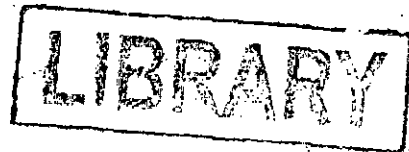


**Central Administrative Tribunal
Kolkata Bench, Kolkata**

O.A. No.313/2013



Thursday, this the 13th day of June 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Dr. Nandita Chatterjee, Member (A)**

Subrata Biswas, aged 54 years,
s/o N C Biswas,
Agricultural Production Commissioner & Principal
Secretary, Animal Husbandry and Dairy Department
Govt. Secretariat, Thiruvananthapuram
Residing at 4D, Sanskriti Apartments, Kowdiar
Thiruvananthapuram

..Applicant

(Mr. B Chatterjee, Advocate)

Versus

1. Union of India, represented by Secretary,
Ministry of Personnel & Public Grievances &
Pension (Department of Personnel & Training)
New Delhi – 110 011
2. The Under Secretary to Govt. of India,
Ministry of Personnel & Public Grievances &
Pension (Department of Personnel & Training)
New Delhi – 110 011
3. Union Public Service Commission
Dholpur House, Shahjahan Road,
New Delhi – 110 069
Represented by its Secretary

..Respondents

(Ms. R Basu and Mr. S K Ghosh, Advocates)

O R D E R (O R A L)

Justice L. Narasimha Reddy:

The applicant is an IAS officer of Kerala cadre. In May, 2006,
he was appointed as Secretary, Damodar Valley Corporation
(DVC), which comes under the control of Ministry of Power,

Government of India, and remained as such till October, 2009. Thereafter, he was appointed as Chairman, DVC and remained in that position till July, 2010.

2. Complaints were received from various Power Plants by the Ministry of Power, as regards the functioning of the applicant. They, in turn, were referred to Central Vigilance Commission (CVC). Through its O.M. dated 08.04.2010, the CVC opined that the minor penalty proceedings be initiated against the applicant. Accordingly, a charge memo was issued to him on 14.09.2010 by the cadre controlling authority, i.e., Government of India, Ministry of Personnel & Public Grievances & Pensions, Department of Personnel & Training (DoPT), the first respondent herein, under the All India Services (Discipline & Appeal) Rules, 1969 (for short 'the Rules'). It was alleged that the applicant has shown lack of devotion to duty and has acted in a manner, which is unbecoming of a member of the IAS; in the context of awarding of contract, resulting in loss of about 25 crores to DVC. The applicant submitted his explanation on 04.10.2010, denying the allegations made against him.

3. The charge memo, opinion of CVC and the explanation of the applicant, were forwarded to the Union Public Service Commission (UPSC), the third respondent herein, for their advice, as required under law. On its part, the UPSC tendered its opinion, vide communication dated 24.02.2012. Taking the same into account, the disciplinary authority passed an order dated 18.05.2012 imposing the penalty of 'reduction to a lower stage by



one stage in the time scale of pay for a period of two years, without cumulative effect but not adversely affecting his pension'. The same is challenged in the instant O.A.

4. The applicant contends that there is absolutely no truth in the allegations made against him and without conducting any inquiry, it was proceeded as though the allegations have been proved. He further contends that the UPSC has also not applied its mind and has mechanically taken the view that the charge can be taken as proved. His further contention is that though minor penalty proceedings were initiated against him, a major penalty was imposed, and thereby the entire proceedings are vitiated. Several other grounds are also urged.

5. The respondents filed a counter affidavit opposing the O.A. It is stated that the allegations against the applicant are serious in nature and on account of lack of devotion to duty on his part, the DVC has suffered huge loss of about 25 crores. It is also stated that the necessity to conduct the inquiry would have arisen, if only the applicant insisted for it and since he did not take that plea, the matter was dealt with in accordance with the relevant Rules. The plea of the applicant that the punishment imposed upon on him is major in nature, is flatly denied.

6. We heard Mr. B Chatterjee, learned counsel for applicant and Ms. R Basu and Mr. S K Gosh, learned counsel for respondents.

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7. Before we proceed to address the other issues raised in the O.A., an important ground raised by the applicant, as regards the nature of punishment, needs to be considered. The punishment imposed upon the applicant is the one of 'reduction to a lower stage by one stage in the time scale of pay for a period of two years, without cumulative effect but not adversely affecting his pension'. According to the applicant, this is a major penalty, as defined under Rule 6 (v) of the Rules and that it could not have been imposed, except by following the prescribed procedure therefor, viz. by conducting departmental inquiry.

8. It is not in dispute that the Rules prescribe separate procedures for imposition of minor penalty on the one hand and major penalty on the other. If what is imposed by the respondents against the applicant is a 'major penalty', it would have become untenable since the procedure therefor was not followed.

9. The failure on the part of the applicant to consult the latest set of Rules led to this impression. Till the year 2000, the penalty of reduction to a lower stage in the time scale of pay for a specific period, with or without cumulative effect and whether or not, with a stipulation as to the earning of increments during the period of reduction, was treated as a major penalty. The minor penalty was the only one of withholding of increment of pay.

10. Through an amendment, carried out to the Rules through Notification dated 01.06.2000, the penalty of 'reduction to a lower stage in the time scale of pay for a period not exceeding three years, without cumulative effect and not adversely affecting his

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pension' was added as 'iv-a' after item 'iv' under the heading 'minor penalties', under Rule 6 of the Rules. The one imposed upon the applicant answers that very description. Therefore, we are of the view that the plea of the applicant that a major penalty was imposed, without following the prescribed procedure therefor, cannot be accepted.

11. Coming to the merits of the case, the charge levelled against the applicant is supported by a detailed background, which runs into four closely typed pages. The gist thereof is mentioned as under:-

"It is, therefore, evident that you as a member of the W&STC-I in its meeting held on 11.03.2008 overruled the decision of the W&STC-I taken on 22.02.2008 for cancellation of the tender due to poor response and restrictive QR and decided to complete the tendering process initiated vide NIT dt. 29.10.2007 even after accepting that the response against the said NIT dt. 29.10.2007 had been poor. As a result of this, the said work was awarded to M/s CISC & M/s BKB Transport (P) Ltd. At an identical high amount of Rs.25,01,68,896/- p.a. which was 28% higher than the Departmental Estimate and which also indicated cartel formation by the two qualified bidders as both the tenderers had quoted same rate and again had offered the same negotiated discount.

It is, therefore, established that you as a member of the W&STC-I in its meeting held on 11.03.2008 took the decision for completion of the tender process in violation of the afore-stated provisions of the W&P Manual, 2006 (Para XIV (a) and (b)).

By your aforementioned acts you showed lack of devotion to duty and have acted in a manner which is unbecoming of a member of the Indian Administrative Service as enjoined under Rule 3 of the All India Services (Conduct) Rules, 1968."

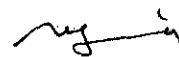
12. By any standard, the allegation, even if partly true, would be a reflection on the nature of devotion to duty or the lack of it,

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on the part of an officer, heading the organization. The applicant, no doubt, denied the charge in his detailed explanation. However, for the reasons best known to him, he did not make any request for conducting of any inquiry. Therefore, the necessity for the respondents to conduct inquiry did not arise. As required under the relevant Rules, the matter was referred to the UPSC. On a detailed consideration of the entire issue, the UPSC opined as under:-

"3.3.15 Considering the above and taking into account the following mitigating factor the Commission conclude that the Charge is prove to the above extent:

- (i) As per para xxiv) of DVAC Works and Procurement Manual 2006, lack of competition exists if "the number of acceptable offers are less than three". Since in this case there were only two acceptable offers, as per the DVC manual, there was lack of competition. But as per DVC Manual (page 15) "number of offer received or qualified shall not be criteria for finalization of contract". Further, as per the DVC manual (page 18) "the cases of acceptance of single officer against open tender will be treated as open offer for all practical purposes."
- (ii) A decision to retender (to generate more competition) is not a must in all cases. The Committee was not aware of the cartel formation by the two qualified bidders.
- (iii) The Calcutta High Court on 8.1.2008 held that it was for the Corporation to decide the eligibility of bidders and the eligibility conditions specified in the NIT dated 29.10.2007 seems to be unreasonable.
- (iv) W&STC-II had in its meeting dated 2.5.2008 held that "the negotiated rate of 28% is higher than the scheduled does not appear to be unreasonable."



4. In the light of the observations and findings as discussed above and after taking into account all facts and circumstances relevant to the case, the Commissioner consider that the charge is proved against the CO to the above extent and the ends of justice would be met if the penalty of 'Reduction to a lower stage by one stage in the time scale of pay for a period of two years, without cumulative effect and not adversely affecting his pension' is imposed on the MOS Shri Subrata Biswas. They advise accordingly.

5. A copy of the orders passed by the Ministry in this regard may please be endorsed by the Commission for perusal and record.

6. The case records as per the list attached are returned herewith, receipt of which may please be acknowledged."

13. For arriving at this conclusion, the UPSC has undertaken extensive discussion. Once the UPSC has tendered its opinion, the disciplinary authority took the same into account and imposed the penalty. It is fairly well settled that the Tribunal cannot sit as an appellate authority in the disciplinary matters, unless any serious violation of the relevant provisions of law is pointed out, or the applicant has successfully established that any patent illegality existed. None of these grounds are pleaded, much less established.

14. We do not find any merit in this O.A. It is accordingly dismissed. There shall be no order as to costs.

(Dr. Nandita Chatterjee)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

June 13, 2019
/sunil/