



2025:DHC:7587-DB



\$~69

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 4370/2021**

A. P. PITTULE

.....Petitioner

Through: Mr. Vinay Kumar Garg, Sr.
Adv. with Mr. Shreenath A. Khemka, Mr.
Ganesh A. Khemka and Mr. K.S. Rekhi,
Advs.

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Ms. Radhika Bishwajit Dubey,
CGSC with Ms. Gurleen Kaur Waraich, Mr.
Kritarth Upadhyay, Ms. Khushi and Mr.
Saksham Sharma, Advs. for UOI with Joint
Director Naveen Bhardwaj and Subedar
Ram Niwas

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

%

19.08.2025

C. HARI SHANKAR, J.

1. The petitioner A.P. Pittule, then posted as Superintending Engineer, was the Commander, Border Roads Task Force, from October 2013 to April 2016.

2. The Boarder Road Organisation¹ entered into a Supply Contract dated 17 November 2014 for the procurement of material towards the widening project of “improvement of surfacing works of Handwara-

¹ “BRO”, hereinafter



Lach-Naugam road in Kashmir”. The project was assigned to 760 BRTF/ Project Beacon of the BRO.

3. As per Clause 26 (c) of the Supply Contract, the Commander Task Force had to conduct a 5% Test Check before making payment to the contractor. As it was nearly impossible for the Commander Task Force to conduct the 5% Test Check of the material supplied owing to the difficult security situation in Kashmir, the petitioner instructed his subordinate officer to take a total of 9 samples (3 samples of each material), for scientific testing at the Field Laboratory. Testing of the samples took place, and the test results were declared on 6 December 2014, 11 March 2015 and 21 April 2015. The samples were found to be in conformity with the specifications of the Supply Contract. The petitioner, therefore, released the payment to the contractor.

4. The project was subsequently subjected to investigation by the Central Bureau of Investigation². In compliance with directions issued by the CBI, the BRO, on 14 August 2015, took the samples from the road surface, using a JCB machine, which were sent for testing to the Central Road Research Institute³, New Delhi. The test reports of the CRRI, which were released on 1 March 2016, found some irregularities in the material used, *vis-à-vis* the specifications contained in the Supply Contract.

5. Based on the aforesaid CRRI reports, the BRO came to the

² CBI

³ “CRRI” hereinafter



conclusion that officers, including the petitioner, had accepted inferior quality material. Consequently, the Ministry of Defence issued, to the petitioner, a Memorandum dated 11 September 2017⁴, proposing to initiate a disciplinary inquiry against him under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, containing the following Articles of Charge:

“Article-I

1. That the said Shri A P Pittule, SE (Civ) (GO-2181 P), while functioning as Commander 760 BRTF/ (P) Beacon during the period from Oct 2013 to Apr 2016 for HQ CE (P) Beacon Contract Agreement No CE (P) BCN/18/2014-15, failed to carry out the mandatory 5% Test Check of the material supplied by the Contractor, before releasing its payment. This led to acceptance of Material of inferior quality and incorrect specifications, by the ground Executives, in connivance with the Contractor and with ulterior motives, in violation of the Contract conditions, thereby causing loss to the Government.

2. By the above act, the said Shri A P Pittule, SE (Civ) has failed to maintain absolute integrity and devotion to duty. He has further failed to take all possible steps to ensure the integrity and devotion to duty of the personnel who, at that time, were under his control and authority, thus violating Sub-rule (1) (i), (ii), (iii), (vi), (ix) and 2 (i) of Rule 3 of CCS (Conduct) Rules, 1964.

Article-II

1. That the said Shri A P Pittule, SE (Civ) (GO-2181P) while functioning as Commander 760 BRTF/(P) Beacon from Oct 2013 to Apr 2016 failed to carry out the mandatory periodic inspections of the Departmental Job of 'Improvement of Surfacing Works (from 3.66 M to 7.00 M width) from KM 5.00 to KM 15.441', on Road "Handwara-Lach-Naugam" under Job No 224/49, This led to execution of substandard work by the ground Executives then under him.

2. By the above act, the said Shri A P Pittule, SE (Civ) has failed to maintain absolute integrity and devotion to duty. He has further failed to take all possible steps to ensure the integrity and devotion to duty of the personnel who, at that time, were under his

⁴ “the charge-sheet” hereinafter



control and authority, thus violating Sub-rule (1) (i), (ii), (iii), (vi), (ix) and 2 (i) of Rule 3 of CCS (Conduct) Rules, 1964.”

6. The petitioner filed a statement of defence, by way of response to the charge-sheet. A disciplinary inquiry followed.

7. The Inquiry Officer⁵, *vide* his Inquiry Report dated 12 December 2019, found both the Articles of Charge not to have been proved, as there was no structural deficiency in the material used, resulting in any loss to the State. The CRRI Report was found to be unreliable, owing to improper sampling.

8. The Disciplinary Authority⁶, disagreeing with the findings of the IO, issued a Disagreement Note to the petitioner on 8 October 2020. The format and structure of the Disagreement Note are significant. With respect to Article I, the Disagreement Note first sets out the Article of Charge and the findings of the IO and, thereafter, records the following “Tentative reasons of disagreement by the Disciplinary Authority”:

“Tentative reasons of disagreement by the Disciplinary Authority

The Charged Officer took no initiative to perform 5 % test check which was to be carried out by Commander task Force. Instead the Charged officer chose to rely on the tests conducted by his subordinates thus violating Para-26(C) of Special Conditions of Contract. This resulted in acceptance of material of inferior quality and specifications by the subordinate ground executives, causing loss to the Government.

On the basis of above reasons, the charge appears to be proved.”

⁵ “IO” hereinafter

⁶ “DA” hereinafter



Similarly, in respect of Article II, too, the DA set out the Article of Charge, the findings of the IO, whereafter the following “Tentative reasons of disagreement by the Disciplinary Authority” were recorded:

“(c) Tentative reasons of disagreement by the Disciplinary Authority

The Charged Officer made certain visits to the H-L-N Road sector, but these visits were insufficient as per SoP of Vigilance Checks and Inspections dated Jan, 2000. Lapses in inspection at various levels resulted in execution of work which was not as per prescribed standards as evident from presence of oversized stone metals in road samples tested by Central Road Research Institute (CRRI).

On the basis of above reasons, the charge appears to be proved.”

9. The petitioner submitted his response to the Disagreement Note on 27 October 2020.

10. On 12 January 2021, the following Order came to be passed by the DA, holding the charges against the petitioner to be proved and penalizing him with compulsory retirement from service:

“F. No. 02(02)/BRO/D(Vig.)/2017/50
Government of India
Ministry of Defence
D(Vigilance-MES & BRO)
Room No. 136, Kashmir House, New Delhi-11
Dated 12th January, 2021

ORDER

WHEREAS disciplinary proceedings were initiated by Disciplinary Authority under Rule 14 of CCS(CCA) Rules, 1965 against Shri AP Pittule, SE (Civ) GO- 2181P of Border Roads



2025:DHC:7587-DB



Organization vide Charge Memorandum
No.02(02)/BRO/D(Vig.)/2017 dated 11.09.2017.

AND WHEREAS Shri AP Pittule, SE (Civ) GO-2181P submitted written defence wherein he denied the Charges framed against him and requested to be heard in person.

AND WHEREAS the Disciplinary Authority after considering the written defence submitted by Charged Officer, Shri AP Pittule, SE (Civ) GO-2181P appointed Inquiry Authority and Presenting Officer vide Order F. No. 02(02)/BRO/2017/D(Vig) dated 04.01.2018 to inquire into the Charges framed against Shri AP Pittule, SE (Civ) GO-2181P.

AND WHEREAS the Inquiry Authority after conducting the Inquiry under Rule 14 of CCS(CCA) Rules, 1965 submitted the Inquiry Report vide letter No. 2123/DE/APP/185/Pers. dated 12.12.2019 with findings that Article of Charges are "not proved".

AND WHEREAS the Disciplinary Authority considered the Inquiry Report submitted by Inquiry Authority and tentatively disagreed with the findings of Inquiry Authority.

AND WHEREAS with the approval of Disciplinary Authority a tentative disagreement note was served on Charged Officer, Shri AP Pittule, SE (Civ) GO- 2181P vide MoD letter No. 02(02)/BRO/D(Vig)/2017/956 dated 08.10.2020 wherein the Charged Officer, Shri AP Pittule, SE (Civ GO-2181P) was requested to submit his representation on the tentative reasons of disagreement with the findings of Inquiry Authority.

AND WHEREAS the Charged Officer, Shri AP Pittule, SE (Civ) GO-2181P submitted his representation to Disciplinary Authority on the tentative disagreement note vide his letter GO20181P/Memo/88 dated 27.10.2020.

AND WHEREAS after careful consideration of the Article of Charges of Charge Memorandum against Shri AP Pittule, SE(Civ) (GO-2181P), the finding of the Inquiry Authority, the representations submitted by Charged Officer and all other relevant documents of the case, the Disciplinary Authority has come to the conclusion that charges under Article-I & II "**stands proved**"

NOW THEREFORE in exercise of the powers conferred by Rule 15(6) of Central Civil Service (Classification, Control and Appeal) Rules, 1965, the President is inclined to take a view that justice would be met by imposing the penalty of "**Compulsory retirement from service with pensionary benefits**" on Shri AP



2025:DHC:7587-DB



Pittule, SE (Civ) GO-2181P and hereby orders accordingly.

Receipt of this order should be acknowledged.

(BY ORDER AND IN THE NAME OF THE PRESIDENT)

(Raj Kumar)

Under Secretary to the Government of India”

11. This was followed by order dated 18 January 2021, discharging the petitioner from service.

12. The petitioner preferred a Review Petition, against the order dated 12 January 2021, which was also dismissed on 8 March 2021.

13. Aggrieved thereby, the petitioner has approached this Court, by means of the present writ petition, praying that the order dated 12 January 2021 compulsorily retiring him from service, as also the order dismissing his review thereagainst on 8 March 2021, be quashed, and the respondents directed to reinstate the petitioner in service with consequential reliefs including continuity of service and arrears.

14. We have heard Mr. Vinay Garg, learned Senior Counsel for the petitioner and Ms. Radhika Bishwajit Dubey, learned CGSC, at length.

15. Apropos Article I, Mr. Garg submits that it was only after satisfying themselves that the material used in the Road construction was satisfactory that, on 11 April 2017, the security deposit furnished by the contractor was released to it. He also draws attention to a



certificate dated 14 December 2020, to the effect that the work performed was as per standards. It was only in 2022, therefore, he submits, that an opinion was mooted that the material used was not of the prescribed standards.

16. Mr. Garg submits that the IO arrived at a finding that the charges were not proved after considering all the material. He has invited our attention to the findings of the IO in this regard, which read thus:

“Findings: The Charges under Article-I are basically on four counts :-

- (a) The CO failed to carry out the mandatory 5% Test Check of the material supplied by contractor before releasing its payment.
- (b) Acceptance of material of inferior quality and incorrect specifications.
- (c) The CO did not visit the said road sector as entries in the Drivers Car Diaries of the relevant period reveal and he did not inspect works as he did not sign the Work Diaries,
- (d) The CO did not carry out vigilance/surprise check as per SOF (S-9).

44. In respect of charge under Paragraph No.43 (a) above, the same are not proved. The reasons are as under: -

- (i) No cogent evidence has been placed on record to prove that the CO functioning as Commander Task Force 760 BRTF did not carry out 5% Test Check before releasing payment to the contractor for GSB material supplied by the contractor as has been envisaged in the contract agreement (S-3).
- (ii) In fact, non endorsement of Test Check in the Measurement Book has been related with the violation of the contract condition.



(iii) The State Witnesses have brought out that there was no SOP laying down the procedures of carrying out the 5% Test Check by the Commander Task Force. It has been left at the wisdom of the Commander Task Force, how he does the 5% Test Check. State Witness deposition, SW-2 (Q No.8 & 9 of Cross Examination), SW-3 (Q No.3 & 4 of Cross Examination) and SW-5 (Q No.9 of Cross Examination).

(iv) It has been brought out by State Witness that as per the contract conditions, it is the Commander Task Force who has to carry out the 5% Test Check and not the 'Commander Contract' as has been mentioned in Paragraph No.4 of the imputation of the misconduct or misbehavior in Annexure-II related to Article-I. The Commander contract is appointed for a specific contract whereas Commander Task Force has to look after all the contracts and works in the area of responsibilities of the BRTF. It has been correctly mentioned in the paragraph No.1 of the imputation of misconduct or misbehavior in Annexure-II related to Article-I that Commander Task Force is supposed to discharge his duties by optimally utilizing the resources placed under his command and authority in the best interest of the State.

(v) The 5% test check endorsement is neither the requirement of contract nor of audit. Therefore, relating non-endorsement of 5% check in the MB is not violation of the contract condition.

(vi) State Witness, SW-2 (Q No.23, 24 & 25 of the Cross-Examination) and SW-3 (Q No.16 and 17 of the Cross Examination) have brought out that 9 samples of each material have been tested independently through Field Lab WS (GREF), Witnesses have confirmed that Test results (D-15, D-16 & D-17) are in conformity with the provisions of the contract agreement S3. Therefore the contractual requirements of the contract agreement S3 is complied with.

(vii) In each RAR (S-5) of S3, a certificate duly signed by both Engineer-in- Charge and OC contract is available to that effect that material received has been tested and found as per specifications and meets requisite standards. Thus special condition 27 of State Document S-3 was complied with. Moreover in each RAR there is an appendix indicating number of tests required to be carried out to assess the quality of material. The State Witnesses SW-2 (Q No.24 and 25 of Cross-Examination) and SW-3 (Q No.16 and 17 of Cross Examination) brought out that nothing adverse has been mentioned in the certificate of acceptance of material and the



appendix indicating details of tests carried out with each RAR (S-5) of S3.

(viii) From foregoing, it may be concluded beyond doubt the sufficient evidences regarding conduct of tests by subordinate officials of Commander Task Force is available in each RAR which may satisfy Commander Task Force that material as per required specifications has been accepted. Thus satisfactory proof regarding quality of material has been furnished as per spirit of Particular Specification 1.4 of State Document which has over riding precedence on special conditions. This has been brought out by State Witness SW-2 in answer to Q No.45 and 46 of the Cross examination

45. In respect of charge under Paragraph No. 43 (b) above, the same are not proved. The reasons are as under:-

(i) No cogent evidence has been placed on record that materials of inferior quality and incorrect specification was accepted.

(ii) The allegation of acceptance of material of inferior quality and incorrect specifications by the ground executives is based on the test results of the samples of GSB material collected from H-L-N Road by team of CBI and State Witnesses SW-1, SW-2 and SW-3. The test results had been submitted under CRRI letter dated 01.03.2016, S-10.

(iii) On perusal of State Document (S-11) and deposition of State Witness SW-2, SW-3 and SW-6, it may be concluded that samples from eight locations were collected in cement bags by digging pit with JCB. While answering Q No.39 of Cross-Examination, State Witness SW-2 says that three samples were collected from each location. One bag from each location was retained by CBI, one bag was given to AE (Civ) SC Bamble and third one was sent to CRRI for testing. SW-2 says samples was of about 50 kg (Q 42 of Cross-Examination). However, SW-3 says sample was of 40-50 Kg (Q No.28 of Cross-Examination). SW-5 (Q No.16 of Cross Examination) says it was 20-25 Kg. However, all witnesses says that cement bags were used for keeping the samples which is of 50 Kg capacity. Considering a part of bag would be utilized for stitching, the material contained in each bag may be maximum of 35-40 Kg in each bag for each locations. Therefore, it may be inferred that for each location about 35-40 kg maximum material was forwarded to CRRI for testing. CRRI New Delhi has intimated that testing were done on all the eight samples vide their letter No. CRRI/RAMG/CBI/J&K/2015 dated 01



Mar 2016 (S-10).

(iv) The State Witness SW-5 (Q No.31 to 35 of Cross Examination) SW-6 (Q No.7 to 9 of Examination-in-Chief) have brought out that existing H-L-N Road was the only road and during construction no diversion was there for diverting the traffic including the Army vehicles. Army vehicles used to use antiskid chain during winters which caused damage to laid GSB. SW-6 has also brought out that damage to GSB layer was caused by snow clearance also.

(v) SW-5 (Q No.35 of Cross Examination) has brought out that, there was no specific material reserved for rectifying the damages, remaining material from the contract and locally available material was used. SW-6 (Q No.9 of Examination-in-Chief) has brought out that, it was rectified with the dislodged material from the GSB which was on side of the damaged spot/berm. He has further stated in answering to Q No. 12 of Cross Examination that he used to locally collect material for repair of pot holes/small repair works. Therefore, it may be concluded that the dislodged material and locally collected material were used to repair the damaged GSB layer.

(vi) The State Witness SW-1 has stated (Q No. 1 of Cross Examination) that location for samples were selected randomly. He further stated (Q No.2 of Cross Examination) that there was possibility of mixing of the material while taking out from the pit. The State Witness SW-2 has evaded the questions (Q No.34 to 40 of Cross Examination) by stating I do not know / I do not remember. However, State Witness SW-6 while answering Q No.14 of Cross-Examination has stated that JCB machine was used for collection of samples as lot of time was taken while digging pit with crow bar at first location. He has also brought out that location was taken as per instruction of CBI (Q No.15 of Cross-Examination). Therefore, it may be concluded that GSB sample material was collected by digging with JCB which is certainly not the method of sample collection envisaged in the code. Such collection method has definite chance of mixing of materials of other layers of surfacing / existing road formation with that of material of GSB layers

(vii) The State Witness SW-3 has avoided the question Q No.33 of Cross Examination by saying I do not remember. The State Witness SW-2 (Q No.42 of the Cross Examination) has stated that around 50 Kg of sample is required for sieve analysis. The State Document S-3, at Page No.39 brings out that IS 2386 (Part-I) will be followed for grain size analysis.



As per clause 2.3 and Table-II of IS 2386 (Part-I) depending on maximum size of aggregate, the minimum weight of sample required for sieve analysis is 100 kg and such samples shall be prepared from larger samples either by quartering or by means of samples divider. As per clause 2.5 of IS 2386 (Part-I), for all-in-aggregate or mixed coarse and fine aggregate, the weight of sample shall not be less than the weight given in Table II i.e. 100 kg. The sample for sieving (See Table IV) shall be prepared from the larger sample either by quartering or by means of a sample divider.

In view of above codal provisions, for all-in-Aggregate or mixed coarse and fine aggregate, based on maximum size of aggregate, as per Table IV of IS Code 2386 (Part-I) the minimum weight of sample obtained by above method is to be taken for sieving is 50 Kg. Thus as per IS Code a sample of minimum weight 100 kg prepared from larger samples, either by quartering or by means of a sample divider is to be sent to laboratory and thereafter a reduced sample of minimum weight of 50 kg is to be desired from 100 kg sample either by quartering or by means of sample divider so as to get actual sample for sieve analysis. Therefore 200 kg samples for each location should have been sent for testing. The less quantity of the sample material has also been brought out by CRRI in (S-10) stating CBR could not be done. Therefore, it may be finally concluded that sample quantity sent for testing was inadequate in quantity and not collected as per provisions of code.

(viii) The test were conducted by CRRI, New Delhi on samples which were collected by following arbitrary and non technical procedures and with inadequate quantity of samples, the test conducted by CRRI, New Delhi cannot be said to be representative of the material received through CA No. CE (P)/BCN/18/2014-15(S3).

46. In respect of charge under Paragraph No.43 (c) above, the same is not proved. The reasons are as under :-

(i) No cogent evidence has been placed on record to prove that CO did not visit the H-L-N road during the execution of the Part-I of the contract agreement S-3. No cogent evidence has been placed on record to prove that inspection of works cannot be done without signing Work Diaries.

(ii) Contrary to allegation it has been brought out by the State Witness SW-4 after perusal of S-6 that CO visited H-



L-N road on 15 Apr 2015 (Q No.2 of the examination-in-Chief). The same has been affirmed by State Witness SW-5 (Q NO.8-9 of Examination-in-Chief). The State Witness SW-6 (Q No.3) has also confirmed the visit of CO to H-L-N road. During the visit of CO to H-L-N road GSB work (Part-I of S-3) had not been completed as (0-46). Therefore it may be concluded that the CO did visit the H-L-N road while GSB had not been completed.

(iii) On perusal of State Document S-6 for the period Oct 2014 to Sep 2015, the CO visited road sectors more than forty times. It may be inferred that commander was on road every 9th day on an average.

(iv) The CO visited road sector in spite of non-conducive security situation in AOR of 760 BRTF. In Jammu & Kashmir. The Threat to GREF personnel has been brought out in SOP of TA Bn deployed with Project Beacon which has been brought out by State Witness SW-4 (Q No.21 and 22 of Cross-Examination and Q NO.5 of Re-Examination). The gravity of the security sense further aggravates when security is not provided to the senior officer like Commander Task Force while on move.

(v) The CO visited road sector and inspected works despite prevailing difficult situation due to un-precedented floods of Sep 2014 which needed focussed attention for following:-

(a) Inspection of damaged road stretched especially sinking areas and restoration of abutments of Bailey Bridges in 53 RCC and Major Bridge site in 99 RCC.

(b) Re-launching of NS Bridge (Bailey Bridge with increased span) in Uri Sector on BSU road.

(c) Proceedings of two BOOs for suggesting rectification of damage to Pmt Bridge Hillar-I caused due to settlement of abutment.

(d) Quantification and recharge of loss of construction stores, bridge stores, regimental properties of 99 RCC as both office and living areas were inundated in 4 ft water for more than 8 days.

(e) Keeping the road Jammu-Srinagar fit for Traffic had become top most priority and of national



importance of 760 BRTF, although except Jawahar Tunnel all road sector was with NHAI. (Q No.2 to 4 of Examination-in-Chief of DW-2).

(f) Similarly snow clearance on approach roads to Jawahar Tunnel had become KRA (Key Result Area) for 760 BRTF during winters of 2014. This needed a lot of coordination with civil, military and Police authorities (SW-S Q No.21 of Cross-Examination.DW-3 Examination-in-Chief Paragraph 6 & 7 of depositions).

(g) First snow clearance of OIC 1674 TMPL (Tunnel Maintenance Platoon) OC 99 RCC (Took over Oct 2014) and new Chief Engineer (P) Beacon required presence of Commander at 760 BRTF (Near to Jawahar Tunnel).

(vi) The State Witness SW-2 in his deposition (Q No.26 & 30 of Cross Examination) has brought out that there is no instructions which state that, it is mandatory for Commander Task Force to carry out monthly inspection of all works executed under area of his jurisdiction. He further brought out that there was no instruction which makes mandatory for the Commander Task Force to sign Work Diaries during each physical inspection of works. He has also stated that work diaries can be checked at places other than work site. The same has been re-affirmed by SW-3.

(vii) The State Witness SW-5 has also stated that there is no connection between signing of work diaries at site and physical inspection of works on site. He has further stated that not signing the work diary does not mean that one has not inspected the works on the same date. He has (Q No.28 of Cross-Examination) also brought that it is not possible to sign Work Diary on the day of visit as entries are made in the Work Diary after the completion of the work of the day. The State Witness SW-5 has brought out (Q No.12 of Examination- in-Chief) that Work Diary can be checked in office also.

(viii) From the fore going it may be concluded that linking signing of Work Diary with physical inspection is incorrect.

From above, it may concluded beyond doubt that the CO visited road sector including H-L-N Road during execution of GSB under Part-I of S3 and inspected works.



47. In respect of charge under Paragraph No. 43 (d) above, the same are not proved, The reasons are as under :

(i) No cogent evidence has been placed on record to prove that works executed with materials received under Part-I of contract agreement CE(P)/BCN/18/2014-15 (S-3) were substandard.

(ii) The works against Part-I of S3 was completed during May 2015 and works against Part-II was completed during June 2016 (D-46 and D-47). The state witness, SW-6 (Who was performing the duties of 21C of 99 RCC till July 2019) has brought that the condition of stretches of H-L-N road where, surfacing works was carried out with the material procured under contract CE (P)/BCN/18/2014-15 (S3) was good till July 2019 and no structural deficiency had been noticed. (Q No.17 -19 of Cross Examination).

48. In view of all above, it may concluded that charges under Article-I against Shri AP Pittule, SE (Civ) is not proved and Shri AP Pittule, SE (Civ) (GO-2181P) has not failed to maintain absolute integrity and devotion to duty and that he has not violated sub rule (1) (i), (ii), (iii), (vi), (ix) and 2(i) of Rule 3 of CCS (Conduct) Rules 1964.

49 Article-II

Findings: The charges under Article-II are basically on following counts:-

(a) Failed to carry out mandatory periodic inspection of works as he has not signed the Work Diaries,

(b) Non-inspection led to sub standard work by ground executive.

(c) The CO did not carry-out the mandatory vigilance/surprise checks in respect of the road H-L-N as per the instructions contained vide HO DGBR letter SOP No.6005/0GBR/99Nig dated 20 Jan 2000.

(d) Casual approach toward his assigned duties and responsibilities.

50. In respect of charge under paragraph 49 (a) above, the same is not proved. The reasons are as under :-



(i) No cogent evidence has been placed on record to prove that inspection of works cannot be done without signing Work Diaries.

(ii) The State Witness SW-2 in his deposition (0 No.26 & 30 of Cross Examination) has brought out that there is no instructions which state that, it is mandatory for Commander Task Force to carry out monthly inspection of all works executed under area of his jurisdiction. He further brought out that there was no instruction which makes mandatory for the Commander Task Force to sign Work Diaries during each physical inspection of works. He has also stated that work diaries can be checked at places other than work site. The same has been re-affirmed by SW-3.

(iii) The State Witness SW-5 has also stated that there is no connection between signing of work diaries at site and physical inspection of works on site. He has further stated that not signing the work diary does not mean that one has not inspected the works on the same date. He has (Q No.28 of Cross-Examination) also brought out that it is not possible to sign Work Diary on the day of visit as entries are made in the Work Diary after the completion of the work of the day. The State Witness SW-5 has brought out (Q No. 12 of Examination- in-Chief) that Work Diary can be checked in office also.

(iv) From State Document S-6 show that the CO visited H-L-N road for inspection on 15 April 2015. The same has been confirmed by State Witness SW-4 (Q No.2 of Examination-in-Chief) and SW-5 (Q NO.9 of Examination-in-Chief). The State Witness SW-6 has also confirmed the visit of Commander TF.

(v) During the visit of CO to H-L-N road GSB work (Part-I of S-3) had not been completed as (0-4 6). Therefore it may be concluded that the CO did visit the H-L-N road while GSB had not been completed.

(vi) On perusal of State Document S-6 for the period Oct 2014 to Sep 2015, the CO visited road sectors more than forty times. It may be inferred that commander was on road every 9th day on an average.

(vii) The CO visited road sector in-spite on non-conducive security situation in AOR of 760 BRTF. In Jammu & Kashmir. The Threat to GREF personnel has



been brought out in SOP of TA Bn deployed with Project Beacon which has been brought out by State Witness SW-4 (Q No.21 and 22 of Cross-Examination and Q NO.5 of Re-Examination). The gravity of the security sense further aggravates when security is not provided to the senior officer like Commander Task Force while on move.

(viii) From the foregoing it may be concluded that linking signing of Work Diary with physical inspection is incorrect.

51. In respect of charge under Paragraph No. 49 (b) above, the same is not proved. The reasons are as under:-

(i) No cogent evidence has been placed on record to prove that works executed with materials received under Part-I of contract agreement CE (P)/BCN/18/2014-15 (S-3) were substandard.

(ii) The works against Part-I of S3 was completed during May 2015 and works against Part-II was completed during June 2016 (D 46 and D-47). The state witness SW-6 (Who was performing the duties of 21C of 99 RCC till July' 2019) has brought that the condition of stretches of H-L-N road where surfacing works was carried out with the material procured under contract CE (P)/BCN/18/2014-15 (S-3) was good and no structural deficiency has been noticed, (Q. no. 17-19 of Cross Examination).

52. In respect of charges under Paragraph No 49 (c) above. The same is not proved, The reasons are as under;-

(i) No cogent evidence has been placed on record to prove that vigilance/surprise check was not carried out as per instructions contained in S-9.

(ii) The State Witness SW-4 has brought out that monthly vigilance/surprise check was carried out. (Q No.7 of examination in chief). The State Witness SW-4 has further brought out that officers were detailed from other units and not from the same unit (Q NO.3 of Cross-Examination) and no discrepancy was noticed in reports submitted by the officers detailed for the purpose. (Q No.4 of Cross-Examination) . It was also not noticed by the State Witness SW-4 who was the vigilance officer of 760 BRTF that officers detailed for vigilance check of 99 RCC had not conducted surprise/vigilance check on H-L-N road (Q NO.5 of Cross Examination). He has stated that specific mention



of H-L-N Road in letter written to CBI(S-8) is as per the information sought by CBI telephonically. While replying Q No.4 of Examination-in-Chief, it has been stated by SW-4 that in Para 1 (d) of the letter that checking officer had been mandated to check any platoon of the RCC. He further clarified that he could not assess or presume officers detailed for the surprise check avoided physical check of contract material as they were asked to check the material supplied against anyone contract of 99 RCC. (Q-6 of the Examination-in-Chief. The CO in his defence statement has stated that as per SOP for vigilance checks and inspections, test checks are required to be carried out for RCC (Unit) which were carried out every month with liberty to surprise checking officer to select the road sector/location of surprise check within AOR of unit in order to ensure the element of surprise in these check. The CO has further stated that Naugam sector had not been inspected was never brought to the knowledge by Task Force Vigilance Officer. The State Witness SW-4 has also' stated that he did not noticed that H-L-N road sector was not checked by officers detailed for the purpose.

(iii) From foregoing, it may be noticed that regular vigilance/surprise check was carried out by the charged officer as per S-8. Checking officer was liberty to check any road or contract.

53. In respect of charges under Para 49 (d) above, the same is not proved. The reasons are as under :-

(i) No cogent evidence has been placed on record to prove that approach of Shri AP Pittule, SE (Civ) towards his assigned duties and responsibilities was casual.

(ii) It has been brought out that CO had carried out 5% test check in pursuance to contract conditions before releasing payment to the contractor. The endorsement of 5% check in MB is neither contractual requirement nor audit. The same procedure has been followed by other Commanders Task Forces also.

(iii) It has also been proved that the CO carried out periodical inspection of works including H-L-N Road despite bad security situation in the AOR of 760 BRTF and J&K. Even in absence of security cover by TA Bn, the CO inspected/Visited road sector periodically.

(iv) The GSB material accepted cannot be said to be non



conformity to contract specification and the road constructed has not developed any structural defect even after four years. The good road construction is the main duty and responsibility of the Task Force Commander. Therefore it may be said that the CO discharged his responsibility very well.

(v) The State Witness, SW-4 has brought out that vigilance checks were carried out for all units including 99 RCC on monthly basis as per SOP of HQ DGBR (S-8). It has also been brought out by SW-4 that no vigilance case was brought against 760 BRTF when CO was the Commander TF.

(vi) It has also been brought out by SW-4 that no vigilance pseudonymous or anonymous complaint was received against the 760 BRTF. No investigation was ordered by the HQ CE (P) Beacon indicating no complaint was received by HQ CE (P) Beacon also.

(vii) The defence witness, DW-2 in his deposition has brought out that the CO had been instrumental in getting permission of the Accepting Officer for the use of the left over material from old contracts, which were lying for years. The CO prepared PIP for new contracts (D-45) taking into account the left over material which led to economy in construction of road works. This action facilitated in reducing the gap between physical and financial progress of the ongoing jobs with the permissible limit and completion certificates were noted for completed job.

(viii) The Defence Witness, DW-1 has brought out (Q No.2 of Examination-in-Chief) that for improving the physical/financial progress, the CO resorted to procurement of local purchase to absolute minimum.

(ix) Despite inexperience manpower with 760 BRTF, difficult position of physical/financial status of jobs, adverse condition of severe floods of Sep 2014, snowfall, insurgency in 760 BRTF the output of the 760 BRTF was kept at best among the three BRTFs in Project Beacon. Accordingly, 760 BRTF was considered for the best Task Force by HQ CE (P) Beacon and forwarded the recommendation of the best Task Force vide HQ CE (P) Beacon letter No.150055/BT/17/EG1 dated 12 Jan 2017. (D-42).



(x) State Witness SW-3 (Q No.23 and 24 of the Cross-Examination) has brought out the dedication and contribution of Commander 76 BRTF for making 760 BRTF as the best performer of the year 2015-16.

(xi) The CO has brought in his brief that because of achievements of the 760 BRTF, his APARs and IPARs of tenure of 760 BRTF was adjudged as outstanding.

In view of above, it may be concluded that CO was not casual towards his duties and responsibilities.”

17. Mr. Garg has drawn our attention, further, to para 4 of the Statement of Imputation of Misconduct in the charge-sheet with respect to Article I, which alleges that, as per Clause 26(c) of the conditions of contract, the petitioner, as Commander contract, was responsible for carrying out 5% test check of the contract materials, before releasing payment to the contractor. It was alleged that, in violation of the said contractual clause, the petitioner “released payment, through RARs Without carrying out the mandatory check of materials supplied/received against Part I of the Contract Agreement”. In this context, he has referred to Q. 34(e) as framed by the IO, which was “whether the required test checks were carried out by the then Commander Task Force Shri A P Pittule, SE (Civ)”. He submits that test checks were in fact carried out and it was only after satisfying himself that the material was as per standards that payment was released to the contractor by the petitioner.

18. With respect to Article II, Mr. Garg has again referred us to the findings of the IO, which already stand reproduced supra. He further asserts that, in the Disagreement Note, the DA altered the charge. Whereas Article II alleged that the petitioner had “failed to carry out



the mandatory periodic inspections”, the DA, in his Disagreement Note, acknowledge the fact that the petitioner had in fact made certain visits to the concerned sector, but that these visits were “insufficient as per SoP of Vigilance Checks and Inspections dated Jan, 2000”. This, submits Mr. Garg, was not permissible in law.

19. In any event, submits Mr. Garg, the Disagreement Note, is also the Order dated 12 January 2021, whereby the petitioner was compulsorily retired from service, are both completely unreasoned.

20. Mr. Garg exhorts this Court, therefore, to grant the prayers in the writ petition. He places reliance, for this purpose, on

- (i) para 12 of the judgement of a Division Bench of this Court in *M.R. Iqbal v UOI*⁷,
- (ii) para 4 of the judgement of the Division Bench of this Court in *UOI v Baljit Singh Sondhi*⁸, and
- (iii) para 56 to 60, 76 to 79, 88 and 89 of the judgement of the Division Bench of this Court in *Nasimuddin Ansari v UOP*⁹.

21. Ms. Radhika Bishwajit Dubey, responding to Mr. Garg, essentially submits that this Court cannot sit in appeal over the decision of the DA. She submits that the reasons for disagreeing with the findings of the IO, even if brief, were precise and that, inasmuch as the DA had, in its final order, taken into consideration the response of the petitioner to the Disagreement Note, no cause for interference exists.

⁷ 2002 (65) DRJ 324 (DB)

⁸ 173 (2010) DLT 346 (DB)

⁹ 304 (2023) DLT 311 (DB)



Analysis

22. To our mind, this case seems to indicate a conscious intent to penalised the petitioner, despite there being no sufficient justification therefor. The findings of the IO, which are detailed, cogent and comprehensive, have been brushed aside by a Disagreement Note which is laconic in the extreme. The response of the petitioner to the Disagreement Note has not even been adverted to, in the impugned order dated 12 January 2021, much less dealt with. We express our undisguised dissatisfaction with the manner in which the DA has proceeded in this matter, which seems, we reiterate, to smack of *mala fides*.

23. The findings of the Inquiry Officer¹⁰ are entirely in favour of the petitioner. Both the Articles of charge have been found not to be proved. A reading of the relevant paragraphs from the Inquiry Report, reproduced *supra*, indicate that there has been complete application of mind by the IO, who has provided more than satisfactory reasons for arriving at the conclusion that neither of the Articles of Charge was proved against the petitioner.

24. The DA, while recording his “tentative reasons for disagreement” has given no cogent justification for disagreeing with the IO. Insofar as Article II of the articles of charge is concerned, in fact, as Mr. Garg correctly submits, the DA has in fact has modified the Article of Charge.

¹⁰ “IO”, hereinafter



25. We are also in agreement with the reliance by Mr. Garg that though the disagreement note is styled as a tentative disagreement note, it partakes of the character of finality, as the DA has already held, in the disagreement note, that the charges against the petitioner appear to be proved.

26. There is not a whisper of a reference, in the impugned order of punishment, to any of the contentions advanced by the petitioner in his response to the disagreement note. In fact, the impugned order is completely non-speaking. There is also no indication in the impugned order as to why, for charges which are, at the highest, mere technical breaches, the petitioner was imposed a punishment as drastic as compulsory retirement.

27. Insofar as the Articles of Charge themselves are concerned, we have also applied our mind to whether it can be said that the petitioner was guilty of any misconduct. We are of the view that the answer has to be necessarily in the negative.

28. So far as Article I is concerned, it is not in dispute that the samples in question were actually subjected to test check by the GREF. In fact, the disagreement note seems to fault the petitioner on the ground that the test check was conducted by his subordinates. Mr. Garg has pointed out that the samples were sent for test check by the AEE, who was the immediate subordinate officer of the petitioner. It is not the respondents' contention that the AEE acted on his own will, without any instructions from the petitioner. In any event, once the immediate subordinate of the petitioner had sent the samples for test check and the goods were test checked, we fail to understand how any



ground for alleging actionable misconduct on the petitioner's part can be said to survive. As has been rightly noted by the IO, there was no requirement, in the contract, that the petitioner had *personally* to have the samples checked.

29. Insofar as Article II is concerned, the only allegation against the petitioner was that he had not carried out site visits. The IO has specifically found, in favour of the petitioner, that he was on an average, visiting to the concerned site once every 9 days and there were 40 site visits conducted by the petitioner. In arriving at this finding, the IO relied on the deposition of the respondents' witness.

30. The DA did not disagree with the findings of the IO but modified the charges to state that the number of site visits was insufficient. No such ground of insufficiency was ever even put to the petitioner.

31. We reiterate that the facts of the present case are stark. Perhaps it was owing to the intervention of the CBI that the Respondents chose the easy way out and decided to penalise the petitioner. In any case, it is apparent that the findings of the IO have not been discredited by any means known to the law by the respondents. They have to be treated as correct.

Conclusion

32. We, therefore, quash and set aside the impugned punishment order dated 12 January 2021. The petitioner would be entitled therefore to be reinstated in service. He shall be also entitled to



2025:DHC:7587-DB



notional seniority as well as all other consequential benefits including continuity of service.

33. In the peculiar facts of the present case, as the petitioner has been prevented from working for no legitimate reason, we are of the view that the petitioner should be entitled to back wages as well. However, we restrict the quantum of back wages to 25% of the amount which he would have been entitled to, had he continued in service, which would include any increments which he may have earned in the interregnum.

34. We would have been inclined to award costs in this matter; however, as we have granted part back wages, we refrain from doing so.

35. The writ petition is allowed in the aforesaid terms.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

AUGUST 19, 2025/AR