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Writ Petition No.1453 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.07.2024

PRONOUNCED ON : 08.08.2024

CORAM

**THE HONOURABLE MR. ACTING CHIEF JUSTICE
D. KRISHNAKUMAR
AND
THE HONOURABLE MR. JUSTICE K. KUMARESH BABU**

Writ Petition Nos.1453 of 2017

Deokrishna ... Petitioner

Vs

1. Union of India
Rep., by the Desk Officer (Vig.II)
Ministry of Communications and IT,
Department of Telecommunications,
Room No.915, Sanchar Bhawan
No.20, Ashok Road, New Delhi -110 001.
2. The Director (VP)
Ministry of communications and IT,
Department of Telecommunications
(Vigilance wing)
Room No.903, Sanchar Bhawan,
No.20, Ashok Road,
New Delhi – 110 001.
3. Deputy Secretary (VP)
Ministry of Communications and IT,
Department of Telecommunications,



Writ Petition No.1453 of 2017

Room No.915, Sanchar Bhawan,
No.20, Ashok Road, New Delhi – 110 001.

4. Principal Controller of
Communication Accounts,
Ministry of Communications and IT,
Department of Telecommunications,
Tamil Nadu Circle,
Chennai – 600 028.

5. The Registrar,
Central Administrative Tribunal,
Chennai – 600 104. ... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, calling for the records pertaining to the order of the fifth respondent which is made in O.A.No.192 of 2012 dated 01.05.2015, and quash the same, consequent to direct the respondents 1 to 3 to restore all the benefits to the petitioner and to pass such further order.

For Petitioner : Mr.R.Malaichamy

For Respondent : Mr.V.Balasubramanian Senior Panel Counsel

for RR1 to 4

R5 Tribunal

ORDER

(Order of the Court was made by Mr.K.KUMARESH BABU.,J.)

The instant Writ Petition had been filed by the unsuccessful ap-



Writ Petition No.1453 of 2017

plicant wherein his challenge to the punishment imposed upon him had been negatived.

2.Heard Mr.R.Malaichamy, learned counsel appearing for the petitioner and Mr.V.Balasubramanian, learned Senior Panel counsel appearing for the respondents 1 to 4.

3. The learned counsel appearing for the petitioner would submit that the petitioner while working as a Deputy General Manager in the office of the General Manager Telecom District, BSNL, Gaya was issued with a charge memo on 17.05.2005 under Rule 16 of the CCS [CCA] Rules, 1968 (hereinafter referred to as the “Rules”). The charge against the petitioner was that he had purchased certain computer hardware/software to the tune of Rs.86.6 lakhs against the tender and agreement value and that too beyond the currency of the agreement period, which was alleged to have been made with ulterior motive for the benefit of the supplier and himself. He would submit that the petitioner denied the charges and that apart he had also alleged that the charge



Writ Petition No.1453 of 2017

memo would not have been issued by the authority other than the disciplinary authority, who is the President of India.

4. He would further submit that the petitioner has not been authorised to call for any fresh tender. When that being so, there is no question of the petitioner calling for fresh tender for purchase of computer hardware and software. Apart from the jurisdiction of the disciplinary authority, he would also contend that no enquiry was conducted to drive home the allegations made in the charge sheet and he was imposed with a punishment of reduction of pay by one stage for a period of two years. He would further submit that the petitioner alone had been singled out, even though there are various other officers involved in the said purchase and therefore, the entire disciplinary proceedings initiated against him is not only arbitrary, but also a colourable exercise of power. He vehemently contend that the Rule 16 provides for the enquiry to be conducted, but however, no enquiry was conducted and based on the reply given by the petitioner to the charge memo, the punishment had been imposed. Therefore, he would submit that there has also been a violation of



Writ Petition No.1453 of 2017

principles of natural justice. All these aspects have been over looked by the Tribunal and had dismissed his Original Application. In support of his contention, he would rely upon the judgment of the Division Bench of this Court in W.P.No.3902 of 2015 and contend that even for imposing a minor penalty such as that has been imposed against the petitioner, enquiry ought to have been conducted. Therefore, he would seek interference with the order passed by the Tribunal.

5. Countering his arguments, Mr.V.Balasubramanian, the learned Senior Panel counsel appearing for the respondents would submit that the petitioner had purchased computer hardware and software to the tune of Rs.86.60 lakhs as against the tender and agreement value of Rs.30,00,000/-. He would further submit that the earlier tender period was over and the agreement that was entered with the private party for supply also by efflux of time, had expired. But however, without calling for any fresh tender, purchase orders were placed for the aforesaid value beyond the currency period with the same vendor. This created a doubt on his devotion to duty which was unbecoming of a Government ser-



WEB COPY
vant and therefore, charges were framed under Rule 16 of the Rules. It is an admitted case that there is a delegation of power of the Appointing Authority/disciplinary authority. He would submit that the delegatee had only carried on the powers vested with him, only in the name of the disciplinary authority. He would submit that there is no mandate for conducting an enquiry for imposing minor penalty under Rule 16 of the Rules.

6. He would further contend that the petitioner had not asked for any enquiry or personal hearing. Since he was found guilty of the charges based on the material records, which speaks for itself, namely the petitioner beyond the period of agreement, had placed purchase order with the same vendor. He would submit that the judgment relied upon by the learned counsel appearing for the petitioner would not be applicable to the facts of the case, as the Division Bench had only held that some minor penalties may have a long term effect and in such case, enquiry ought to have been conducted. Further he would submit that in the facts of the case, the allegation against the delinquent Officer in the matter decided by



Writ Petition No.1453 of 2017

the Division Bench was an allegation which could only be proved by way of evidence. He would submit that in the present case, the delinquency that is alleged to have been committed was that he had made purchases based upon expired agreement. Therefore, the record speaks for itself and there is no necessity to conduct an enquiry as prayed by the petitioner. He further submit that the Tribunal had correctly analysed the facts placed on record and infact on merits, the petitioner found guilty of the delinquency that had been alleged. Therefore, he would submit that there is no necessity to interfere with the impugned order before this Court.

7.We have considered the rival submissions made by the learned counsels appearing on either side and perused the materials placed on record.

8.As regards the jurisdiction, the Tribunal had referred to the various aspects and had given a categorical finding that the authority had the jurisdiction to pass the order imposing the punishment. We find no reason to differ with the view taken by Tribunal in that aspect we affirm the



view taken by the Tribunal.

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9.However, as regards to the issue raised by the petitioner that the Rule 16 mandates an enquiry before passing an order of punishment is concerned, we propose to analyse the provision of Rule 16 of CCS (CCA) Rules. Rule 16 reads thus under:-

“16. Procedure for imposing minor penalties [1] Subject to the provisions of sub-rule [3] of Rule 15, no order imposing on a Government servant any of the penalties specified in Clause [1] to [iv] of Rule 11 shall be made except after --

[a] informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;

[b] holding an enquiry in the manner laid down in sub-rules [3] to [23] of Rule 14, in every case in which the Disciplinary Authority is of the opinion that such inquiry is necessary;



Writ Petition No.1453 of 2017

[c] taking the representation, if any, submitted by the Government servant under Clause [a] and the record of inquiry, if any, held under Clause [b] into consideration;

[d] recording a finding on each imputation of mis-conduct or misbehaviour; and

[e] consulting the Commission where such consultation is necessary.”

10.Rule 16 (1)(b) indicates that an enquiry in the manner laid down in sub-Rule (3) to (23) of Rule 14 can be made if the disciplinary authority is of the opinion that such enquiry is necessary. In the present case as rightly pointed out by the learned Senior Panel counsel for the respondents, on receipt of the charge memo, the petitioner had also not intimated that an enquiry was required to be conducted. Further, the allegation made against the petitioner was that he had placed orders with the vendor whose agreement had expired by efflux of time. The petitioner had not placed any materials on record to substantiate his claim that he had only placed orders with the vendor, whose agreement was in subsistence. When that being so, the petitioner cannot claim to have not



Writ Petition No.1453 of 2017

committed any delinquency. In this case, the record speaks for itself and

the Tribunal has also given a specific finding that the petitioner has

committed the delinquency. The Tribunal was also right in holding that

the punishment could only be interfered, when there are no evidence,

perverse evidence of the same has been made on surmises and

conjectures. Those grounds are not available to the petitioner. Further we

are also of the considered view that the Division Bench judgment of this

Court relied on by the learned counsel for the petitioner would not be

applicable to the facts of the present case. On the facts of the case, the

Division Bench had held that to come to a conclusion that a finding of

negligence could only be made based upon an enquiry and not otherwise.

In the present case, it is not negligence on the part of the petitioner, but a

flagrant violation of Rule of law by placing orders with a vendor whose

agreement had expired by efflux of time.

11. For the foregoing reasons, we do not find any infirmity or

illegality in the impugned order passed by the Tribunal and in fine, the

Writ Petition is dismissed. However, there shall be no order as to costs.



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Writ Petition No.1453 of 2017

(D.K.K.,A.C.J.,)

(K.B., J.)

08.08.2024

Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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Writ Petition No.1453 of 2017

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WEB COPY

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Pre-Delivery Order in
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