



**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 3664/2019

New Delhi, this the 3rd day of January, 2020

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A.K. Bishnoi, Member (A)**

Shri Sushil Kumar Nimesh,
Aged about 59 years, Ex.Eng.(C),
R/o F-23/26, Sector-3,
Rohini, Delhi-110085

Presently posted at:
Exe.Engineer (Civil),
Office of : EE/ND-12,
Munim Ji Ka Bagh,
Office Complex, Narela,
Delhi-110040.

.. Applicant

(By Advocate : Mr. Malaya Chand)

Versus

Delhi Development Authority,
Through Vice Chairman,
Vikas Sadan, INA, New Delhi.

.. Respondent

(By Advocate : Mrs. Sriparna Chatterjee)

O R D E R (ORAL)

Justice L. Narasimha Reddy, Chairman

The applicant was working as Junior Engineer in
the Delhi Development Authority (DDA) in the year



2000. In that capacity, he cleared some bills. Disciplinary proceedings were initiated against him, by issuing Charge Memorandum dated 07.08.2006. Two articles of charge were framed, alleging acts of indiscipline. The applicant submitted his explanation, and not satisfied with that, the Disciplinary Authority (DA) appointed the Inquiry Officer (IO). The IO submitted his report dated 02.08.2007, holding both the charges as 'not proved'. A copy of the report was furnished to the applicant.

2. The DA issued a disagreement note on 13.09.2007, taking the view that the articles of charge as 'proved'. Thereafter, the applicant was issued a notice on 27.11.2007. Ultimately, the DA passed an order dated 24.01.2008, imposing the punishment of 'reduction of pay scale by two stages for a period of one year with cumulative effect'. In an appeal preferred against the order of punishment, the Appellate Authority (AA) reduced the punishment to 'reduction of pay scale by one stage for a period of one year with cumulative effect'.



3. The applicant states that he filed a revision petition before the Competent Authority, and complaining that the same was not disposed of for quite a long time, he filed O.A. No. 1743/2013 challenging the order of punishment, as modified by the AA. Alternative prayer was made for disposal of the revision petition. The Revision Authority (RA) passed an order dated 20.02.2014, when that O.A. was pending. Taking that fact into account, the O.A. was disposed of on 10.01.2019, leaving it open to the applicant to pursue the remedy, vis-a-vis the said order. Hence this O.A. is filed, challenging the order of punishment, as modified by the AA, and confirmed by the RA.

4. We heard Mr. Malaya Chand, learned counsel for the applicant. Since the controversy in this O.A. is limited, we requested Mrs. Sriparna Chatterjee, who generally appears on behalf of the respondent – DDA, to assist.

5. The principal ground urged by the applicant is that the DA disagreed with the finding of the IO,



without providing an opportunity to the applicant to explain.

6. The Articles of Charge framed against the applicant read as under:

“ARTICLE – I

Shri SK Nimesh, while working as Junior Engineer in RPD2, during the period 1999-2000 prepared the bills and recommended for pass and release of payment amounting to Rs.2,25,823/- on account of watch and ward service charges in respect of the following works for the period prior to 2.5.97 when EM's Circular no.474 dated 8.11.95 was in force, wherein no payment for watch and ward Service Charges was admissible.

1. C/O 480 SFS Houses in Pkt.10, Sector 11 (Extn.) Rohini SH: C/O 192 SFS houses in pkt. 10, Sector 11, (Extn.) Rohini Gr.I Agency : M/S Shri Durga Construction Co. Main Agreement no. 17/EE/RPD-2/92-93 Supplementary Agreement no. 7/EE/RPD-2/99-2000
2. C/O 480 SFS Houses for Cat.II in Pkt.10, Sector 11 (Ext.) Rohini SH: C/O 152 SFS houses for Cat.II, under SFS Gr.II. Agency : M/S Satya Mohan Constn. Co. Ltd. Main Agreement no. 24/EE/RPD-2/92-93 Supplementary Agreement no. 6/EE/RPD-2/99-2000
3. C/O 480 SFS Houses for Cat.II in Pkt.10, Sector 11 (Ext.) Rohini SH: C/O 136 houses for Cat.II under SFS Gr.III Agency : M/S Satya Mohan Constn. Co.Ltd. Main Agreement no. 25/EE/RPD-2/91-92 Supplementary Agreement no. 5/EE/RPD-2/99-2000

ARTICLE – II

Further the payment amounting to Rs.5,73,750/- towards Watch and ward service charges in respect of aforesaid three works was recommended in contravention of the instructions contained in EM's Circular No. 509 & 510 dated 2.5.97 and Circular No.520 dated 30.3.99, without verification of deployment of chowkidars at the sites.



The said Shri SK Nimesh, Junior Engineer (C) by his above acts failed to maintain absolute devotion to duty and behaved in a manner unbecoming of an employee of the Authority, thereby, violating sub rule 4(i) and (iii) of DDA Conduct, Disciplinary and Appeal Regulations 1999 as applicable to the employees of the Authority. ”

7. The explanation submitted by the applicant was found ‘not satisfactory’ and the IO was appointed. In his report dated 02.08.2007, the IO held both the articles of charge as ‘not proved’.

8. In case, the DA wanted to disagree with the finding of the IO, it was open to him to issue a show cause notice to the applicant, to explain as to why the articles of charge be not treated as ‘proved’, duly indicating the reasons and basis for that. However, the DA has straightaway disagreed with the finding of the IO, even while calling it as a disagreement note. The so called disagreement note reads as under:

“Disagreement note against I.O.’s report in respect of Sh. S.K. Nimesh, JE(C).

Article-II
{Ingredient (b)}

The I.O. has not proved this ingredient of charge on the plea that the defects like replacement of broken glass panes, easing of doors/windows, leakages/seepages, removal of mortar droppings etc., which need to be attended to at the time of handing over of flats to the allottees.



The I.O.'s report cannot be accepted. As per condition No.3 of EM's circular No.520 the watch & ward charges would be payable w.e.f. the dates when all the liabilities/obligations of the main agreement including defect liability period has been fulfilled, but C.O. has recommended the payment of watch & ward charges inspite of the fact the defects existed at the time of supplementary agreement, thus the charge is proved against the C.O.

{Ingredient (e)}:

The I.O. has held this charge as not proved on the ground that C.O. would have been required to verify deployment of chowkidars if these chowkidars were engaged by the department. There was no stipulation in the agreement regarding number of chowkidars to be deployed by the contractor. The contractor may outsource the watch & ward work to a security agency. P.O. has not adduced any evidence to show that the deptt. was ever required to make good any loss or damage to property.

I.O.'s report cannot be accepted, C.O. was required to ensure deployment of watch & ward personnel to be provided by the contractor for the entitlement of payments but C.O. has failed to exercise proper supervision and made payment without verification thus the charge is proved against the C.O."

9. There is not even a mention about the issuance of show cause notice to the applicant, before the DA disagreed with the finding of the IO and held the articles of charge as 'proved'. There is a clear illegality in the process and the entire proceedings are vitiated.

10. In the normal course, the matter should be remanded to the DA for issuance of show cause notice, proposing disagreement. However, since the



proceedings are of the year 2006 and there was some lapse on the part of the applicant in releasing the amount, contrary to the rules, the issue can be given a quietus by modifying the punishment to the one of 'reduction of pay scale by one stage for a period of one year without cumulative effect'; and on expiry of the one year period of punishment, the pay scale shall stand restored.

11. We, therefore, allow the O.A. in part, and modify the order of punishment imposed against the applicant to the one of 'reduction of pay scale by one stage for a period of one year without cumulative effect'. It is needless to mention that on expiry of one year, from the date on which the punishment was imposed, the pay scale shall stand restored. The resultant amount shall be released to the applicant, within a period of three months from the date of receipt of a certified copy of this order. There shall be no order as to costs.

(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/jyoti/