

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).21945/2013

(From the judgement and order dated 09/04/2013 in CWP No.6480/2011 of The HIGH COURT OF DELHI AT N. DELHI)

U.O.I & ORS.

Petitioner(s)

VERSUS

ANANT RAM TIWARI

Respondent(s)

(With prayer for interim relief)

Date: 05/08/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE V. GOPALA GOWDA

For Petitioner(s) Mr. Mohan Parasaran, SG
Mr. R Balasubramanian, Adv.
Mr. B.S. Khanna, Adv.

For Respondent(s) Mr. Vivek Tankha, Sr. Adv.
Mr. Sumeer Sodhi, Adv.
Mr. T. Mahipal, Adv.

UPON hearing counsel the Court made the following
O R D E R

This petition is directed against order dated 09.04.2013 passed by the Division Bench of the Delhi High Court whereby the punishment of compulsory retirement from service imposed on the respondent was quashed with liberty to the disciplinary authority to pass fresh order in accordance with law.

While he was working as Chief Engineer, Border Roads Task Force, an inquiry was initiated against the respondent under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short, 'the Rules'). The following were the charges levelled against the respondent:

"Article I

Dr. A.R. Tiwari, as Commander 42 BRTF has failed to supervise the embankment work to improve the submersible stretches of the road viz. Jowai-Badarpur-Churaibari (NH-44) (Between KM 230.600 to KM 260.825), Karimganj Bye-Pass (Between Km 0.000 to KM 3.660) and Karimganj - Sutarkandi (NH-151) (between 3.750 to KM 10.000). As a result, the work has suffered both in quantity and quality and has been left incomplete till date instead of finishing it within the given time frame.

By the above act, the said Dr. A.R. Tiwari, SE (Civil) (Now CE (Civil) (GO-1450K) has failed to maintain devotion to duty and thereby violated the provisions of rule 3 (1) (ii) of CCS (conduct) Rules, 1964.

Article II

Dr. A.R. Tiwari, SE (Civil) (Now CE (Civil) (GO-1450K) while functioning as commander 42 BRTF (P) Setuk has failed to execute the engagement of Casuai paid labours / casual paid mates in accordance with the provisions of technical sanction No. 21401/Vol-V/21/E2TS dt. 31.03.1999 (JB No. 713/42). This act of Dr. A.R. Tiwari has led to a loss of Rs. 63,88,947/- to the State.

By the above act, the said Dr. A.R. Tiwari, SE (Civil) (now CE (Civil) GO-1450K) has failed to maintain devotion to duty and absolute integrity and thereby violated the provisions of Rule 3 (I) (i) (ii) of CCS (Conduct) Rules, 1964.

Article III

Dr. A.R. Tiwari, SE (Civil) (now CE (Civil) as Task force commander approved payments to the contractors through Running Account Receipts as per details in column 9 of the table below without confirming / cross checking the correctness of quantities of earth entered in the relevant records, i.e. work Diaries / Measurement Books.

Sl. No.	CA No. & Name of the Contractor	Job No.	CA Amount (in Rs.) & Qty of Earth (in Cum)	Qty received as per M & RAR (in cum)	Bill Amount passed with keeping reserve amount (in Rs.)	Qty. Shown in work Diaries (in Cum)	Amount (in Rs.) & Rate per cum as per CA	Amount of over payment (col. 5(-) Co17 9s) CA Rates
2	3	4	5	6	7	8	9	
	CE (P) Setuk 36/98-99 M/s. Abdul Latif	713/365	2,98,52,375/- Ordinary Earth 263083 Selected earth 10,792	Ordinary Earth 2,14,959.64 Selected Earth 6,960.92	2,41,89,341/-	Ordinary Earth 1,15,823 Selected Earth : Nil	1,26,24,707/- (Rs. 109/- Cum)	1,15,64,634

The quantity of earth received and booked in Work Diaries is less than the quantity in the Measurement Book as per condition No. 12 of special conditions to the tune of 1,06,097.56 Cum amounting to Rs. 1,15,64,434/-. This act of Dr. A.R. Tiwari has caused wrongful loss of Rs. 1,15,64,634/- to the State and wrongful gain to the contractor.

By the above act Dr. A.R. Tiwari, SE (Civ) (Now CE (Civ) (GO/1450K) has failed to maintain integrity and absolute devotion to duty, thereby violated the provisions of Rule 3 (1) (i) and (ii) of CCS (conduct) Rule, 1964."

After conducting detailed inquiry, the Inquiry Officer

submitted report with the finding that Articles I and II of the charges levelled against the respondent have not been proved and Article III is partly proved.

The Central Vigilance Commission (for short, 'CVC'), to which the matter was referred for advice, opined that Article III of the charges is fully proved and recommended that a major penalty may be imposed on the delinquent.

After receipt of the advise of the Central Vigilance Commission, the Disciplinary Authority ordered that copy of the Enquiry Report together with the advise of the CVC be forwarded to the respondent so as to enable him to make a representation. The latter submitted detailed reply to controvert the findings recorded by the Inquiry Officer.

After receipt of the representation of the respondent, the case was referred to the Union Public Service Commission (for short, 'the Commission') for its advice. The Commission opined that all the charges levelled against the respondent have been proved and advised the Disciplinary Authority to impose the penalty of compulsory retirement from service.

The Disciplinary Authority accepted the advise of the UPSC and passed order dated 28.03.2011 whereby it imposed the penalty of compulsory retirement on the respondent. Paragraphs 3 to 11 of the order passed by the disciplinary authority are extracted below:

"3. AND WHEREAS Shri SC Vasudeva, ADG of CPWD (Retired was appointed as Inquiry Officer vide BRDB Sectt order of even Number dated 03rd March 2006 to inquire into the charges framed against the said Dr. AR Tiwari, Chief Engineer (Civil) (GO No. 1450K). After conducting the oral inquiry on the above said charges, the Inquiry officer after considering all the documentary and oral evidences adduced during the inquiry has come to the following conclusion:-

(a)	Article I	:	Not proved
(b)	Article II	:	Not proved
(c)	Article III	:	Partially proved

4. AND WHEREAS Central Vigilance commission was consulted for second stage advice on the Inquiry Report and it has been advised by them to impose a major penalty against Dr. AR Tiwari, Chief Engineer (civil) (GO No. 1450K) vide their Om No. 006/SHT/001-21418 DATED 19TH September, 2008.

5. AND WHEREAS a copy of inquiry report and CVC 2nd stage advice was forwarded to Dte. GBR for giving the same to Dr. AR Tiwari, chief engineer (Civil) (GO No. 1450K) vide BRDB Sectt. Note no. BRDB/02 (172) /2005-GE II dated 25th September 2008 for making representation, if any, by Dr. AR Tiwari, chief Engineer (civil) (GO No. 1450K).

6. AND WHEREAS Dr. AR Tiwari, Chief Engineer (civil) (GO No. 1450K) submitted his representation on the Inquiry Report vide his letter dated 30th October 2008, which was duly considered by the Disciplinary authority.

7. AND WHEREAS, the reasons for disagreement on inquiry report was forwarded to the Dr. AR Tiwari, CE (Civil) and in response to this his representation dated 24th May 2010 was also duly considered by the Disciplinary authority.

8. AND WHEREAS the Union Public Service commission was consulted with regard to the penalty to be imposed on Dr. AR

Tiwari, Chief Engineer (Civil) GO No. 1450K).

9. AND WHEREAS the Union Public Service commission after taking into account all the facts of the case vide their letter No. F 3/388/2008 SI dated 18th March 2011 (Copy enclosed have advised that the ends of justice would be met in this case, if the penalty of Compulsory Retirement is imposed on Dr. AR Tiwari, Chief engineer (Civil) (GO No. 1450K).

10. AND WHEREAS, the disciplinary authority, after careful consideration of the charges framed against Dr. AR Tiwari, Chief Engineer (Civil) (GO No. 1450K), the analysis and findings made by the Inquiry Officer, the representation dated 24th May 2010, made by Dr. AR Tiwari, chief Engineer (Civil) (GO No. 1450K), second stage advice of CVC, advice of UPSC and other documents including prosecution and defence documents of the case has come to the conclusion that Article III of the charge framed against him fully proved as mentioned under :-

(a) Contract Agreement No. CE (P) Setuk-36/1998-99 was awarded to M/s. Abdul Latif for supply of earth - ordinary earth 2,14,959.64 cum and selected earth 6,960.92 cum - which was to be commenced on 21st April, 1999 and completed by 20th October 2000. Works diary for the said project was maintained with regard to the contract agreement during the execution period of the period by showing entries of daily work carried out by the contractor. Further, the project authorities also maintained measurement books. During the execution of the contract, CO in the capacity of Task Force Commander (TFC)/ CWC, approved 96 running accounts Receipts (RAR No. 1 to 6) and an amount to the tune of Rs. 2,41,89,341/- was paid to the contractor keeping reserve amount as per existing rule during the period from 3rd March 2000 to 24th April 2001.

(b) there is a large variation of figures entered in the MB and RARs vis-`-vis work diaries. As per the entry made in the MB, the total quantity of Ordinary earth supplied by the contractor was shown as 2,14,959.64 Cum of Ordinary Earth and 6,960.92 Cum of Selected Earth and accordingly an amount of Rs. 2,41,89,341/- (2, 14,959.64 Cum + 6960.92 cum) x Rs. 1069/cum of earth) was paid to the contractor. While on the other hand, the entries shown in the Work Diaries for the relevant jobs during the corresponding period work out to 1,15,823 Cum of Ordinary Earth only and thereby the actual payment which should have been made to the contractor is Rs. 1,26,24,707/- (1,15,823 cum x Rs. 109.00 = Rs. 1,26,24,707/-). Thus, a difference of 1,06,097.56 cum (2,14,959.64 Cum + 6960 Cum) - 1,15,823 Cum 1,06,097.56 cum) of earth including ordinary and selected earth in RAR quantity and the quantity actually booked in work Diaries is found and resultant over payment to the tune of Rs. 1,15,64,634/- was made to the contractor.

(c) Similarly condition No. 12 of the special Condition with regard to the measurement forming part of the contract Agreement stipulates that all the measurements will be properly recorded in the Measurement Books IAFW - 2261, as per IS-1200 (Part VII) of 1969, and signed by both the parties immediately after completion of each set of Measurement. The above discrepancies in the MB vis-`-vis Work Diaries shows that the MBs have not been recorded properly which is contrary to the condition No. 12 of the special Conditions forming part of the Contract Agreement.

(d) The CO in his representation has argued that the total quantity entered in MB against RAR No. 1 to 6 tallies with the entries of work diary for the period from December 1999 to May 2001. The disciplinary Authority has counter the above argument of the CO in their comments stating that the CO has not furnished the reference of particular work diaries and MBs from where the figures are extracted. However, the figures quoted by CO are based on surmise and conjectures, which cannot be relied upon. Further the summary of earth recorded in Measurement Books and actually laid/complacted on ground as shown in respective work diaries did not tally.

(e) Further, the contention of CO that he was not provided opportunity to cross examine the PO with regard to calculation of earth work measuring 1, 15,823 cum as found to be inflated by the Po in his written brief dated 19th March 2008, is not tenable. In this context the CO is not allowed to cross examine the PO during the inquiry proceedings as per rule. The CO is allowed to cross examine the prosecution witnesses. In the instant case the CO was given reasonable opportunity to give his defence arguments against PO's brief while submitting his written brief to the IO. The said opportunity was provided to him and accordingly he submitted his written brief to the IO vide his letter dated 27th March 2008.

(f) As per the instructions on the work diaries, the commander Task Force i.e., the CO was required to check the entries relating to the earth work made therein on monthly basis. Had the CO (being the Commander, Task force of the Setuk Project) checked these entries of the work Diaries on monthly basis, the over payment to the tune of Rs. 1,15,64,634/- relating to earth work made to the contractor through running accounts Receipts (RAR) could have been avoided by cross checking the correctness of the quantity of earth entered in the work Diaries as well as in the Measurement Books. The CO thus tailed in the proper discharge of his supervisory responsibility in this regard and thereby the charge contained in Article III stands fully proved against him.

11. NOW THEREFORE, in exercise or the powers conferred by Rule 15 (4) of Central Civil service (classification, control and appeal) Rules, 1965, and in consultation with the Union Public Service commission, the president hereby imposes the major penalty of 'compulsory Retirement' on Dr. AR Tiwari, Chief Engineer (Civil) (GO No. 1450K) (presently posted as DDG in date. GBR HQ) with immediate effect."

The respondent challenged the order of punishment by filing an application before the Central Administrative Tribunal but withdrew the same because the petitioners herein objected to its maintainability. Thereafter, he filed a writ petition before the Delhi High Court which was allowed by the Division Bench by relying upon the judgment of this Court in Union of India and others v. S.K. Kapoor (2011) 4 SCC 589.

The learned Solicitor General assailed the impugned order and argued that in view of the judgment of this Court in Union of India v. T.V. Patel (2007) 4 SCC 785, non supply of the copy of advice of the Commission to the respondent with an opportunity to make representation in the context of the opinion expressed by the

Commission is not fatal to the order of punishment. He submitted that the judgment in T.V.Patel's case lays down the correct law and the contrary view expressed in S.K.Kapoor's case (supra) and S.N. Narula v. Union of India and others (2011) 4 SCC 591 (the case was decided by this Court in 2004 but the reporting was done in 2011) does not represent the correct law.

We may have examined the matter in greater detail and then decided whether the issue raised by the petitioners should be referred to a larger Bench because of apparently conflicting opinions expressed by the co-ordinate Benches, but having regard to the peculiar facts of this case we do not consider it necessary to adopt that course. Admittedly, the CVC recommended imposition of major penalty because in its opinion Article III of the charges levelled against the respondent was proved. This was communicated to the respondent. However, the Commission opined that all the charges have been proved and recommended that penalty of compulsory retirement from service may be imposed on the respondent. The Disciplinary Authority did not give any indication to the respondent about the opinion expressed by the Commission. Therefore, he was misled in making representation qua the findings recorded by the Inquiry Officer, the Disciplinary Authority and the CVC. If the respondent had been foretold that all the charges have been treated as proved, he would have availed the opportunity of making a comprehensive representation to contest those findings. However, the fact of the matter is that no such opportunity was given to him. This definitely resulted in miscarriage of justice.

As a sequel to the above discussion, we hold that the High Court did not commit any error by remanding the matter to the Disciplinary Authority for fresh consideration.

With the above observations, the special leave petition is dismissed.

The question whether the judgment in T.V.Patel's case (supra) lays down correct law and the same requires re-consideration on the ground that the earlier two judgments in S.K.Kapoor's case (supra) and S.N.Narula's case (supra) had not been considered in the latter judgment is left open to be decided in an appropriate case.

The time fixed by the High Court for deciding the representation of the respondent is extended by eight weeks.

| (Parveen Kr.Chawla)

| Court Master

| | (Phoolan Wati Arora)

| | Court Master

