

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2836 of 2017

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Uday Kumar Sharma S/o Late Sheo Dayal Sharma, Resident of Mohalla-
Aakashwani Road, Khajpura, Patna- 14, District- Patna.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Government of India, Department of Defence Production, New Delhi
2. The D.G.O.F. and Chairman, Ordnance Factory Board, 10A, S.K. Bose Road, Kolkata- 700 001.
3. The General Manager, Ordnance Factory, Nalanda Biharsharif.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Hemant Kumar Karan, Mr. Jayant Kumar Karan, Advocates
For the Respondent/s	:	Mr. Raj Kamal, CGC

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 06-12-2021

This case has been listed for seeking some
clarification on a particular issue from the respondents.

Heard learned counsel for the parties.

Petitioner has prayed for following reliefs:-

“A. To set aside order dated 04.10.2016, passed by Ld.
CAT, Patna Bench in O.A. No.916/2014, as contained in
Annexure – P/9, whereby the case of petitioner, claiming
imposition of erroneous punishment in Disciplinary
Proceedings has been dismissed.

B. To set aside Order of Punishment, issued vide
Order No.13024/1/Vig/1/08/D(Vig.)-Vol.II Dated 30.08.2013,

as contained in Annexure – P/7, by Under Secretary to the Government of India, by Order and in the name of President, through -DGOF & Chairman / OFB, Kolkata imposing upon the petitioner punishment of “reduction to two stages lower in the time scale of Pay, for a period of 1 year, with further directions that he will not earn the increments of pay during this period but on expiry of this period the reduction will not have the effect of postponing future increments of his pay.

C. Any other incidental, consequential or other relief / reliefs, to which the petitioner is found entitled in the eye of law.”

Briefly stated the facts of the case is that petitioner joined Indian Ordnance Factory Service as Assistant Works Manager on 7.4.1992 and was posted at Ordnance Factory, Nalanda from 18.3.2002 to 2.5.2011.

Allegation against petitioner is that while he was posted in Ordnance Factory, Nalanda and was member of tender evaluation committee and was associated with procurement of 20 tonnes capacity mobile crane and one of the technical specifications was that the cranes should have “rear mounted engine”, however, petitioner facilitated procurement of a crane from M/S. Escorts which had a front mounted engine, although on the same ground of front mounted engine, the offer of one of the bidders M/s. ACE was rejected. A three-men technical

committee which included petitioner submitted an incorrect report that the crane purchased are as per specifications of tender.

Petitioner was served with a memo of charge dated 13.12.2019 which reads as follows:-

Statement of articles of charges framed against Shri U. K. Sharma, JtGM, of Nalanda is as under:-

ARTICLE- I

Shri U. K. Sharma was a member of factory level TEC where the offer of a front mounted engine crane from M/S ACE was rejected as the requirement was for a rear mounted engine on the crane. Further he attempted to pass off a front mounted engine crane supplied by M/S ESCORTS as a rear mounted engine crane and got the crane supplied by M/S ESCORTS cleared for payment through factory level TPC recommendations dt. 28-05-2008, wherein he was a signatory. He also hid the material facts- vigilance investigations, rejection of M/s ACE offer on same grounds, downplaying the effect of engine location on performance before the aforesaid TPC, for getting the technical deviations approved without any cost reduction so that 90% payment could be released to M/S Escorts. Consequently full 90% payment was made to the firm.

ARTICLE-II

By the above acts of omission and commission, Shri U.K. Sharma, JtGM, of Nalanda exhibited lack of integrity and devotion to duty and acted in a manner unbecoming of a Government Servant in violation of Rule 3(1)(i),(ii) and (iii) of the CCS (Conduct) Rules 1964.

Along with memo of charge, 19 documents were

enclosed based on which, charges were to be proved and two departmental witnesses were to be examined.

Inquiry officer as well as presenting officer were appointed by the disciplinary authority to enquire into the charges framed against the petitioner and same was conducted under Rule 14 of the CCS (CCA) Rules, 1965 and completed on 15.01.2011 and inquiry officer submitted his inquiry report on 18.4.2011 in which charges framed against the petitioner were found not to be proved.

The inquiry officer found the charges not to be proved, however, disciplinary authority differed with findings arrived by Inquiry Officer and gave tentative reasons for differing with the findings of inquiry officer on the basis of materials available in the inquiry report.

In the case of **Punjab National Bank & Ors. vs. Kunj Behari Misra, since reported in (1998) 7 SCC 84**, it has been held that whenever the disciplinary authority disagrees with the findings recorded by enquiry officer on article of charges, then before it records its own findings on such charge, it must record its tentative reasons for disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the Inquiry officer containing its findings will

have to be served and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the findings as recorded by Inquiry Officer in favour of delinquent. The Hon'ble Apex Court proceeded to observe that the principles of natural justice require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

A disagreement note against inquiry officers report was served upon petitioner on 8.1.2013 in which the disciplinary authority differed with the findings of inquiry officer and on the basis of materials available in inquiry report, found the charges to be proved against the petitioner, against which, petitioner submitted his representation to the disciplinary authorities on 22.03.2013 and, thereafter, on consideration of inquiry report, disagreement note and representation filed by petitioner against disagreement note, found the charges to be proved and passed order of punishment.

The CVC also concurred with the view of disciplinary authority that charges were proved and major penalty should be awarded to the delinquent.

The learned tribunal has held that no malice, as alleged, could be established by the petitioner and moreover the proceeding was conducted against all the officers including the then General Manager who was involved in this procurement. The Tribunal has further held that disciplinary authority after proper appreciation of evidence on record, and applying his independent mind, has come to a tentative finding that charges were proved and he has given tentative reasons to differ with the finding of inquiry officer and, as such, there was no illegality committed by the disciplinary authority while differing with the findings of the inquiry officer based on evidence on record and came to independent finding after due appreciation of materials available on record that the charges are established against the petitioner.

The Tribunal has also examined the case on merits and held that the key aspect to be examined was whether there was a deviation from technical specification which the petitioner along with other officers tried to underplay in order to favour M/S Escorts.

It was lastly argued that it was a case of mere negligence in performance of duty or error of judgment in discharge of duty and would not constitute misconduct. However, from the

charges, as framed and established by the department, it does not appear that it is a case of mere negligence or error of judgment but a well planned conspiracy to procure cranes in connivance with M/s Escorts which did not fulfil the technical specifications and to cover up said misconduct by submitting a vague and incorrect report to justify such procurement.

Having gone through the nature of allegations and finding recorded by the inquiry officer and disciplinary authority as well as perusing the order passed by the Tribunal which has threadbare considered the charges framed against petitioner as well as explanation and defence put forth by the petitioner, did not find the departmental proceeding to be vitiated on any account and the punishment imposed not to be disproportionate to the gravity of proved charges.

It is now settled preposition of law that courts will not act as appellate authority and reassess the evidence led in the departmental proceeding nor can interfere on the ground that another view is possible based on the materials available on record. If inquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of evidence will not be ground for interfering with the findings in the departmental inquiries.

Courts will not interfere with the findings of fact recorded in the departmental inquiries except where such findings are based on no evidence or where they are clearly perverse.

After going through the order passed by the Tribunal as well as considering the materials available on record, does not find any error in the decision making process during conduct of departmental proceeding in which charges were found to be proved and punishment awarded. This Court also does not find violation of any principle of natural justice or any statutory regulation.

This Court does not find any error or infirmity in the order passed by the Central Administrative Tribunal, Patna and, accordingly, this writ petition is dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-Ranjan

AFR/NAFR	NAFR
CAV DATE	NA
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