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## Lt. Governor of Delhi Vs S.C. Gupta and Others

### Writ Petition (C) 18387 of 2004

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**Court:** Delhi High Court

**Date of Decision:** Sept. 29, 2010

**Acts Referred:**

All India Services (Discipline and Appeal) Rules, 1969 " Rule 8(19)#Central Civil Services (Classification, Control and Appeal) Rules, 1965 " Rule 14(18)

**Hon'ble Judges:** Pradeep Nandrajog, J; Mool Chand Garg, J

**Bench:** Division Bench

**Advocate:** Amitabh Marwah, for the Appellant; G.D. Gupta S.K. Gupta, for R-1 and A.K. Bhardwaj, for R-2/UOI, for the Respondent

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### Judgement

Pradeep Nandrajog, J.

Two Original Applications being OA No. 452/2002 and OA No. 453/2002 have been disposed of by a common

order dated 06.04.2004. The first respondent in the two Original Applications is the writ petitioner before us and the applicants of the two Original

Applications are respondent No. 1 before us.

2. At a common enquiry against respondent No. 1 of the two writ petitions and other officers in the Engineering Department in the Irrigation and

Flood Department, in which one set of witnesses were examined, but separate reports submitted by the enquiry officer; the reports being pari

material in substance, the respondent No. 1 of both writ petitions were indicted and after obtaining the advice from the Central Vigilance

Commission (CVC) but not communicating the advice to the respondent No. 1 penalty imposed on both was of compulsory retirement.

3. The indictment was for the reason a bridge constructed in village Ronahla by the Irrigation and Flood Department of the Government of NCT

Delhi collapsed within a week of it being opened for traffic. The respondent No. 1 in each petition were associated in the construction of the bridge

as the Assistant Engineer and Junior Engineer respectively. It is apparent that the two were supervising the construction under the overall

supervisory control of the Executive Engineer, upon whom we note a similar penalty of compulsory retirement was imposed, but he accepted the

same. The reason was his nearing the age of superannuation and the first respondent in both the writ petitions had over 15 years service left.

4. The respondent No. 1 in both the writ petitions had taken a defence that the bridge had collapsed, not on account of any lapse committed by

them, but for the reason there was an inherent design defect in the bridge.

5. Before the enquiry officer the respondents filed an application to bring on record relevant documents which according to the respondents would

have proved the defence. They had an issue of all documents not being supplied as also the ones which were supplied were very late and in

piecemeal during the ongoing inquiry.

6. The inquiry officer indicted both the respondents upon whom penalty levied was of compulsory retirement.

7. They had urged various points in response to the report of the inquiry officer and having a grievance that the points were not considered by the

Disciplinary Authority which levied the penalty, they urged said points before the Appellate Authority but met with no success.

8. Challenging the penalty levied, before the Central Administrative Tribunal various pleas were urged and the same can be broadly put under four

heads.

9. Of the four pleas, two were technical and two pertained to the substance of the inquiry held against them.

10. The two technical pleas urged were, firstly that the advice received from CVC pertaining to the penalty to be levied was not disclosed to them.

Thus, it was urged that the order levying penalty required to be set aside and the Disciplinary Authority be directed to supply the advice of the

CVC to enable them to respond. Second technical plea urged was that the mandate of Sub-Rule 18 of Rule 14 of CCS (CCA) Rules 1965 was

violated. It was urged that from the evidence the circumstances appearing against them were not put to them by the inquiry officer and hence the

inquiry was vitiated.

11. The two pleas of substance urged may be noted with reference to the pleadings in para 4.12 and 4.16 and the corresponding grounds urged in

para 5.1 (with the sub para(s)) of the grounds urged as also Ground 5.4 and 5.5 of the Original Application filed by Shri S.C. Gupta, respondent

No. 1 in WP(C) No. 18387/2004. The same are as under:

4.12 The inquiry proceedings were thereafter fixed for 16.3.1998. On the said date, the applicant submitted a list of 34 documents, all of which

were permitted by the Inquiry Officer. A copy of the order dated 16.3.1998 is annexed hereto as ANNEXURE A-

10. The Presenting Officer was further directed that in case of those documents not being available for one reason or the other, a certificate for

non-availability should be obtained and filed. The applicant further states that the Presenting Officer took a considerably long time in making

available the additional defence documents, which made it impossible for the applicant to prepare his defence vis-à-vis the said documents;

whereas some documents were not at all made available for inspection. The applicant annexes hereto as ANNEXURE A-11. A copy of the

statement in a tabulated form showing the dates and documents in which the inspection was allowed. The statement annexed also details the

documents the inspection of which was not at all given to the applicant, notwithstanding that all these documents were adjudged to be relevant by

the Inquiry Officer vide his order dated 16.3.98 and thus, allowed to be permitted. It is respectfully stated that the contents of the annexed

statement may be read as the part of the pleadings.

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4.16 The reply of the applicant to the comments to the Inquiry was submitted on 13.5.99. Copy thereof is annexed as ANNEXURE A-17. The

disciplinary authority, however, without considering the points of defence of the applicant in his reply to the report of the inquiry officer and during

the course of personal hearing, imposed on the applicant the penalty of compulsory retirement vide order dated 11.1.2000 of which a copy is

already annexed hereto as ANNEXURE A-1.

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5.1 Because the applicant had submitted a detailed list of additional documents required for and on behalf of defence during the inquiry

proceedings to substantiate his defence. Vide order dated 16.3.1998, the Inquiry Officer allowed the list of additional documents demanded by the

applicant and directed the prosecution to make available all documents in the list dated 16.3.1998 on or before 27.3.1998 or to obtain and

produce on record a "non-availability certificate" in respect of documents not made available to the defence. However, the prosecution supplied

only some documents to the applicant and some documents which were crucial for the applicant to prove his defence were not made available to

him at all. The list of documents not supplied to the applicant is detailed in the paragraphs to follow. It is also pertinent to mention here that some of

the vital documents had been made available to the applicant at night of 1.4.1998, 3.4.1998, 6.4.1998 and 7.4.1998 though the regular hearing

had started on 1.4.98, and completed on 8.4.1998. As such the applicant was not given reasonable and sufficient time to prepare his defence in an

effective manner which has resulted in causing serious prejudice to the applicant.

The documents demanded by the applicant and allowed by the Inquiry Officer but not made available to him and which has caused material

prejudice to the applicant are as under:

(i) Work files maintained at Circle Level in the office of Superintending Engineer Shri R.M. Puttaswamy and at the Sub Divisional level in respect

of the work in question.

The prosecution had made available the applicant only the work files maintained at Divisional Level while those maintained at Circle Level and

Sub-Divisional Level were neither supplied nor shown for inspection to the applicant. It is pertinent to mention here that the Sub-Divisional Officer

i.e. Assistant Engineer had maintained a correspondence file at his end during the time of construction of the bridge. Had the said file been

produced, it would have been proved through correspondence between the Assistant Engineer and his superior officers that the applicant was

performing his part as per instructions of his seniors in a transparent manner and with integrity, sincerity and devotion to duty. In the absence of the

said documents, the applicant could not effectively cross examine certain witnesses particularly Shri G.S. Arora and Shri A.N. Gupta in order to

show that the applicant had been acting under the dictation and control of Shri G.S. Arora and had performed his duty in an honest and a fair

manner.

(ii) Agreement number EE/SDDV/2/90-91 entered into with the contractor for construction of work in question.

The said document was essential for effectively cross-examining Shri A.N. Gupta (PW-4) and Shri G.S. Arora (PW-5) who had held the post of

Engineer In Charge.

Had the said record been produced, the applicant would have shown (through Clause 6 of the General Conditions of Contract) that it was the

Engineer-In-Charge i.e. the Executive Engineer (PW-5) who had to ascertain and determine the value in accordance with the contract of work

done and the applicant was working only as an authorized representative of Engineer-In-Charge and was bound by his instructions and orders and

the applicant diligently performed his legitimate sphere of duties and responsibilities attached to various posts manning the execution of work at

bridge. The aforementioned agreement was thus essential for defence of the applicant.

(iii) Complete file maintained at SSW office in the year 1993-94, in respect of Ranhola Bridge containing letter number CEF/SSW/Ranhola

Bridge/93-94 (PF) 3308 dated 6.12.1994 and documents disclosing action taken by the addressee and endorsee authority who had specifically

directed to take suitable action.

Only letter dated 6.12.1994 (marked as Ex.D-3C) was made available to the applicant instead of the complete file that was asked for. Through

this document the applicant would have proved the fact of failure of design of structure submitted by the private designer which was not in

conformity with the Indian Road Congress Codes and Indian Standard Guidelines. This document would have further proved that the applicant

had nothing to do with the poor compaction of the concrete and it would have nullified the adverse effect of the Reports Ex.S-2, S-3 and S-4.

(iv) Duties and Responsibilities attached to the post of Junior Engineer, Assistant Engineer, Executive Engineer and Superintending Engineer while

performing duties in field.

Though these documents, the applicant would have been able to prove that he was not empowered to act beyond a scope of instructions and

orders given by Shri G.S. Arora at the time of execution of work. The applicant would have proved the scope of his duties vis-à-vis duties of his

superiors.

(v) Letters number PA/JS/(IF)/623 dated 25.7.95 issued by Development Commissioner/Secretary (I&F) to Director General (Road

Development Ministry of Surface Transport), along with letter number RW/NH/34066/2/95-S&R dated 16.8.95 issued by Superintending

Engineer (Bridges) for Director General, Road Development, in response to the above said letter along with the document disclosing action on the

same.

The main document disclosing action taken on the letter dated 16.8.95 by which the Department was intimated regarding the vital defect in design

had been concealed. This document would have proved that there had been no defect in the execution of the work as the basic design itself was

faulty. The said document would have proved that whenever a structure fails to meet the requirements of design aspect and when it is under

reinforced, it is liable to fall, irrespective of the quality of concrete.

(vi) Reply by CWC in response to letter number PA/JS/I & F/214 dated 5.9.94 by Secretary (I&F) to Chairman, Central Water Commission.

The said letter was addressed in order to identify the defects in design and drawings and to confirm whether the existing design was sufficient to

withstand the Indian Road Congress.

The said reply had clearly admitted that the design submitted by the designer of the bridge in question was not sufficient to bear 70R loading and

was liable to fall and fall when subjected to actual designed load.

In the absence of the said document, the applicant was deprived of opportunity to effectively cross examine witness Sh.B.K. Mittal (PW-2) who

was closely and squarely related to checking of the design of the Bridge.

(vii) Minutes of the Meeting held on 3.2.1995.

This document would have proved on record that CWC had clearly stated that collapse was due to failure of design and wrong placement and

overcrowded reinforcement and thin section as shown in drawing. It was recorded in the said minutes that it was under reinforced structure which

had fallen after giving proper warnings like appearance of cracks and showing sagging. Negligence of Sh.O.P. Sharma, Chief Engineer would have

been proved on record through this document who allowed the bridge to collapse and did not take any remedial measures as suggested by Shri

K.B. Rajoria PW-8 vide Ex.S-4.

It is pertinent to mention here that witness Shri O.P. Sharma was not produced as a witness even though he was a cited witness.

(viii) Documents disclosing the base, date, documents on the basis of which Ex.S-5 had been framed.

Non supply of the said documents deprived the applicant the opportunity of cross examining PW-2 effectively, the author and framer of Ex.S-2

thereby causing serious prejudice to the applicant.

(ix) The documents, data, drawings etc. on the basis of which document listed at S. No. 4 of the impugned charge-sheet had been framed including

the details of type of equipment used while conducting the said inspection and the codes relied upon while framing the said report.

These documents would have proved the fact that the defects and deficiency in design pointed out by Shri Rajoria, (PW-8) had been concealed by

the prosecution.

(x) The applicant had demanded the details of the methodology adopted in collecting and testing the core samples and chipping concrete samples

and disclosure of their respective standardized codes on basing which such methods had been adopted as stated in para 1 on page 1 in

conclusions and listed document number 3 along with structure proof to the effect that such instructions had been followed.

In response to the above mentioned documents, Dr. Maiti (PW-1), the author and framer of Ex.S-3 made a mala fide attempt to cover the gap

apparent on the face of the said Ex.S-3 and forwarded some loose papers which nowhere disclose any proof to the effect whether the

instructions/orders etc. contained in the code had ever been followed at the time of collecting and testing the samples. Moreover, no document was

produced either by Dr. Maiti or prosecution to prove whether any such tests had been carried out and in whose presence, on what date and time

and at what place.

(xi) Literature of machines appearing in Fig.1 at page of listed document No. 3 and the maintenance register proving the fact of maintenance of said

machines as per norms and standards as suggested by Manufacturers to give due performance and proof of specific training imparted to the as

core cutting is a specialized job and requires skilled workers and good machines.

Dr. Maiti PW-1 provided illegible photocopies of the documents. No material was placed on records to show whether the said machine

purportedly used at the time of collecting samples had been done as per inherent requirement of the code.

This strengthened the defence plea that Dr. Maiti was having a concept of maintenance of machines/equipments purportedly used in collecting

samples.

(xii) Documents proving the fact that due care and caution had been taken by NCB as stated in 2nd para at page 2 of the Report of the document

listed at Sr. No. 3.

The said document was very essential for effective cross examination of PW-1, Dr. Maiti.

(xiii) Documents, codes etc. disclosing and explaining the variables which are standardized and some of which are non-standardized.

Absence of these documents affected the cross examination of Dr. Maiti, PW-1. It is pertinent to mention here that the applicant had demanded

documents explaining "variables" as appearing in para 2 of page 2 of the Report (part of Ex.S-3) whereas Dr. Maiti, PW-1 vide para 5 at page 2

of Ex.D-19, submitted the clarifications regarding variation in percentage of cement contents which had no relevance with the contents of the

reports against which the document had been demanded.

(xiv) Documents disclosing variation allowed in the result of chemical analysis and the method of testing and deducing the compressive strength and

variation allowed in the result including the disclosure of the equipment used to test the samples with that respective manufacturer literature.

These documents would have shown that testing was not done as per laid down norms and standards prescribed for the purpose.

(xv) Log books of vehicles number DLV-3, DED-3784, DNA-1935, DDV-403, DAE-30, for a period of January 91 to September 93.

These documents had been demanded to establish the fact that all superiors of the applicant like Engineer In Charge, Superintending Engineer and

Chief Engineer had also visited the site and issued necessary instructions regarding execution of work, especially concrete work, the quality of

which has been alleged to be poor.

(xvi) Complete Court File and Arbitration File in respect of the appointment of the Arbitrator and claim counter claim of the department in case

number 736/98 in suit number 2559-A/94.

These documents were important for the defence of the applicant to bring on record the fact that the department had taken an entirely different

stance before the Hon"ble High Court of Delhi and nowhere laid the blame at the door of the Execution Staff.

It is pertinent to mention here that the department has admitted before the Hon"ble High Court that there had been poor workmanship on part of

the contractor and the department had accepted the work with due deductions in the same. It is specifically mentioned that the lapses that are

appearing of workmanship are those which have been admitted by Engineer Incharge. The contractor had challenged the department vide Ex.D-10

stating that the design of the structure was faulty and not safe. Further Ex.D-3(c) and Ex.D-7 are the documents by which the department admitted

that structure had collapsed due to design failure.

(xvii) Notification issued by the Competent Authority i.e. L.G. approving the adoption of CPWD Manual in Irrigation and Flood Department.

The said notification was essential and was required to show that CPWD Manual/CPWD Code were not applicable at the material time and any

reliance thereupon by the prosecution has no force and cannot advance the case of prosecution any further.

The non supply of above mentioned crucial documents deprived the applicant at a fair opportunity to defend himself against the cooked up

charges.

12. Vide impugned judgment and order dated 06.04.2004 the Tribunal has dealt with only two pleas i.e. the two technical pleas and has not dealt

with the pleas of substance.

13. Indeed, the respondents are entitled to an adjudication on the pleas urged by them and the grounds urged in support thereof as extracted by us

herein above in para 11. Indeed, it requires to be considered whether the inquiry officer erred in not ensuring the documents production whereof

was sought after holding that they were relevant and the effect thereof. If the respondents could show that the bridge collapsed due to a faulty

design and in respect of the evidence sought to be brought on record that they permitted sub-standard material to be used, could establish that

Ground 5.4 urged was correct, they would have successfully demonstrated that the charge of permitting sub-standard material to be used was

sustained ignoring the said pleas and deficiency in the evidence brought on record.

14. The Tribunal has remanded the matter with a direction that the inquiry officer should examine the respondents as per the mandate of Rule 14

(18) of the CCS(CCA) Rules and additionally that the Disciplinary Authority should supply the CVC advice rendered to the department pertaining

to the penalty to be levied.

15. Now, if the respondents can make good the contentions urged by them in para 4.12 and para 4.16 and the Grounds urged in para 5.1, 5.4

and 5.5 of the Grounds, that would mean that the entire inquiry report stands vitiated and it would be a case of denial of fair opportunity of defence

as also a case of the inquiry officer ignoring material evidence.

16. Now, if we allow the two writ petitions and set aside the findings returned on the two pleas as afore-noted, we would be compelled to restore

the two Original Applications for adjudication on the other issues which were urged by the respondents, but have not been dealt with, and which

issues strike at the very root of the matter. If we dismiss the writ petitions, it would mean that the department would have to rectify the two

deficiencies pointed out by the Tribunal, but we would be compelled to hold that other pleas would be open to be urged, should the Disciplinary

Authority still inflict a penalty upon the respondents.

17. Either situation would prolong the further litigation, which is inevitable, because of the reason the Tribunal has ignored the mandate of law

which requires all issues to be decided and not only a few.

18. In our opinion leaving open the two issues of substance which were raised by the respondents which have not been decided by the Tribunal

would mean that a futuristic battle would obviously be fought.

19. The best solution would be to note whether the Tribunal has covered the entire sweep of the span of the two technical issues decided by it, for

if not done, the matter would be required to be remitted to the Tribunal for a decision on all four issues raised.

20. Noting that two issues have not been dealt with by the Tribunal at all and which go to the root of the matter, we note that pertaining to non-

compliance with Rule 14 (18) of the CCS(CCA) Rules 1965, the Tribunal has not adjudicated whether non-compliance with the Rule has

prejudiced the defence and especially when we look to the pleadings in para 4.12 and para 4.16 and the relatable Grounds urged in para 5.1, 5.4

and 5.5 and as noted above. We note that in the decision reported as Sunil Kumar Banerjee Vs. State of West Bengal and Others, non-adherence

to Rule 8(19) of the All India Service Disciplinary Rules 1969, which is pari material with Rule 14(18) of the CCS(CCA) Rules 1965 was held to

be non-fatal except upon prejudice caused being shown. A somewhat discordant note has been struck by the Supreme Court in the decisions

reported as Moni Shankar Vs. Union of India (UOI) and Another, and Ministry of Finance and Another Vs. S.B. Ramesh,

21. On the issue of CVC advice not being disclosed to the respondents, the Tribunal has noted the decision of the Supreme Court reported as

Indra Sawhney and Others Vs. Union of India (UOI), but has not factored the fact that the advice by CVC was to dismiss the respondents from

service but the Disciplinary Authority has levied a penalty less than what was advised by the CVC and in this context has not considered whether

any prejudice was caused.

22. Accordingly, we hold that the facts of the instant writ petitions require the matter to be remanded to the Tribunal for adjudication on all the

pleas which were urged including the two pleas which have been decided by the Tribunal but not after spanning the entire sweep of the law

pertaining to the said pleas.

23. Impugned order dated 6.4.2004 is set aside and OA No. 452/2002 and OA No. 453/2002 are remanded to the Tribunal for fresh

adjudication with a direction that all contentions urged and pleas raised in the Original Applications shall be decided by the Tribunal including on

the two issues on which we find truncated decision by the Tribunal.

24. Endeavour would be made to re-decide the two Original Applications within 6 months of the matters being listed before the Bench upon

revival by the Registrar of the Tribunal.

25. No costs.