

**Central Administrative Tribunal
Principal Bench**

OA No.1165/2015

New Delhi, this the 12th day of February, 2020



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

Shri Gulshan Kumar Anand,
Aged 54 years,
S/o Shri G.M. Anand,
A.O. (Commercial),
New Delhi Municipal Council, 19th Floor,
Room No.1904, Palika Kendra,
Parliament Street,
New Delhi-110001.

...Applicant

(By Advocate : Shri Surinder Kumar Bhasin)

Versus

New Delhi Municipal Council,
Through Chairperson (Disciplinary Authority),
Palika Kendra, Parliament Street,
New Delhi-110001.

...Respondent

(By Advocate : Ms. Sriparna Chatterjee)

ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman :-

The applicant was working as Assistant Accounts Officer in the New Delhi Municipal Council (NDMC) in the year 2007-08. A charge memo was issued to him on 07.09.2011, alleging that on account of the lapses on his

part, about the factum of the cheques issued by parking contractor of Lot 'C' Block, Inner Circle, Connaught Place, the Corporation incurred a loss of Rs.7,66,202/-.



The applicant submitted explanation denying the charges. Not satisfied with that, the Disciplinary Authority (DA) appointed the Inquiry Officer. On a consideration of the material placed before him, the Inquiry Officer submitted his report on 11.01.2013, holding that the charge is not proved. The DA, however, issued a disagreement note; and the applicant submitted his explanation. On a consideration of the same, he passed an order dated 25.06.2013, imposing the punishment of reduction of two increments in the time scale of pay for two years with further directions that he will not earn increments of pay during this period of reduction and on the expiry of two years, the reduction will have effect of postponing his future increment of pay. Aggrieved by that, the applicant filed an appeal before the Lt. Governor. Through his order dated 30.10.2014, the Lt. Governor not only dismissed the appeal, but also directed that the punishment imposed against the applicant in another case shall not run concurrently with the one imposed through order dated 25.06.2013. This OA is filed challenging the order dated 25.06.2013,

passed by the DA and the order of Appellate Authority (AA) dated 30.10.2014.



2. The applicant contends that the Inquiry Officer held that the charge is not proved and the DA has straightway disagreed with the finding, even while pretending to issue a disagreement note. He further submits that the AA has modified the punishment to his detriment, without issuing any notice and the same is contrary to law. Other contentions are also raised.

3. Respondents filed counter affidavit opposing the OA. It is stated that the charge framed against the applicant is serious in nature and the prescribed procedure was followed, throughout. It is stated that even as regards the disagreement with the finding recorded by the Inquiry Officer, the DA issued a Show Cause Notice and only on consideration of the explanation submitted by the applicant, a different view was taken.

4. It is also stated that the AA did not modify any punishment as such, except that the punishment imposed through another order is directed to run separately.

5. We heard Shri Surinder Kumar Bhasin, learned counsel for applicant and Ms. Sriparna Chatterjee, learned counsel for respondents.



6. The charge framed against the applicant reads as under :-

“STATEMENT OF ARTICLE OF CHARGES FRAMED AGAINST SH. GULSHAN KUMAR ANAND, ACCOUNTS OFFICER, COMMERCIAL DEPARTMENT, NDMC, NEW DELHI.

While working as Assrtt. Accounts Officer in Enforcement Department, NDMC, Pragati Bhawan, Jai Singh Road, New Delhi during the period from 01.05.2007 to 30.11.2008 Shri Gulshan Kumar Anand has failed to maintain absolute devotion to his duties in as much as that :-

He failed to take appropriate timely action to inform the dealing assistant and the higher authorities regarding dishonoured cheques of the parking contractor of parking lot C Block, Inner Circle, Connaught Place, New Delhi, which had resulted in extension of the contract from time to time. Thus, the Council has suffered a pecuniary loss amounting to Rs.7,66,202/- upto the period ending 30.11.2007.

The above act on his part amounts to gross misconduct and unbecoming of a Council Servant. He has thus violated the provision of Rule-03 of the CCS (Conduct) Rules, 1964.”

7. The applicant denied the charge and the DA appointed the Inquiry Officer. In his report dated 10.01.2013, the Inquiry Officer held the charge as not proved. It was certainly open to the DA to disagree with the finding. However, he was under obligation to state the reasons and then to indicate that he arrived at a tentative conclusion; and relegating the finding thereon, to the stage after the applicant submitted his explanation. In the instant case, however, the disagreement does not accord with the requirement of the law. The relevant paragraph of the note reads as under :-

“Whereas, after going through the records of Inquiring Authority, evidence adduced and marked including the contents of Inquiry Report dated 10.01.2013 and considering the error occurred in submissions of the said Inquiry Report submitted by Shri Rakesh Kumar, Director (Accounts), NDMC. I have arrived at decision that Inquiry Report dated 10.01.2013 cannot be accepted on the grounds as mentioned herein above; and accordingly I disagree with the findings of Inquiry Report.”

8. Nowhere, it was mentioned that the conclusion arrived at by the DA was tentative or provisional in nature. Straightway he has arrived at a decision that the report of the Inquiry Officer dated 10.01.2013 cannot be accepted at all. Such a note does not accord with law.





9. The next ground urged by the applicant is that the AA issued a direction to his detriment, without issuing a Show Cause Notice. The applicant availed the remedy of appeal against the order of punishment. It is not clear as to whether the AA is conferred with power to enhance or modify the punishment. Even if, such a provision exists, the AA shall be under obligation to issue notice to the employee, before he takes any decision for modification of the punishment. In the instant case, the AA made the following remarks :-

“9) Hence, I am of the considered opinion that the grounds adduced by the appellant in his appeal petition are devoid of merit. The records of the case clearly establish that the appellant failed to maintain absolute devotion to his duties, thereby displaying conduct unbecoming of a Municipal servant. I, therefore, see no reason to interfere with the impugned penalty order dated 27.06.2013 passed by the Disciplinary Authority. The appeal is hereby **rejected**. Further, I find no merit in the Disciplinary Authority allowing the penalty imposed in this case to run concurrently with the penalty imposed vide penalty order dated 25.06.2013. The appellant had been charge sheeted for causing pecuniary loss to the Council in two different matters and the Disciplinary Authority has held the appellant culpable in both and I have upheld the decision. Therefore, the appellant is liable to suffer the consequences of both the cases. Hence, I set aside the rider of the

Disciplinary Authority and order that both the penalties shall not run concurrently but implemented one after the other, as per rules i.e. separately.”



10. Apart from rejecting the appeal, he directed that the punishment imposed against the applicant through order dated 25.06.2013, shall not run concurrently. In other words, he modified the order passed by the DA. Such a course could have been adopted only after issuing notice to the applicant. That not having been done, even the order of AA suffers from legal infirmity.

11. We therefore, allow the OA and set aside the order of punishment, the disagreement note and the order by the Appellate Authority. It shall be open to the Disciplinary Authority to issue a fresh disagreement note and to take further steps, in accordance with law.

(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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