

(15)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. 1070/2003

New Delhi, this the 3<sup>rd</sup> day of June, 2004

HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

In the matter of:

O.P. Jatia,  
S/o Shri Mool Chand,  
R/o 265-C, Janta Flats,  
Paschim Vihar Extn.,  
New Delhi

.... Applicant

(By Advocate : Shri Arun Bhardwaj)

Versus

1. Chairman, Standing Committee  
ESI, Head Quarter,  
Kotla Road, New Delhi

2. Director General,  
ESI, Head Quarter,  
Kotla Road,  
New Delhi

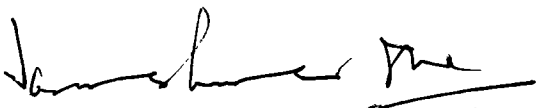
.... Respondents

(By Advocate : Shri Yakesh Anand)

O R D E R

Heard.

2. This OA has been filed against the orders of the respondents dated the 8th October, 2002 whereby the disciplinary authority has passed an order imposing the penalty of with-holding next increment for one year without cumulative effect (Annexure A-1). The applicant has prayed that the said order be quashed and set aside. He has also prayed for quashing and setting aside the impugned order dated the 27th February, 2003 as passed by the appellate authority. He has also sought quashing and setting aside the enquiry officer's report dated the 11th February, 2002 and further that he be paid all consequential benefits.



2. The facts of the matter, briefly, are that the applicant while serving as Deputy Director, ESIC Regional Office, Faridabad, was issued a charge sheet under major penalty procedure on 18.11.1998 for certain charges as indicated in the Memorandum issued by the respondents (Annexure A-6) whereby he was also directed to submit within 10 days of the receipt of the said Memorandum a written statement of his defence and also to state whether he desired to be heard in person. On perusal of the charges levelled against him, it is observed that these related basically to his having certified that M/s. Jain Printing Works had the requisite capacity to do printing work and further that their tenders for the value of about Rs.12.5 lacs be accepted, ignoring the interests of ESIC and, in the process, exhibited lack of integrity, lack of devotion to duty and a conduct unbecoming of a Corporation employee, thereby violating Rule 3 (1) of CCS (Conduct) Rules, 1964 read with Regulation 23 of ESIC (Staff & Conditions of Service) Regulations, 1959 (as amended). The applicant made written brief against the Memorandum. An enquiry was conducted in the matter and a report was submitted on 27.4.2001 whereby charge No.1 was held to be not proved and charge No.2 was held to be partly proved and partly not proved and further that charge No.3 was held to be proved (Annexure A-3).

3. The applicant represented against the Enquiry Officer's report on 21.8.2001 alleging bias, malafide and violation of the procedure on the part of the Enquiry Officer. A representation was also submitted to the Director General on the same date (Annexure A-8). Having considered the matter, the disciplinary authority remitted it to the enquiry officer for further enquiry and report.

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Additional pleas were submitted by the applicant to the enquiry officer vide Annexure A-10. The enquiry officer submitted a supplementary report. But the applicant had grievance against the supplementary report also and he accordingly represented to the disciplinary authority vide Annexure A-12. In the said representation, the applicant again gave the whole history of the case and alleged, among other things, that the enquiry officer had grossly erred in evaluation of evidence and that his findings were based on unsubstantiated and tainted evidence of Vigilance Officers reflecting complete contempt of independence of judgement. He specifically mentioned that the partly proved charge (2) of wrong certification of M/s. Delhi Sales Corporation was based on no prosecution evidence and against the documentary evidence laid by him and that charge (3) was based on contradictory evidence and was, therefore, unsustainable in the eyes of law (Union of India v. K.A. Kittu & Ors - 2000 (5) SLR 797). He, accordingly, prayed in the said representation that he be exonerated of the charges and the proceedings be closed. He also prayed for personal hearing being given to him to explain his innocence in the case. However, the impugned order was finally passed on 8.10.2002 imposing the penalty of withholding next increment for one year without cumulative effect on the applicant. He preferred an appeal to the appellate authority against the said impugned order, but his appeal was also rejected vide the orders of appellate authority dated the 27th February, 2003 (A-2).

4. Going through the reply as filed by the respondents, it is observed that the enquiry against the applicant had been entrusted to one Shri Daya Ram, Joint Director, who submitted his report on 27.4.2001 with the following findings:-

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Charge I : Not proved

Charge II : Partly proved. (The portion of the charge regarding M/s. Delhi Sales Corporation has been proved. The portion of the charge relating to M/s. J.D. Printers is not proved)

Charge III : Fully proved.

4. While they have mentioned that the disciplinary authority, on the basis of the findings of the enquiry officer and after following the due procedure, passed a detailed order dated 8.10.2002 imposing upon the applicant the penalty in question, a lenient view ~~was~~ taken while imposing the said penalty. They have asserted that the appellate authority had considered all the submissions and contentions of the applicant and ~~has~~ kept in view the relevant documents and material on record before passing his order.

5. In paragraph 4.3 of the reply, the respondents have given details of the various stages of the matter relating to award of the printing work to M/s. Delhi Sales Corporation, finally taking a view that there was unassailable evidence to support the findings of the enquiry officer that the applicant and two others gave wrong report to the effect that M/s. Delhi Sales Corporation was having a printing press of its own as per ESIC requirement to execute the printing orders. They have highlighted the point that the Finance & Accounts Branch of the Corporation, of which the applicant was Incharge, instead of working as a watchdog in matters of finances and expenditure incurred therefrom and instead of questioning the justifiability of the proposal from the administration to entrust the printing job to the three parties, vide his note dated 16.2.1996, justified the abnormal higher rates quoted by them without verifying the market rates and the rates in the neighbouring regions. It has accordingly been inferred that the applicant

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has favoured the these outside parties at the cost of ESIC and, in the process, exhibited lack of integrity, lack of devotion to duty and conduct unbecoming of a Corporation employee, thereby violating Rule 3 (1) of CCS (Conduct) Rules, 1964 read with Regulation 23 of ESIC (Staff & Conditions of Service) Regulations, 1959 (as amended).

6. The respondents have denied that Shri Daya Ram, Joint Director, ESI (Retd.) had consented to work as Defence Assistant in the departmental enquiry, as alleged by him. <sup>(The applicant)</sup> They have also denied that certain material documents were not supplied to him during the course of enquiry. On the question of supplementary report having been submitted by the enquiry officer, it has been clarified that the said supplementary report dated 11.2.2002 was submitted by the enquiry officer taking into account the additional plea having been made before the enquiry officer during the enquiry proceedings. Though they have admitted that the said report was not represented against by the applicant on 26.3.2002, the disciplinary authority, on the basis of the findings of the enquiry officer and after following the due procedure passed the impugned order dated 8.10.2002. They have reiterated that while so doing a lenient view was taken of withholding of next increment for one year without cumulative effect.

7. I find from the reply of the respondents that the other two persons, namely, Shri R.K. Mehta (PW-4) who was liable for <sup>being</sup> issued a warning for incorrect verification, the same could not be issued to him for the reason that he had since retired, in regard to the other person, namely, Shri S.S. Sharma, who was one of the team members with the applicant, the respondents have stated that he was cautioned on 20.11.1998, taking the position that the prosecution has

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every right to dispense with the evidence of any witness listed in the charge sheet. They have argued that if the applicant was sure that any such witness dropped by the prosecution would be useful to him, he could have requested the inquiry officer to call such a person as a defence or a court witness. They have, therefore, submitted that the allegation of the applicant as made in paragraph 5.4 and 5.5 of the OA is without basis. They have also asserted that three hearings were devoted to inspection of documents.

8. The submission of the respondents as made in paragraph 5.13 of their reply is quite significant in the sense that if the value of the tenders received on 15.2.1996, which was quoted to be Rs.12.05 lacs by each tenderer which showed an increase of about 400% with reference to the last printing done in 1993, had been published as the value of the tender, better response and more competitive rates could have been expected. In the opinion of the respondents, the applicant could have returned the proposal to the Administration/General Branch if he was of the view that the estimated cost of printing was not realistic. In the other paragraphs of the reply as filed by the respondents, specific remarks/details have been furnished with regard to the details of the matter which are by way of para-wise comments and do not, in any way, detract from the fact, as submitted by the respondents that they went by the report of the Inquiry Officer, who had conducted the enquiry, in their opinion, following the due process and procedure and also that the appellate authority had considered all aspects of the matter including the representation of the applicant before he passed his order.

9. In the rejoinder filed by the applicant, he has highlighted the fact that the penalty order as passed by the disciplinary authority is based on perverse findings of the inquiry officer and also due to non-application of mind.

*Sanjiv Kumar*

Most of the other things as submitted in the rejoinder have been submitted by the applicant in the OA also in one form or the other and also during the course of oral submissions. Moreover, the submissions are by way of elaboration and clarification and do not include any new facts.

10. A written submission has also been filed on behalf of the applicant after the arguments were concluded in which things as submitted in the OA as well as in the rejoinder have been reiterated and it has been prayed that the OA may be allowed with consequential benefits to the applicant.

11. Having made careful perusal of the facts as submitted by the applicant as well as the respondents, it is observed that while the applicant being Incharge, Finance & Accounts Branch of the Haryana Region of ESIC, was responsible for examining the subject relating to the printing requirement and the estimated amount therefor very closely, bringing to b upon the matter the principles of economy and frugality while considering the proposal of the administration, the fact of the matter appears to be that the economy aspect of the matter escaped his mind. He also appears to have ignored the necessity of examining the proposal with reference to the past requirement of the Organisation and the amounts spent thereon and also the procedure followed therefor. It is observed that no comparative assessment of the cost both with reference to the market rate as also with reference to normal increment both in requirement as well as related costs was carried out by Finance & Accounts Branch under the applicant. The said Branch should have made the administration wiser by bringing in more factual analysis of the estimated cost of the required work by having a detailed and indepth examination of not only the cost, both present as well as the past, but also in terms of the technical abilities/capacities available in the market vis-a-vis the

*Sanchar Me*


related economics in terms of expenditure as well as savings involved. No such exercise appears to have been carried out. As regards the other individuals, who were part of the team which proceeded to verify the facts of the matter as reported through the proposals submitted by the parties, having been parties to the lapses allegedly committed by the applicant and the said persons having been not proceeded against in the same manner as in the case of the applicant, it is observed that while one had retired and the other was not found, in the judgement of the respondents, to have been as similarly placed as the applicant so as to proceed against him in the same manner. While it may not be the case as has been made out by the respondents in regard to the said individuals, it would not be worth-while to go into that matter so far as the case of the applicant is concerned. It would not be rational for the applicant to take shelter under what dispensation has been extended to the said persons. Incidentally, while the said persons (Shri Sharma) was a member of the team which participated in the verification of the various aspects of the matter including the capacity available with the tenderers, the fact remained that he was not Incharge of the Finance & Accounts Branch and he did not, therefore, carry the same responsibilities as were carried out by the applicant. Accordingly, his case has been viewed differently by the respondents. As regards the procedure followed by the respondents in the matter of enquiry, I find that no glaring lapse appears to have been committed in this regard. To remove the apprehension of the applicant about the due procedure having not been followed, a supplementary report had been submitted by the inquiry officer after taking into account the additional affidavit filed by the applicant in the matter. However, on perusal of the representation of the applicant after receiving the supplementary report





it is observed that no separate and specific points have been brought out by the applicant against the said supplementary report not being satisfactory to him. Moreover, having observed that while charges I & III have been proved against the applicant and Charge II has been partly proved against him and further that the respondents have taken a position that a lenient view has been taken by the disciplinary authority while imposing the penalty of withholding of next increment for a period of one year without cumulative effect, I do not find that the respondents have not taken into account the various aspects of the matter as had been submitted by the applicant to them through his representations. I also do not see any reason to suspect that the respondents have not applied their mind to the subject objectively and rationally.

12. Having regard to the facts and circumstances of the case and also after having given a careful consideration to the submissions made by the two sides and the respective learned counsel during the course of arguments, I do not find any merit in the OA and, therefore, I am convinced that it must fail. Accordingly, the OA stands dismissed. No costs.

  
(Sarveshwar Jha)  
Member (A)

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