i.e. Hon'ble UDM & CVO, would advise initiation of Major Penalty Proceedings against S/Shri V.P. Singh, the then AE (now EE). Shri Satish Kumar, the then JE (now AE) and no action against Shri Pritam Singh, the then EE. It may be ensured that necessary action may be taken well in time since Sh. V.P. Singh, the then AE (now EE) and Shri Satish Kumar, the then JE (now AE) are due for retirement on superannuation on 31.08.2016 & 31.07.2016, respectively.

4. Further, it is observed that DG, CPWD vide his note dated 10.04.2014 ordered to fix the responsibility for no action taken in vigilance unit of CPWD from 15.12.2008 to 18.01.2012 and also directed to examine the abnormal delay in processing the case initiated by SE in 2003. Therefore, the Commission would advise CVO, CPWD to examine & fix the responsibility for delay and revert back the case to the Commission for first stage advice **within 4 weeks positively.**

5. MoUD's case file is returned herewith. The receipt of the same may please be acknowledged.

6. Action taken in pursuance of Commission's advice may also be intimated."

9. It is not without reason that the ceiling of four years is stipulated for initiation of proceedings against a retired employee under Rule 9 of the CCS (Pension) Rules, 1972. The objective is to ensure that an employee is not subjected to undue harassment by reopening the stale and old issues. The circumstances that obtained before the retirement of an employee are no doubt different. At the same time, the principle underlying the stipulation of four years cannot be ignored. If it is four years in respect of a retired employee, it can be slightly more in respect of an employee who is about to retire. By choosing to issue a charge memo immediately before the retirement, the

Disciplinary Authority cannot dig up the issues which are decades old.

10. In case of the applicant, the issue which is sought to be reopened is of the year 1992. By 2016, it was 24 years old, which is nearly a quarter century. One can understand if it was a serious issue involving crores of rupees and tainted with allegations of fraud and cheating. At the end of the day, the allegation against the applicant is that instead of waiting for 10 days for opening the tender, he did it within three days. The quantum of work is just of Rs.33,940/-. It is not uncommon that user department exerts heavy pressure for completion of the work of small and trivial nature.

11. Another allegation is about maintenance of record of the sale of tender forms. There again, it is not even alleged that the applicant is involved in any fraudulent activity or he has favoured any particular individual. The third article is too trivial. An amount of Rs.7,613/- is mentioned. The allegation is not that the work was not done at all. In article 4, the amount is a bit more, but the nature of allegation is the same. It is more a case of perception, namely, whether the polishing of the surface

was done properly or not. It is not even available for verification after the quarter century. No useful purpose would be served by proceeding against the applicant on the basis of those allegations. Nowhere, it was mentioned that the applicant has resorted to any acts of fraud or cheating. The availability of any material for verification is next to impossible. An employee who served for more than three decades, cannot be subjected to such a treatment. The applicant has already suffered in the form of a denial of retiral benefits from 2016 onwards. The interest to be calculated on that amount would be more than the amount mentioned in the charge memo.

12. We, therefore, allow the OA and set aside the impugned order. The respondents shall settle and release the retiral benefits of the applicant, within a period of eight weeks, from the date of receipt of a certified copy of this order, if not already done.

Pending MAs, if any, stand disposed of.

There shall be no orders as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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