

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00348/16**

Reserved on: 24.07.2019
Date of Order: 29.07.2019

C O R A M

**HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER**

Lauhar Singh, Son of Late Jagdish Narain Singh, Senior Divisional Accounts Officer, Office of the Accountant General (A&E), Bihar, posted at Building Division, Muzaffarpur (Bihar).

.... **Applicant.**

By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India through the Comptroller & Auditor General of India, 10, Bahadur Shah Zafar Marg, New Delhi- 110002.
2. The Deputy Comptroller & Auditor General of India, 10, Bahadur Shah Zafar Marg, New Delhi-110002.
3. The Accountant General (A&E), Bihar, Mahalekhakar Bhawan, "R" Block, Bir Chand Patel Path, PO- GPO, Patna – 800001 (Bihar).

.... **Respondents.**

By Advocate: - Mr. Bindhyachal Rai

O R D E R

Per Dinesh Sharma, A.M:- The instant OA has been filed against the order dated 12.02.2015 passed by respondent no. 3 (Accountant General A&E, Bihar) and the order dated 15.02.2016 passed by respondent no. 2 (Dy. Controller and Auditor General of India) whereby the applicant has been punished with reduction in pay by one stage for a period of one year with further direction that this will have the effect of postponing future increments. The applicant claims that these orders are without application of independent mind. The chargesheet dated 07.01.2013 following which

this enquiry was conducted is also unsustainable for the sole reason that no prosecution witnesses were examined and the applicant has been punished on the basis of certain documents referred in the chargesheet. Without proving these documents and without examining/cross examining the authors of the concerned documents, the documents cannot be said to be proved. The applicant has denied the allegation by submitting his reply dated 18.02.2013 and the onus of proving the charges is cast upon the Department and not on a delinquent employee. His appeal against the punishment order has also been rejected in a totally mechanical manner. The punishment imposed is disproportionate taking into account the seriousness of the charges against the applicant. On all these grounds the applicant has prayed for quashing the punishment order dated 12.02.2015 together with the order of the Appellate Authority dated 15.02.2016 and the enquiry report dated 12.11.2013. He has also requested for restoring the pay of the applicant with all consequential benefits.

2. The respondents have filed their written statement in which they have denied the claim of the applicant. According to them, the applicant, while posted as Divisional Accounts Officer in Flood Control Division Camp. Thakraha, Gopalganj committed irregularity in recommending payment of second running Account bill for Rs. 4,39,39,509/- to M/s Dharti Dredging and Infrastructure Limited, Hyderabad, for the work related to construction of Pilot Channel at Saran Embankment from Km. 117405 to 124.24, without verification of the measurements by

Ocean Department of IIT, Madras/Bombay/Kharagpur. According to the provisions of the tender documents, payment in respect of even number bills and final bills for dredging work was required to be made after such verification. The applicant being the Financial Advisor to the Executive Engineer should have ensured that this condition was fulfilled for recommending payment against this bill. The respondents have also pointed out that this omission on the part of the applicant is further noticeable from the fact that the applicant had himself proposed in his note dated 12.09.2011 for deduction of some amount from the second running bill on ground that the reply to letters written to the IIT for verification had not been received. The respondents have stated that the delinquent officer participated in the enquiry and he should not question the bonafides of the enquiry officer after the conclusion of the Disciplinary Proceeding. The punishment orders have been passed after a thorough enquiry and after considering the representation of the applicant and there is nothing on record to prove that he tried to bring the discrepancies in the order of the Divisional Officer to the notice of either the Divisional Officer or any higher authority. The penalty is commensurate with the gravity of the proved charge and the orders passed by the Appellate Authority is speaking and reasoned order. The OA should, therefore, be dismissed.

3. We have gone through the pleadings and heard the learned counsels of both the parties. Very simply put, the charge against the applicant was of not objecting (and thereby recommending) to the release of payment against the second running account bill of about Rs. 4.39 crores

to a contractor, without getting the work measurements verified by one of the IITs, which was one of the conditions of such payment in the contract. The applicant in his statement of denial of charges stated that there was no need for such measurement by the IIT since this bill was for dry excavation of earth and not for under water excavation. Therefore, he alleged that “only on the ground of even numbering of the bill, para (iii) of mode of payment is not applicable since it was clear that the bill produced for payment was for dry excavation of earth.” By taking this defence what the charged officer has tried to state is that it was not the numbering of the bill (odd or even) which should have determined whether the IIT should verify it but the fact whether it was for dry excavation or excavation under water. Such reasoning (or justification) cannot be expected from an Accounts Officer whose job was to ensure strictly whether the terms of the contract were properly fulfilled before release of payment. The applicant has nowhere denied that the terms of the contract required every even bill to be super checked by one of the IITs. In such a situation, the arguments raised by the applicant about the documents not having been proved by any witness becomes irrelevant since the applicant has himself not denied this particular aspect of the charge. We also find that the orders passed by the Disciplinary Authority and the Appellate Authority are very detailed and well-reasoned. It is mentioned in the Disciplinary Authority’s findings that this bill included payments made at the rate fixed for dredging machine which itself shows that the claim made by the applicant, about this bill pertaining only to dry land excavation, is also not correct. The punishment

imposed on the applicant, who was supposed to keep a vigilant eye on release of payments as per the terms of the executed contracts, is prima facie not disproportionate to the lapse on his part and the reasons stated by the applicant for quashing these orders are not legally tenable. The learned counsel for the applicant has cited the decisions of this Tribunal in OA 251/2008 decided on 08.03.2016 and the judgment of Patna High Court dated 17.12.1999 in CWJC No. 1405 of 1995 in the matter of Kumar Upendra Singh Parimar Vs. B.S. Co-Opt. Land Dev. Bank Ltd. In both these decisions it is held that if no witnesses are called by the Department in support of the charges it cannot be held that the charges are proved. We have gone through these decisions. They do not apply to the facts of this case since the delinquent employee has himself not denied about his not insisting on IIT verification despite it being required under explicit terms of the contract. He has only tried to give other explanations for his not doing his job properly. A fact that is admitted does not have to be proved and therefore the cited decisions will not apply to the admitted facts of this case. In the light of the above, the OA lacks merit and is, therefore, dismissed. No order as to costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member