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Court : Central Administrative Tribunal CAT Delhi

Decided On : Sep-03-2008

Judge : M R Vice, C P Ramesh

Appellant : Lalit Mohan

Respondent : Dda and ors. (Through the Lt.

Judgement :

1. The pleadings had been complete and the parties were ready to go on with the case when it had been listed for orders. The challenge is about the sustainability of the disciplinary proceedings, which have culminated in a penalty advice. According to the applicant, he is at the fag end of his career, and the proceedings were ill advised and perhaps had been initiated so as to wreck his career prospects. We may examine the rival contentions raised by the parties, so as to come to a conclusion whether there is substance in the allegations of the applicant and whether there was justifiable reason for imposition of penalty and the sustainability thereof.

2. The applicant is working as an Executive Engineer in the DDA. According to him, he had unblemished career. On 30.11.2005, a memo was issued to him. Proceedings were initiated under Regulation 27 of DDA Conduct Disciplinary and Appeal Regulations, 1999. It was in respect of certain alleged lapses, which had occurred while he was functioning as an Executive Engineer under SE (P) II.3. The applicant at that time was associated, the memo alleged, in the preparation of Notice Inviting Tenders (NIT) pertaining to two projects. The memo alleged that

the notices failed to incorporate certain conditions. To be more precise, it had been alleged that notices did not incorporate additional Clause-B properly since it did not specify the period by which the agency was required to submit bank guarantee bonds. The applicant explains that while awarding the work, the DDA had brought in a practice, whereby bank guarantees were to be made available in favour of the organization to ensure proper execution of the work. The condition had been incorporated, but the time within which these proceedings were to be completed, an award of the work, was not specifically referred to in the tender notice.

4. Records indicate that an explanation was submitted by the applicant, on 09.12.2005. The Vice-Chairman, being the disciplinary authority did not think it necessary to hold an inquiry in the matter, and by order dated 01.07.2006 (Annexure A-1) observed as following: AND WHEREAS, the undersigned, being the Disciplinary Authority, has gone through the facts carefully and has come to the conclusion that charge against Sh. Lalit Mhan, is proved and a penalty of withholding of increment for one year without cumulative effect is imposed on Sh. Lalit Mohan, EE. NOW THEREFORE, the undersigned being the Disciplinary Authority, in exercise of powers conferred under the said Regulation, hereby orders imposition of the penalty of withholding of increment for one year without cumulative effect on Sh. Lalit Mohan, EE (C).

It was a minor penalty as per the Regulations. An appeal had been filed therefrom, and it is seen to be disposed of, on 17.01.2007. The appellate authority, taking notice of the submissions of the applicant, held that considering totality of the facts and keeping in view the nature of misconduct, the penalty imposed is not commensurate with the gravity of the misconduct. It was, therefore, held that it will be adequate, fair and just to reduce the penalty to a censure. This is Annexure A-2. The applicant had thereafter filed a review petition, but the Lt. Governor had rejected the same, on 20.11.2007. These proceedings are under challenge.

5. Mr. Bhardwaj, appearing for the applicant, submits that the charges were issued so as to synchronize with a DPC meeting, in which the applicant was interested, and perhaps it was motivated. As a matter of fact, the allegations pertain to a

period 2000-2001. He further submits that the lapse itself could not have been sufficient enough to characterize it as a misconduct, actionable. The explanation submitted by the applicant had totally been ignored while imposing the penalty, and the Tribunal is obliged to interfere as the rights of a civil servant is jeopardized.

6. According to him, the appellate authority was convinced of the arbitrariness that had been meted out but had restrained himself, perhaps not to offend the Vice Chairman. It is pointed out that the circumstances placed by the applicant have been overlooked. It was a case where no action was justified, as the applicant could not have been considered as guilty of any lapses or misconduct.

7. Mr. Mahendru, however, on behalf of the respondents, submits that due formalities have been complied with, and when it had been noted that there was actionable conduct on behalf of the applicant, the whole matter had been examined with reference to the available records, and there is no circumstance, therefore, for the Tribunal to interfere. In addition, the appellate authority had looked into the matter thoroughly and whatever complaint that might have been there as regards the course of action initiated by the Vice Chairman, that now stands rectified.

According to him, the Vice Chairman was the sole authority to determine as to whether there was no necessity to proceed against an erring employee and when records indicate that there was justification in initiating proceedings, and by an in-house proceedings the appellate authority itself had reduced the quantum of punishment, in a process of judicial review, the Tribunal was not expected to interfere in the matter.

8. We may examine the contentions in the above background. Of course, what the applicant has been meted out is a minor penalty, as codified by the Regulations. The question is whether the matter has been duly examined, by the disciplinary authority before he came to a conclusion that the conduct should not go unnoticed. Regulation 27, of course, prescribe a procedure. Before imposition of a minor penalty, a show cause notice requires to be given with opportunity to the person concerned to explain his stand. In appropriate cases, the disciplinary authority is

also entitled to exercise its discretion to direct that the inquiry is to be held in the matter. In the present case, no inquiry had been held and the thought process, leading to the order can be gatherable only from Annexure A-1, consisting of the paragraphs, which have already been extracted earlier. What is stated is that he had carefully gone through the facts and had come to the conclusion that the charge against the applicant is proved.

9. We are sure in our mind this is not what is expected of a disciplinary authority. The record of proceedings as envisaged by Regulation 27 (3) is full material, and under Sub Regulation (vi) the order should be accompanied by the reasons therefor. As a matter of fact, in the process of penalty, the applicant has been put to a great prejudice. If an inquiry had been held, it would have been possible for him to substantiate its contentions. Such opportunity had been denied to him. It is not disclosed as to what prompted to the disciplinary authority to come to the conclusion that the 'charge' against the employee is proved.

10. We are constrained to make this observation since the order is bald, despite the fact that by his explanation-dated 09.12.2005 (Annexure A-5) running to three pages, applicant had explained the stand vis-is the allegations. He was working as Executive Engineer, and the two works referred to in the charge memo, have been entrusted as additional job by the Chief Engineer on 15.06.2000. The work had been completed, well in time. According to him, while putting the NIT for approval, the competent authority had accepted the same, and, in fact, at that point of time additional Clause-B had been incorporated to stipulate that Contractor was to provide Bank Guarantee Bond. It is further submitted that the concerned Executive Engineer had ensured that the agency who had been ultimately nominated, had been advised to furnish Bank Guarantee, and, as a matter of fact, the guarantee was submitted by the agency in January, 2001. Further, while forwarding the NIT, directions were given by the approving authority that the concerned Executive Engineer should not cause any discrepancy and should get it corrected from his office. Therefore, it had been submitted that he was not answerable to the allegations. Due care and caution had been taken and in respect of the work, there was no allegation that because of the non-furnishing of the Bank guarantee, the DDA had suffered any loss. The NIT too had been approved by the Superior

Officer, and there was no reason to single him out for harassment.

11. We are not, as of now, examining the veracity of the contentions as above raised but nevertheless are compelled to observe that the applicant had stated his defence which was clear cut, namely, (1) that the NIT had been approved not by him but by the superior authority, and any defect had not been pointed out. (2) it was at his instance that Clause-B had been incorporated; (3) in respect of the works bank guarantee had been furnished; and (4) he was put in additional charge but the matter was to be looked into by the concerned Executive Engineer for execution of the work. Over and above, it was also suggested that there was no justification in pointing out a discrepancy and that too of no consequence, for initiating action after passage of four years.

12. We are definite that the disciplinary authority had erred in issuing Annexure A-1 order in a cryptic manner. He has practically overlooked, to note the contentions as raised in the objection which as the disciplinary authority he was bound to examine and comment upon.

This he was obliged under the Regulations. The imposition of penalty in the above circumstance cannot be held as diligent exercise of power, the defect affects the root of the matter, and the order requires to be set aside. It is also to be presumed that if there is no penalty at the initial instance, there would not have been possibility of an appeal.

In other words, harsh penalty resulted in appeal, and although the sting is taken off, nevertheless a punishment is on record. When we find that the penalty advice itself was not sustainable, the appellate order also requires to be set aside and we do so.

13. It may not be necessary to go in further aspects, since we are allowing the Original Application. But we have to take notice of submissions of Mr. Bhardwaj, that there was some amount of deliberate attempt to spoil the career of the applicant. Ultimately, it has to be taken note of that excepting a slip, there was nothing, which had forth come from the part of the applicant which could have been characterized as a misconduct. The conclusion, therefore, can be that the

respondents have made a mountain out of a molehill. The proceedings might not have been in public interest. It might have resulted in the nipping off of the initiative of a senior officer. If one steps into the shoe of the affected, it is perceivable that one might have become frustrated and got tired by facing disciplinary action, compelled to file appeal, revisions, writ petition and also prosecuting the matter before the Tribunal running for years.

14. Senior officers are generally expected to rise to the occasion and should not unnecessarily concern themselves with trivialities. It may not be possible for us to concur with the submissions of Mr. Mahendru that the conduct of the applicant was so serious that the very foundation of the authority was likely to be rotted, if disciplinary action was not initiated. If, as a matter of fact, there was a case of loss or inconvenience, suffered by DDA the complicity of the applicant required to be seriously inquired into. But the uncontroverted facts indicate that this was not so.

15. In the circumstances, Original Application is allowed. The impugned orders will stand set aside. However, we make no order as to costs.

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