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IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE IJAZ UL AHSAN

AFR

CIVIL APPEAL NO.10 OF 2020.

(Against the judgment dated 22.10.2018
passed by the Federal Service Tribunal,
Islamabad in Appeal No.2183(R)CS/2011).

Anthony Roy (decd) through Legal Heirs. ...Appellant(s)

Versus

The Prime Minister of Islamic Republic of Pakistan through
Prime Minister Secretariat, Islamabad and others.

...Respondent(s)

For the Appellant(s): Mian Asif Mumtaz, ASC.

For the Respondent(s): Mr. Jawad Mehmood Pasha, ASC.
Raja Ghazanfar Ali Khan, ASC.
Syed Rafaqat H. Shah, AOR.
Imran Hayat, Director Legal.
Azam Ghafoor, Chief Contractor
Purchase.
Rashid, Waqas, Dy. CME.
Shehzad Javed, Dy. Mechanical
Engineer.
Muhammad Saleem, Joint
Director M/o Railways.

Date of Hearing: 23.04.2020.

ORDER

IJAZ UL AHSAN, J.- This appeal arises out of a
judgment of the Federal Service Tribunal, Islamabad dated
22.10.2018. Through the impugned judgment an appeal filed
by the Appellant (now deceased) was dismissed. This Court
granted leave to appeal vide order dated 06.01.2020 in the
following terms:

"Learned counsel for the petitioner contends that no regular enquiry was conducted against the petitioner on the allegation that he has made embezzlement and fraud in the Pakistan Railways Funds. He contends that whatever the quantity of Bitumen Tapes were ordered to be purchased, they were applied on the pipes and there is nothing to show on the record that any embezzlement or fraud whatsoever was committed by the petitioner. He further contends that for dismissal from service, the minimum requirement is that regular enquiry should be held, which was not done in the present case.

2. Leave to appeal is granted to consider, inter alia the submission made by the learned counsel for the petitioner. The appeal shall be heard on the available record but the parties are allowed to file additional documents within a period of one month. As the matter relates to service, office is directed to fix the same preferably after three months. CMA No.1855/2019 is also allowed."

2. Briefly stated the facts necessary for disposal of this appeal are that the Appellant was working as Deputy Chief Mechanical Engineer in BS-19 in Pakistan Railways Headquarter Office, Lahore. He was charge sheeted *inter alia* on the following allegations:

- i) That in a contract for procurement of Bitumen Tape, he failed to mention the required quantity and instead kept it open ended. This omission on his part led to manipulation of quantities culminating in

fraud and embezzlement of public money. Further, he verified bills indicating that 22750 yards Bitumen Tape had been wrapped/received whereas only 8787.33 yards Bitumen Tape had actually been wrapped/received.

- ii) He verified purchase of 13962.67 yards excess of Bitumen Tape worth Rs.38,39,734/- which resulted in excess payment to the Contractor and loss to public exchequer.
- iii) He verified that work had been completed in Rawalpindi, Kundian, Karachi Cantt., and Lahore Sheds as per API specifications whereas such tape had not been wrapped on underground pipeline at Karachi Shed (KC) and the quality of tape wrapped at Kundian Shed (KDA) was not as per API specifications.

3. The Appellant responded to the charge-sheet. However, he was found guilty and visited with the penalty of dismissal from service. He filed an appeal before the Federal Service Tribunal which was allowed and the judgment of the departmental authority was set aside. The Pakistan Railways challenged the said order before this Court by way of an appeal. Such appeal was allowed and the case was remanded to the Service Tribunal for decision afresh. In post remand

proceedings the Tribunal decided against the Appellant on the basis of record and material before it and upheld and maintained the findings of the departmental authority.

4. Learned counsel for the Appellant has argued that the due process rights of the Appellant were violated. He maintains that although excess quantity was indeed ordered, no loss had in fact been caused to the exchequer for the reason that the quantity of Bitumen Tape which remained unutilized is still available in the stores of Pakistan Railways. He further argues that there is nothing on record indicating that the Appellant had embezzled any amount or unjustly enriched himself by embezzling any funds. He further submits that the inquiry conducted by Rana Abrar Anwar was defective for various reasons including the fact that he was junior to the Appellant and could not have been appointed as the inquiry officer to conduct the inquiry in question. He submits that the Tribunal has not considered the issues holistically that has led to miscarriage of justice.

5. This matter was heard on 22.04.2020 when the learned counsel appearing for Pakistan Railways sought time to obtain instructions and produce relevant record. Therefore the matter was adjourned for 23.04.2020 when all relevant record has been produced and examined by us. The learned counsel for Pakistan Railways has pointed out that three successive inquiries found the Appellant guilty. He demonstrated from official record that excess quantity were

ordered but not received. He also showed us the record indicating that only minimum quantity of excess of Bitumen Tape were lying in the stores of the Pakistan Railways and the claim of the learned counsel for the Appellant that approximately 13950 yards of Bitumen Tape which was in excess of the 8787.33 yards actually utilized, was lying in stores of the Pakistan Railways was totally incorrect. He took us through the relevant records to demonstrate that excess quantities were ordered and paid for but the tape in question was never received by Pakistan Railways. He further submits that the bills raised by the Contractor were verified by the Appellant which were paid on the basis of such verification and sum of Rs.38,39,734/- was over paid. He, therefore, submits that conclusions arrived at by the Tribunal are correct, proper and duly supported by the record.

6. Heard. Record perused.

7. It is clear and obvious to us that three successive inquiries were conducted at three different levels by qualified and experienced officers of Pakistan Railways who had no apparent bias against the Appellant. In all three inquiries the Appellant was found guilty. We have found it strange to note that in the Tender documents, no specific measurement of the Bitumen Tape was mentioned and the question of quantity was kept open which opened the door for fraud which was consequently committed. Contracts of this nature are required to mention specific quantities of goods required in order to

ensure that the exchequer is not unduly burdened with excessive procurement or over payment. A length of pipe is ascertained or ascertainable and width of the pipe to be wrapped with Bitumen Tape is known. There is no reason why specific quantities of Bitumen Tape required cannot be mentioned in the tender. We are therefore of the view that this was a major omission on the part of the Appellant which led to considerable loss for the exchequer.

8. We also find that it was the duty of the Appellant to confirm what quantity of Bitumen Tape had actually been used by Contractor before verifying his bills on the basis of which payments were to be made to the Contractor. The Appellant appears to have failed to perform the said duty with due diligence and circumspection. We get the distinct impression that he solely relied upon reports prepared by his subordinates and mechanically approved the bills confirming that a quantity of 22,750 yards of Bitumen Tape had been utilized while subsequent and successive on spot inquiries revealed that only 8787.33 yards had been used. There is nothing on record that may indicate that 22750 yards of Bitumen Tape were actually supplied and the excess quantity is available in the stores of the Pakistan Railways. On this score also the Appellant acted negligently and omitted to perform the duty which he was required to perform by virtue of his office. Therefore, we find that the claim of the learned counsel for the Appellant that a quantity of 22,750 yards of Bitumen Tape was actually supplied and paid for and the excess amount is available in

the stores of the Pakistan Railways which can be utilized periodically and in other projects is patently incorrect and not supported by the record.

9. As far as the inquiry conducted by Rana Abrar Anwar is concerned, we find that it was only a fact finding exercise and his sole objective of the same was to physically examine the entire work done and to report about the quantity of the Bitumen Tape used. He was not an inquiry officer and at best his position would be that of a witness. There is no denial of the fact that he visited each and every Shed to ascertain the actual quantity of utilized the Bitumen Tape compared to what was claimed to have been utilized as verified by the Appellant. It is evident from the record that the measurements given by the Appellant were not supported by the work actually performed. It is also significant to note that the facts reported and conclusions drawn were not contested by the Appellant. He only resorted to technical objections relating to the fact finding inquiry conducted by Rana Abrar Anwar. Further, two subsequent inquiries conducted by competent officers in which the Appellant participated and was allowed to take all defences available to him came to the same conclusions. We are therefore of the opinion that the departmental inquiry the resultant action and the conclusions drawn by the departmental authority as affirmed by the Tribunal do not suffer from any factual or legal error.

10. We however find ourselves in agreement with the learned counsel for the Appellant that there is neither any allegation nor any evidence on record that may indicate that the Appellant had misappropriated any amount or indulged in embezzlement of State Funds. We have specifically asked the learned counsel for the respondents if there was any thing on record even remotely indicating that the Appellant had received any of the amounts paid in excess to the Contractor. He has frankly conceded that there is no such evidence on record. We are therefore of the view that the Appellant may have been negligent and careless in performance of his duties which led to a loss of Rs.38,39,734/- where in the first instance he did not mention any quantity of Bitumen Tape required, thereafter did not supervise actual use of the Bitumen Tape and finally without due verification mechanically and negligently approved bills raised by the Contractor which led to over payment of Rs.38,39,734/-. However, there is nothing on record indicating embezzlement, commission of fraud or misappropriation of Government funds. On that score, any finding recorded at any stage is not sustainable. However, the penalty of dismissal is sustainable on the basis of material available on record and is accordingly sustained on account of the fact that gross negligence, carelessness and failure to perform his duty diligently, efficiently and conscientiously stood established from the record. The learned counsel for the Appellant has conceded that over payment was made but has tried to argue that the Appellant was not responsible for such over payment.

Unfortunately on the basis of the record examined by us, we have come to a different conclusion as far as responsibility is concerned. We therefore find that the impugned judgment of the Federal Service Tribunal does not suffer from any legal, procedural, jurisdictional or factual, defect, error or flaw that may require interference by this Court.

11. For reasons recorded above, we do not find any merit in this appeal. It is accordingly dismissed with no order as to costs.

39/ — H C J
39/ — J

ISLAMABAD.

23.04.2020.

Zubair/*

'Not Approved For Reporting'

Amir D
30/4/20

