
(2014) 05 P&H CK 0701

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 4276-CAT of 2008 and C.W.P. No. 19595 of 2007

Diwan Singh Puri

APPELLANT

Vs

Central Administrative Tribunal

RESPONDENT

Date of Decision : 15-05-2014

Acts Referred:

Citation : (2014) 4 SCT 93

Hon'ble Judges : Sanjay Kishan Kaul, C.J.; Arun Palli, J

Bench : Division Bench

Advocate : K.L. Kohli, Advocate, S.K. Pipat, Senior Advocate and D.R. Sharma, Advocate and Central Administrative Tribunal, Advocate for the Appellant; K.L. Kohli, Advocate, S.K. Pipat, Senior Advocate and D.R. Sharma, Advocate and Central Administrative Tribunal, Advocate for the Respondent

Judgement

Sanjay Kishan Kaul, C.J.—The petitioner before us, Diwan Singh Puri, was in the services of the Department of Telecommunications, Government of India on 05.02.1979 holding the post of Deputy General Manager, Surat Telecom District when he was served with a memorandum dated 22.11.1995 proposing to hold an inquiry against him. The memorandum enclosed the statement of imputations of misconduct or mis-behaviour qua which inquiry was proposed alongwith article of charges. The article of charges read as under:- "That the said Shri Diwan Singh while functioning as TDM, Bhavnagar, during the period from 1992 to 1994, deliberately and with the malafide intention of favouring the party entertained tenders from three firms belonging to the same party, for the work of erection/dismantlement of lines and wires in Bhavnagar Secondary Switching Area during 1993-94, and, in collusion with S/Shri P.K. Saha, DE (SBP), P.V. Puranik, DE (M/W), and B.A. Patel, the then CAO, O/o TDM, Bhavnagar, who were Members of the Tender Evaluation Committee, awarded the work to M/s. Singh Associates, Ahmedabad, being one of the three firms of the same party from whom the tenders had been received, at exorbitant rates, which were 3 to 4 times higher than the departmental standards and the rates of the same party for the same work approved by the said Shri Diwan Singh for the year 1992-93, thereby

causing undue pecuniary advantage of Rs. 18,45,423/- to the said contractor and corresponding loss to the Department.

Thus, by his above acts, the said Shri Diwan Singh committed grave misconduct, failed to maintain absolute integrity and devotion to duty, and acted in a manner unbecoming of a Government servant thereby contravening Rule 3(I)(i), (ii) and (iii) of the CCS (Conduct) Rules, 1964.

By order and in the name of the President."

The statement of imputations of misconduct or mis-behaviour in support of article of charges annexed as Annexure-II to the memorandum reads as under:-

"That the said Shri Diwan Singh was functioning as TDM, Bhavnagar, during the period from 1992 to 1994.

2. During the aforesaid period the said Shri Diwan Singh as the TDM, Bhavnagar, floated tender for the work of erection/dismantlement of lines and wires in Bhavnagar Secondary Switching Area during 1993-94, vide Notice Inviting Tenders No. MM/Tender/93-94/Genl. Dated 07.04.1993. Tenders were received from the following three firms:-

1. M/s. M.R. Trading Company, D/2, Panch Rahi Apartment, Section II, Ranip, Ahmedabad. (Proprietor : Ragini Dirajlal Joshi).

2. M/s. Narendra Sales & Services, Factory : 2306/2, Lashkarisheth Bldg., Old Wadaj, Ahmedabad. Head Office : 207, Shreeji Complex, Nr. Ellisbridge Post Office, Ashram Road, Ahmedabad. (Proprietor : Baldevsingh Raghunathsingh Rajput).

3. M/s. Singh Associates, 207, Shreeji Complex, Nr. Ellisbridge Post Office, Ashram Road, Ahmedabad. Factory : Lashkarisheth Bldg. Old Wadaj, Ahmedabad. (Proprietor: Ragini Dirajlal Joshi).

4. The three tenders received as aforesaid were opened by the DE (SBP), ACAO and AE (MM) of the O/o TDM, Bhavnagar, in the presence of representatives of the tenderers.

5. The following Income Tax Clearance Certificates were submitted alongwith the aforesaid tenders:-

1. Income Tax Clearance Certificate issued by Asstt. Commissioner of Income Tax No. S3/92- 93 dated 03.07.1992, showing Ragini Dhirajlal Joshi as Proprietor of M/s. M.R. Trading Company, Ahmedabad.

2. Income Tax Clearance Certificate issued by Income Tax Officer dated 21.09.1990, showing Shri Baldevsingh Raghunathsingh Rajput as Proprietor of M/s. Narendra Sales & Services, Ahmedabad.

3. Income Tax Clearance Certificate issued by Income Tax Officer dated 19.08.1991 showing Ragini Dhirajlal Joshi as Proprietor of M/s. Singh Associates,

Ahmedabad.

6. The said Shri Diwan Singh as the TDM constituted a Tender Evaluation Committee vide his letter No. 11/93-94/7 dated 11.05.1993, with himself as Chairman and the DE (SBP), ACAO, DE (M/W), DE (Admn.), and AO (Cash) as Members.

7. From the addresses of the three firms which submitted tenders, and from the Income Tax Clearance Certificates submitted by them, it is clear that all the three firms are related to each other and belong to the same party/proprietor. Moreover, the envelopes in which the tenders were received in the O/o TDM, Bhavnagar, are similar with same typewriting and correction in the same handwriting. As no other tenders were received in response to the Notice Inviting Tenders, the tenders received from the three firms which obviously belonged to the same party/proprietor, ought to have been rejected and fresh tenders invited.

8. Further, the validity of the Income Tax Clearance Certificates submitted by M/s. Narendra Sales & Services and M/s. Singh Associates dated 21.09.1990 and 19.08.1991, respectively, had already expired, as the Income Tax Clearance Certificates were valid only for one year from the date of issue.

9. However, the said Shri Diwan Singh as the Chairman of the Tender Evaluation Committee, entertained the three tenders submitted by the same party/proprietor, and finally accepted one of them, with the malafide intention of favouring the said party. The Tender Evaluation Committee under his Chairmanship had met on 14.05.1993 and recommended the rates of M/s. Singh Associates, Ahmedabad, without any proper evaluation of the rates with reference to the departmental standards and the rates of the same contractor for the same work which had been approved for the year 1992-93.

10. The said Shri Diwan Singh was fully aware of the procedure to be followed for acceptance of tender and award of work, as he himself had followed the said procedure while awarding the work in 1992-93 vide notes and comparative statement in file No. MM/Tender/8/92-93. However, he as the Chairman of the Tender Evaluation Committee for the tenders received for the year 1993-94, deliberately did not advise the members of the Committee to follow the prescribed procedure by evaluating the rates quoted by the tenderers with reference to the departmental standards and the rates approved for the same work for the previous year, i.e., 1992-93 which were in fact lower than the departmental standards for most of the items. Finally the tender of M/s. Singh Associates, Ahmedabad, was accepted and the work awarded to the said firm at rates which were 3 to 4 times higher than the departmental standards and the rates of the same party approved for the year 1992-93.

11. M/s. Singh Associates, Ahmedabad, submitted 36 bills for a total of Rs. 28,44,865/- for the period from 30.09.1993 to 21.04.1994. A comparative statement showing the cost of items of work on the basis of approved rates of the said contractor and the cost as per departmental standards, shows that the

total costs as per departmental standards would have come to only Rs. 9,99,442/- as against Rs. 28,44,865/- claimed by the contractor as per his aforesaid bills.

12. The said Shri Diwan Singh, thus, in collusion with the Members of the Tender Evaluation Committee, deliberately and with the malafide intention of showing undue favour to the party, accepted tenders from three firms of the same party and awarded the work to M/s. Singh Associates, Ahmedabad, being one of the three firms of the same party from whom the tenders had been received, at very exorbitant rates, thereby causing undue pecuniary advantage of Rs. 18,45,423/- to the said contractor and corresponding loss to the department within a short period of seven months.

13. Thus, by his above acts, the said Shri Diwan Singh committed grave misconduct, failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Government servant thereby contravening Rule 3(1)(i), (ii) and (iii) of the CCS (Conduct) Rules, 1964."

2. The article of charges were denied by the petitioner, and, thus, one Sh. Rakesh Kumar then working as G.M.T. Nadiad was appointed as the Inquiry Officer to inquire into the charges. On completion of inquiry with evidence being led by both the parties, an inquiry report dated 11.11.1998 was submitted. The inquiry report after analysis of the pleadings and evidence of both the parties gave a finding that the article of charges were partly proved against the petitioner. The conclusions are extracted hereunder:-

"9.1 The charge that all the tenderers belonged to the same party is proved.

9.2 The charge that tenders were not evaluated properly as per specifications, terms and conditions of tender is also proved.

9.3 it is not important to know exact loss, but the glaring irregularities, which were overlooked with impunity thus allowing for scope of loss to the department. Persons who were closely associated from beginning of the tendering process including S/Shri P.K. Saha, DE (SBP) and B.A. Patel, CAO, therefore, are accomplice with the charged officer Shri Diwan Singh for helping the contractor deliberately and with malafide intention. This charge is also proved.

9.4 The charge that rates were exorbitant which were 3 to 4 times higher than departmental standards is not proved.

9.5 The charge that rates were exorbitant, as compared to rates of same party for the same work approved by Shri Diwan Singh for the year 1992-93 is also not proved.

9.6 The charge that this has caused undue pecuniary advantage of Rs. 18,45,423/- to M/s. Singh Associates, and corresponding loss to the department is partially proved as exact amount of loss needs to be reworked. Various cost have to be added to departmental rates as well as expenditure booked on

maintenance work has to be reduced from the bills at Exhibit S-10."

3. We would like to delve into a little more detail at this stage qua the findings of the inquiry report because to our mind they are crucial as both the sides rely upon the same inquiry report and the findings arrived therein. In effect, the finding is that the petitioner was required to be more careful and was negligent in scrutiny of the tenders with the result that the infirmities in submission of the tenders were not detected. Simultaneously, it is material to note that qua the financial implication of the same, the finding is that the charge of the rates being exorbitant and being 3 to 4 times higher than departmental standards was not proved, nor was it proved that these rates were exorbitant as compared to the previous year of 1992-93. In fact, the same contractor had been awarded the contract for the previous year of 1992-93 and, thus, this fundamental aspect was found in favour of the petitioner. Not only that, while observing that the charge of undue pecuniary advantage had been partially proved, it was observed that the exact amount of loss needed to be reworked which was never reworked and placed before any judicial forum including before us till date. Having made these observations qua the inquiry report, we proceed now to trace out the checkered history of the action taken pursuant to this inquiry report and the judicial scrutinize thereof.

4. An order was passed on 16.08.2000 in the name of the President of India by the Assistant Director General (VIG) of the Ministry of Communications post having obtained advice from the Union Public Service Commission. The advice of the Union Public Service Commission was that the Tender Evaluation Committee (TEC) under the Chairmanship of the petitioner had committed a number of irregularities while awarding the work to one of the three firms who had submitted the tenders and, thus, was guilty of grave misconduct. The extreme penalty of dismissal from service was recommended to be imposed. In view thereof, it was observed by the President that the charge of undue pecuniary advantage having been partially proved with exact amount of loss not having been worked out and the remaining elements of charge having been established, the advice of the Union Public Service Commission was to be accepted and, thus, the punishment of dismissal from service was imposed on the petitioner.

5. The petitioner aggrieved by the aforesaid order passed in pursuance to the inquiry report filed O.A. No. 822/2000 before the Central Administrative Tribunal, Mumbai Bench, Mumbai. The petitioner partly succeeded in terms of a judgment rendered on 13.10.2003 by the Tribunal. The Tribunal found force in the contention of the petitioner relying upon the judgment of the Hon"ble Supreme Court in State of U.P. and Others Vs. Raj Pal Singh , wherein it was held that if there are more than one delinquents against whom the same charges have been levelled, the authorities would not have imposed different punishment against each of them. In the facts of the case, the petitioner had been charged in the same manner as other members of the Tender Evaluation Committee who had been awarded lesser punishment. The Tribunal, thus, gave a finding that in its

opinion the disciplinary authority had not addressed itself the real point in issue whether the petitioner was responsible for causing such monetary loss to the government exchequer, the Inquiry Officer having exonerated the petitioner qua the charge of rates being exorbitant as compared to the rates of the same party for the same work for the previous year. Not only that the payments were also not made by the petitioner. The impugned order of dismissal dated 16.08.2000 was quashed and the matter was remitted back to the disciplinary authority for reconsideration in view of the observations of the Hon'ble Supreme Court in Raj Pal Singh's case (supra), the petitioner really being at par with the other delinquent officers against whom lesser punishment had been imposed.

6. The respondents - Union of India aggrieved by this judgment of the Tribunal assailed the same before the High Court of Judicature at Bombay in Writ Petition No. 789 of 2004, but the order of the Tribunal was affirmed and the petition being devoid of merit was dismissed vide the order of the Division Bench dated 27.08.2004.

7. With the aforesaid once again began the second round of fresh order being passed on 21.10.2004 in the name of the President. In terms of this order, after recording the historical facts, it was observed that the petitioner was the head of the Telecom District and the authority who accepted the tender, while the other co-accused officers were his subordinates. The petitioner was also the Chairman of the Tender Evaluation Committee and, thus, the role of the petitioner was found to be pre-eminent. The charges proved against the petitioner pertained to irregularities in the acceptance of tender for the work of erection/dismantlement of lines and wires and not the execution of the work or the passing of bills of the contractor. The observations are extracted as under:-

"In compliance with the directions of the Central Administrative Tribunal, as upheld by the High Court, the matter regarding imposition of punishment on the said Shri Diwan Singh, has been reconsidered. The President has observed that Shri Diwan Singh was the Head of the Telecom District and the authority who accepted the tender. The other co-accused officers were his subordinates. Shri Diwan Singh was also the Chairman of the Tender Evaluation Committee. Thus, at every stage of the transaction, Shri Diwan Singh's role was pre-eminent, and it could not be equated with the roles of his subordinates who were members of the Tender Evaluation Committee and who handled the case at various stages for acceptance of tender and award of work. As Chairman of the Tender Evaluation Committee, and as the authority competent to accept the tender and to award the work, it was the duty of Shri Diwan Singh to fully satisfy himself that all the conditions of the tender were fulfilled by the tenderers, before awarding the work. The charge framed against Shri Diwan Singh, which have been held as proved on the basis of evidence on record, pertains to irregular acceptance of tender for the work of erection/dismantlement of lines and wires, and not to the execution of the work or to the passing of bills of the contractor."

8. The disciplinary authority, thus, sought to revisit the focus on the issue of

acceptance of the tender having realized the possible futility of emphasizing the aspect of execution of the work and passing of the bills in view of the findings of the Inquiry Officer as per paras 9.5 and 9.6 of the inquiry report. The conclusion, however, remained same as the order states that the President found no valid ground for altering the quantum of punishment imposed on the petitioner.

9. This order was once again assailed by the petitioner before the Central Administrative Tribunal, Bombay Bench at Mumbai in O.A. No. 133/2005. This O.A. was decided vide order dated 13.01.2006 and once again the pleas of the petitioner found favour. The Tribunal found that the Inquiry Officer conducted the inquiry in respect of the charged officers. Shri P.K. Saha was awarded the punishment of stoppage of two increments and Shri P.V. Puranik and Shri B.A. Patel were exonerated. The petitioner was transferred out of Bhavnagar when the works were actually executed and the bills of contract were passed when the petitioner had already been transferred from the place. The Tribunal opined that the disciplinary authority did not mention anything about the charges levelled against other persons, nor did it discuss as to how the misconduct proved against the others was different. Simply because the petitioner was Chairman of the Tender Evaluation Committee while others were Members is not sufficient to arrive at a conclusion that the proved misconduct was of different order. It further added that in case the punishment awarded to the petitioner was severe vis-?-vis the others, then giving reasons for the same was also essential. Not only that, the disciplinary authority had not complied with the earlier order of the Tribunal dated 13.10.2003, which was affirmed by the High Court of Judicature at Bombay, as it confirmed the original penalty of dismissal from service which had already been set aside by the Tribunal. There was nothing on record, thus, for confirmation and a fresh speaking order was required to be passed. The ball was, thus, again back in the court of the disciplinary authority. This order was not assailed further by the respondents.

10. The third order to be passed by the disciplinary authority is dated 29.03.2006. After recording the usual history, the discussion is contained in the following paragraphs:-

"7.1 in view of the above position, the President has found that the facts of this case are clearly distinguishable from the facts of the case of State of U.P. and Others Vs. Raj Pal Singh , which has been quoted by the Tribunal. In Raj Pal Singh case, no ulterior or corrupt motive was involved on the part of Charged Officers. In the said case it was upheld that when the gravity of charges of all delinquents is the same then there cannot be different punishments for different delinquents. The Honourable Supreme Court in Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, , has observed that even if a co-delinquent has been given lesser punishment, the same cannot be a ground for interference. The charges against Shri Diwan Singh and against the other co-accused officers, as stated in Para 7 above, cannot be said to be "same and identical in relation to one and the same incident", and it cannot be held that

there is no "difference in the delinquency", as found by the Honourable Supreme Court in Raj Pal Singh's case. As per records, Shri Diwan Singh is the mastermind and other officers who were his subordinates have acted as conduits.

7.2 As for the quantum of punishment imposed on the other co-accused officers, the President has observed that each case is decided on merits, after due application of mind to the facts and circumstances relevant to each case. The penalty of reduction of pay by one stage in the time scale of pay till his retirement on attaining the age of superannuation, was imposed on Shri B.A. Patel, the then Chief Accounts Officer, vide order No. 8-7/99-Vig. II dated 22.08.2000. The penalty of reduction of pay by one stage in the time scale of pay, for a period of two years, without cumulative effect, was imposed on Shri P.K. Saha, the then Divisional Engineer (SBP), vide order No. 8/166/98-Vig. II dated 03.08.2000. Shri P.V. Puranik, while functioning as Divisional Engineer (Microwave), Bhavnagar, was nominated as Member of the Tender Evaluation Committee by Shri Diwan Singh. As the said Shri P.V. Puranik thus did not belong to the Bhavnagar Telecom District of which Shri Diwan Singh was the Head, and as his role was limited as an outside Member, the said Shri P.V. Puranik was exonerated of the charges, vide order No. 8/32/98-Vig. II dated 19.06.1998.

7.3 In this context, the President has noted the observations of the Honourable Supreme Court in the case of Union of India (UOI) and Another Vs. Major Bahadur Singh, . The Honourable Supreme Court observed in the said case that "Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's Theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes.. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes."

11. In the conspectus of the aforesaid findings, once again, penalty of dismissal from service was imposed. The added rub was that this penalty was sought to be applied retrospectively w.e.f. 22.08.2000 i.e. when the first dismissal order had been passed.

12. The petitioner, thus, had to approach the Central Administrative Tribunal for the third time, but on this occasion approached the Chandigarh Bench vide O.A. No. 343/PB of 2006. This time the luck did not favour the petitioner as this petition was dismissed by the impugned order dated 15.05.2007 except to the extent that the order of dismissal from service was sought to be made applicable retrospectively, an aspect which was declared illegal.

13. The endeavour of the petitioner to seek review of this order vide R.A. No. 31 of 2007 also did not succeed as it was dismissed by the order dated 12.06.2007.

We have heard learned counsels for the parties and perused the pleadings on

records in extensio.

14. The impugned orders of the disciplinary authority as affirmed by the Tribunal show that the emphasis has been on the entitlement of the disciplinary authority to impose different levels of punishment as in the opinion of the disciplinary authority there was a difference in delinquency. It was observed that the petitioner was the mastermind, while the other officers who were his subordinates had acted as conduits. The Tribunal found that the judgment in *Raj Pal Singh (supra)* had been rightly distinguished in the order of the disciplinary authority as the judgment was predicated on a finding that no ulterior or corrupt motive was involved on the part of the charged officers. Reference was also made to *Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar*, holding that even if a co-delinquent has been given lesser punishment the same cannot be a ground for interference. The role of the petitioner being the mastermind has, thus, been emphasized. Even qua the aspect of quantum of punishment after discussing the judicial precedence, it was observed that interference would be called for only if the punishment was found to be totally disproportionate to the proven misconduct or found to be shocking to the conscience of the Court or one which no reasonable man could have chosen *Indian Oil Corporation Ltd. and another Vs. Ashok Kumar Arora*, , *B.C. Chaturvedi Vs. Union of India and others*, , *Kailash Nath Gupta Vs. Enquiry Officer, (R.K. Rai), Allahabad Bank and Others*, , *U.H. Jadhav v. UOI*, 1999 (2) SCT 319 and *Union of India (UOI) and Another Vs. K.G. Soni*, . It was observed that it was not for the Tribunal to re-appreciate the evidence to reach a conclusion different from that of the disciplinary authority.

15. The Tribunal, however, found in favour of the petitioner on the penalty order being passed with retrospective effect as the third order communicated vide letter dated 06.04.2006 sought to make the date of dismissal effective from 22.08.2000, the first order of the disciplinary authority. In this behalf, reliance was placed on the judgment of the Hon"ble Supreme Court in *Jivaratnam v. State of Madras*, AIR 1966 (SC) 961 to divide the order of dismissal into two parts: (a) the order of dismissal from the date having been passed and (b) making it retrospective in operation. Relying on the said judgment, it was concluded that the first portion would remain valid as on the date of passing of the order, but the second part making it retrospectively effective was liable to be declared as illegal. It is, in fact, this segregation of the order into two parts which had given rise to the review application filed by the petitioner.

16. In our view, the legal principles are well settled. Neither the Tribunal, nor this Court acts as an appellate authority. It is in these circumstances that we delved into a little more detail qua the inquiry report which is the fundamental document. In our view, the crucial findings of the inquiry report appear not to have been shown deference for coming to a conclusion qua the punishment to be imposed. The most important aspect is that there is fundamentally nothing proved qua the financial impropriety issue. There are undoubtedly findings qua

the defects and infirmities in accepting the tender, but that had to be read with the aspect of the charge that this was with a motive of giving financial benefit to the contractor and that is why the rates at which the contract was awarded were exorbitant being 3 to 4 times higher than the departmental standards and higher than the previous year for which also the successful contractor was the same. The findings in paras 9.4 and 9.5 are categorical that this charge does not stand proved. There is also a finding that even qua the previous year, in comparison no benefit could be said to be arisen to the contractor. If we look at these two findings, it is rather surprising to note that in para 9.6, the Inquiry Officer holds that the charge of pecuniary advantage was partially proved. Once the rates at which the work was awarded were not in question and there was lack of proper scrutiny of the tender, the moot point would arise as to how there could be pecuniary advantage to the contractor. Be that as it may, after observing that it was partially proved, it was stated that the exact amount of loss needed to be worked out. In these multiple scrutinize and prolonged litigation never have the respondents been able to show that what is the value of the so called pecuniary advantage. The same having not been placed on record even till date, thus, effectively what has been proved against the petitioner is only negligence or lack of close scrutiny of the tender documents which had various infirmities apart from the fact that there was an aspect of commonality of proprietorship among the tenders submitted. If one sees the article of charges, it is predicated on a malafide intent of the petitioner to favour the party which in turn is stated to have caused the financial loss - an aspect which has never been proved. The tentative figure of pecuniary advantage of Rs. 18,45,423/- appears to have coloured the orders passed by the disciplinary authority from time to time and the last order of the Tribunal which is impugned before us, while losing site of the fact that effectively this charge has really not been proved and there has been no quantification of any such amount.

17. The first order of the Tribunal in O.A. No. 822/2000 dated 13.10.2003 which was affirmed by the High Court of Judicature at Bombay emphasized various aspects including the aspect of different punishments for similar delinquencies and the gravest punishment of dismissal from service being awarded to the petitioner. Thereafter, when the disciplinary authority passed the second order, it sought to focus on the issue of "irregular acceptance of tender" rather than "and not to the execution of the work or to the passing of bills of the contractor". Having said so, it still found it fit not to alter the quantum of punishment (the last part of the order, thus, having been faulted by the subsequent order of the Tribunal). The second order of the Tribunal in O.A. No. 133/2005 dated 13.01.2006 referred to the aforesaid aspect as also the confirmation of the punishment, while the original order did not stand. The observation in para 10 of that order that the Tender Evaluation Committee consisted of total five persons and the Inquiry Officer conducted the inquiry in respect of all charged officers was held to be material as also the fact that the petitioner had been transferred out when the works were actually executed and the bills were not passed by the

petitioner. It, thus, opined that how the misconduct proved was different had not been explained and at the time of the petitioner simply being Chairman of the Tender Evaluation Committee would not suffice. Despite this observation, the third order of the disciplinary authority does little more than repeat of what the second order said i.e. that the petitioner was the Chairman of the Tender Evaluation Committee and was, thus, the mastermind. The question of the petitioner being a mastermind would arise if there was an issue of financial impropriety which has not been found against the petitioner in view of the findings in paras 9.4 and 9.5 of the inquiry report.

18. We are thus of the unequivocal view that what was an issue was the lack of proper scrutiny of the tender documents by the Tender Evaluation Committee which was the common blame on the petitioner and other members charged. May be being Chairman of the Tender Evaluation Committee and the awarding authority, the responsibility of the petitioner can be said to be a little more. We have already observed that there being an apparent loss or impropriety in award of the tender arising from financial implications does not hold good in view of the findings in paras 9.4 and 9.5 of the inquiry report as also the fact that the contract was neither executed, nor payments made through the petitioner. The aspect of there being any financial loss was in fact left in a limbo by the Inquiry Officer by stating that it was yet to be quantified. This quantification has not seen the light of the day in almost 16 years till date.

19. Now coming to the findings of the inquiry report and the consequent punishment if at all to be imposed, the delinquency of the petitioner as found is only qua various aspects of how the tender ought to have been scrutinized. It is here that the fault lay with the petitioner. We are also conscious of the fact that it is not for this Court to normally substitute one punishment with the other, but then two orders of remittance by the Tribunal with detailed reasoning have proved to be futile by a mere repetition of the punishment originally imposed of dismissal from service. In the context of findings against the petitioner, we have no hesitation in coming to the conclusion that the test of punishment being totally disproportionate to the stated misconduct, shocking to the conscience of the Court and being one which no reasonable man could have chosen in the present case stands satisfied and, thus, calls for our intervention. We are of the view that in the conspectus of the matter, the punishment of compulsory retirement in the case of the petitioner would more than suffice.

20. Now coming to the cross-petition filed by the Union of India qua the order of dismissal of service being made applicable retrospectively, we find no infirmity in the view taken by the Tribunal. It has already been observed that the earlier order was quashed and the matter remitted back for re-examination. If there was no order in existence, the petitioner would continue in service. We are also of the view that there was no error in the Tribunal bifurcating the two aspects of punishment and making it retrospectively applicable in view of the enunciation of law laid down by the Hon''ble Supreme Court in Jivaratnam's case (supra) and,

thus, the Tribunal was well within its rights in declaring only the retrospective application of the punishment as illegal. However, the consequence of the present order would be that the present punishment would be substituted with compulsory retirement which would, thus, take effect from 29.03.2006. We may note that, as informed, the petitioner in normal circumstances would have superannuated on 31.10.2006.

21. The result of the aforesaid is that the petition filed by the petitioner being CWP-4276-CAT-2008 is partly allowed, while the petition filed by the Union of India i.e. CWP-19595-2007 is dismissed. The consequent financial benefit with interest as admissible to the petitioner be remitted to him within a period of two months from today and the future benefit of pension etc. would accordingly arise.

22. We may add that the reference to the parties as petitioner and respondents aforesaid has been in the context of the array of parties in CWP-4276-CAT-2008. We conclude with the hope that finally this would put the prolonged dispute to an end.

The parties are left to bear their own costs.