

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :: 13.03.2017

Delivered on :: 13.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P. No.13362 OF 2014

D.THAMIZHMANI

... Petitioner

Versus

- 1 THE UNION OF INDIA REP BY
UNDER SECY. TO THE GOVT. OF INDIA
THE MINISTRY OF COMMUNICATIONS DEPT.
OF TELECOMMUNICATIONS 915
SANCHAR BHAWAN, NEW DELHI.
 - 2 THE CENTRAL VIGILANCE COMMISSION
REP. BY THE DIRECTOR
SATARKTA BHAWAN GPO COMPLEX
BLOCK A INA NEW DELHI - 103 301.
 - 3 THE UNION PUBLIC SERVICE COMMISSION
REP. BY THE DEPUTY SECRETARY
DHOLPUR HOUSE SHAJAHAN ROAD
NEW DELHI-110 069.
 - 4 THE CENTRAL ADMINISTRATIVE
TRIBUNAL REP. BY THE REGISTRAR CENTRAL
ADMINISTRATIVE TRIBUNAL HIGH COURT CAMPUS
CHENNAI-104.
- ... Respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorari to call for the records on the file of the fourth respondent in connection with the order passed in O.A.No.1366 of 2011 dated 25.04.2014 and quash the same.

For petitioner : Mr.R.Singaravalen, Senior Counsel
for Ms.M.Srividhya

For Respondents : Mr.V.Venkatesan,
for respondents 1 2 & 4
NA-R3

O R D E R

K.K.SASIDHARAN, J.

This Writ Petition is directed against the order dated 25 July 2014 in O.A.No.1366 of 2011 dismissing the original application filed by the petitioner challenging the order imposing punishment by the first respondent, notwithstanding the clean chit given by the Enquiry Officer.

Factual background:-

2. The petitioner is an employee of BSNL. The Disciplinary Authority issued a charge memo to the petitioner on 18 September 2007 alleging that he was instrumental in making recommendation for procurement of PVC pipes in huge quantities far beyond the actual requirement for the period 2000-2001 and thereafter, procured the pipes in total violation of the instructions given by the Chief General Manager.

3. The petitioner in his explanation denied the charge and submitted that he joined duty only on 3 July 2000 and the procurement was pursuant to the earlier order dated 4 January 1999. The explanation was not accepted by the Disciplinary Authority. The Disciplinary Authority appointed an Enquiry Officer to enquire into the charges framed against the petitioner. The Enquiry Officer conducted a very detailed enquiry and submitted a report absolving the petitioner from the charges.

4. The Disciplinary Authority vide memorandum dated 28 October 2010, disagreed with the findings recorded by the Enquiry Officer and decided to proceed further. The petitioner was called upon to submit his explanation as to why he should not be punished.

5. The petitioner submitted his explanation to the memorandum. The Disciplinary Authority thereafter passed the impugned order dated 28 September 2011 imposing the penalty of reduction of pay in the time scale for a period of two years. The order was challenged before the Central Administrative Tribunal. The Tribunal without addressing the issues raised by the petitioner, dismissed the original application primarily on the ground that before imposing the punishment, advice of the Union Public Service Commission (hereinafter referred to as the UPSC) was also taken. The order passed by the Tribunal is under challenge before this Court.

6. We have heard the learned Senior Counsel for the petitioners and the learned counsel for the respondents 1 to 3.

DISCUSSION:-

7. The Disciplinary Authority initiated disciplinary proceedings against the petitioner on allegation that while functioning as Deputy General Manager (Planning), in the office of the Chief General Manager, Telecom, Kerala Circle Trivandrum, during the period from 3 July 2000 to 5 June 2001, the petitioner recommended for procurement of PVC pipes in huge quantities, far beyond the actual requirement for the period from 2000-2001 and procured the same in violation of the instructions issued by the Chief General Manager that preliminary estimates must be obtained and details furnished before placing the purchase orders and that the estimates have to be furnished before placement of advance purchase orders. The Disciplinary Authority alleged that the petitioner violated the departmental instructions regarding decentralized procurement, and thereby caused undue loss to the Department of Telecommunications and BSNL.

8. The petitioner in his detailed explanation, submitted that he was not responsible for the purchase of PVC pipes. According to the petitioner, he was neither the authority involved in the methodology adopted in Kerala Circle in the finalization of quantity of pipes to be tendered nor had any role in assessment of pipes to be procured. The petitioner contended that at the instance of the General manager, Development, who was involved in the entire process of procurement, he had put up the file. In short, the petitioner contended that he was not responsible for the purchase of PVC pipes in any manner.

9. The Enquiry Officer conducted a full fledged enquiry. While absolving the petitioner from the charges, the Enquiry Officer recorded thus:-

"It is seen that the Charged Officer, as per the discussions the GM (Dev) had with the SE Civil and SSW on 20.10.2000, had recorded his views/remarks as directed by the GM (Dev), when the letter dated 19.10.2000 of the civil wing was received in file from AGM MM-1 and marked the file to GM (Dev) for further action as the action required in that letter was not within the competency of the charged officer. Thereafter the file has come back in the section of AGM MM-1 with the approval of GM (Dev) for authorizing for procuring 60% of the tendered qty of pipes and the AGM MM-1 had as usual no other role except conveying the decision of the superior authorities for necessary action. Except recording the remarks of the DGM (Plg) (Charged Officer) in the relevant file as orally instructed to do so by the GM (Dev) proposing procurement of 60% of the tendered quantity the CO was not involved in the decision making process of authorizing the civil Wing to place purchase orders for 60% of the tendered quantity of PVC Pipes.

Therefore, the charge to the effect that "procured rigid PVC pipes in huge quantities far beyond the actual requirements for 2000-2001 "contravening Rules 3(1)(ii) and (iii) of the CCS Conduct Rules 1964 is not proved beyond doubt". Further all the activities performed by the charged officer were based on specific orders of the superior authority conveyed in the relevant file provisions of rule 3(2) (ii) (iii) and (iv) is not applicable in this case as no written or oral instructions were conveyed to his subordinate officers.""

10. The Disciplinary Authority differed from the findings recorded by the Enquiry Officer and decided to proceed further. The Disciplinary Authority issued a memorandum to the petitioner dated 28 October 2010 calling upon him to submit his explanation.

11. The petitioner submitted a detailed explanation dealing with each and every tentative findings recorded by the Disciplinary Authority. The Disciplinary Authority was expected to consider the articles of charge, his tentative findings and the explanation given by the petitioner before passing the order imposing penalty.

12. The Disciplinary Authority after discussing the background facts resolved to impose the penalty by way of a very brief order. The ultimate finding would read thus :-

"Now thereafter, after careful consideration of the allegations levelled, the findings of the IO, examined independently the submissions made by Shri.D.Thamizhmani, the then DGM (Planning), the Charged Officer, in his representation dated 08.12.2010, the advice tendered by the UPSC, and all relevant facts and circumstances of the case, the President, the Competent Disciplinary Authority hereby accepts the advice of UPSC and orders for imposition of the penalty of "Reduction of pay by one stage in the time scale of pay for a period of two years with further direction that he will not earn increment of pay during the period of such reduction and on the expiry of such period, the reduction will have the effect of postponing the future increments of his pay, on Shri D.Thamizhmani, the then DGM (Planning), the Charged Officer."

13. The order passed by the Disciplinary Authority does not contain any material muchless justifiable material to award the punishment. The Disciplinary Authority was expected to consider the entire matter and arrive at an independent finding. This is more so on account of the fact that the Enquiry Officer has given sufficient reasons as to why he exonerated the petitioner from the charges. Since the Disciplinary Authority differed from the findings recorded by the Enquiry Officer, a duty is cast on the said authority to state as to why he is imposing the punishment. The fact that UPSC has tendered advice alone would not suffice. Entire materials has to be analyzed by the Disciplinary Authority and a speaking order should be passed.

14. The Central Administrative Tribunal without discussing the merits of the order passed by the Disciplinary Authority, simply confirmed it taking into account the advice given by the UPSC. Since the order passed by the Disciplinary Authority is bereft of reasons, we are of the view that the matter requires fresh consideration.

15. In the result, the order dated 25 April 2014 is set aside. The original application in O.A.No.1366 of 2011 is allowed. The order passed by the Disciplinary Authority dated 28 September 2011 is set aside. The matter is remitted for fresh consideration. The first respondent is directed to consider the issue afresh in the light of the report submitted by the Enquiry Officer and the explanation submitted by the petitioner. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

- 1 THE SECY. TO THE GOVT.
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CENTRAL ADMINISTRATIVE TRIBUNAL
HIGH COURT CAMPUS
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+1cc to Mr.V.Venkatesan, Advocate Sr.22718
+1cc to M/S.M.Srividhya, Advocate Sr.22636

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srg 24/04/2017



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