



**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 2026/2017
MA 3691/2019
With
OA 2042/2017
MA 3695/2019

Reserved on 24.01.2020
Pronounced on: 31.01.2020

Hon'ble Mr. S.N.Terdal, Member (J)
Hon'ble Mr. Mohd. Jamshed, Member (A)

OA 2026/2017

Shri R.C.Pant,
S/o Late V.N.Pant,
R/o Flat no. 3, MCD Staff Quarters,
Nimri Colony, Phase-II,
Delhi-110052

... Applicant

(By Advocate: Mr. Rajeev Sharma)

VERSUS

1. Lt. Governor of Delhi,
Raj Niwas, Raj Niwas Marg,
Rajpur Road, Civil Lines, Delhi-54.

2. The Commissioner,
North Delhi Municipal Corporation,
4th Floor, Civic Centre, JLN Marg,
New Delhi-02.

... Respondents

(By Advocate: Mr. M.S. Reen)

OA 2042/2017

Shri D.K.Sharma,
S/o Shri R.C. Sharma,
R/o A-2/11, Sector- 18,
Rohini, Delhi-110085

... Applicant

(By Advocate: Mr. Rajeev Sharma)



VERSUS

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Rajpur Road, Civil Lines,
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ORDER

(Hon'ble Mr. S.N.Terdal, Member (J)):

We have heard Mr. Rajeev Sharma, counsel for applicants and Mr.M.S. Reen, counsel for respondents in both these OAs, perused the pleadings and all the documents produced by both the parties.

2. As the facts and the issues involved in both these OAs are identical and a joint enquiry was held and even punishment imposed by the disciplinary authority by a common order, hence both these OAs are heard together and this common order is passed.

3. In these OAs, the applicants have prayed for the following reliefs:

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- “(A) to quash and declare impugned orders dated 26.5.2016 and 12.04.2017 are illegal and unconstitutional.
- (B) to issue direction to the respondent to give all the consequential benefits to the applicant.



(C) the Hon'ble Tribunal may pass any other order/direction as deemed fit and proper in the circumstances of the present case and in the interest of justice."

OA No. 2026/2017

- "(a) to quash and declare impugned orders dated 26.5.2016 and 12.04.2017 are illegal and unconstitutional.
- (b) to issue direction to the respondent to give all the consequential benefits to the applicant.
- (c) the Hon'ble Tribunal may pass any other order/direction as deemed fit and proper in the circumstances of the present case and in the interest of justice."

4. The relevant facts of the case are that on the allegation that the applicants having connived with the contractor contributed in preparing wrong calculation sheet and that resulted in excess and undue payment in crore of rupees to the contractor, departmental enquiry was initiated against the applicants. The relevant charges are extracted below:-

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"Statement of charges framed against Sh. Ramesh Chander Pant S/o Sh. V.N.Pant, UDC Maintenance Division M-II, Rohini Zone, NDMC.

Sh.Ramesh Chander Pant while working as UDC in Maintenance Division-II Rohini Zone during the year 2010, failed to maintain absolute integrity, devotion to duty and committed gross misconduct which is unbecoming of a municipal employee in as much as he in connivance with contractor M/s S.A.Builder, Sh. S.K.Singhal, EE, Ms. Gurmeet Kaur, Accountant, Sh. Arun Awasthi, LDC/Cashier and D.K.Sharma, the then DA-II made excess and undue payment of Rs.1,69,13,867/- to the contractor as he forwarded the note dated 26.5.2010 along with wrong calculation sheet for

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making payment of Rs.3,96,08,952/- and finally for Rs.3,77,87,508/- which resulted into the excess payment of Rs. 1,69,13,867/- to the Contractor M/s S. A.Builder during the year 2010 pertaining to construction work approaches to flyover at the level crossing on New Rohtak Road with clover leaf, slip road and service road etc. awarded to M/s S.A. Builder vide work order No. 343/EEVIII/83-84 dated 10.11.1983.

He, thereby, contravened Rule 3 (1) (i) (ii) (iii) of CCS (Conduct) Rules 1964 as made applicable to the employees of NDMC."

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"Statement of charges framed against Sh. D.K.Sharma S/o Sh.R.C.Sharma, UDC, Maintenance Division M-IV, C.L. Zone, NDMC.

Sh.D.K.Sharma while working as UDC/DA in Maintenance Division-II Rohini Zone during the year 2010 failed to maintain absolute integrity, devotion to duty and committed gross misconduct which is unbecoming of a municipal employee in as much as he in connivance with contractor M/s S.A.Builder, Sh. S.K.Singhal, EE, Ms. Gurmeet Kaur, Accountant, Sh. Arun Awasthi, LDC/Cashier and Ramesh Chander Pant, UDC the then DA-II made excess and undue payment of Rs.1,69,13,867/- to the contractor as he forwarded the note dated 26.5.2010 along with wrong calculation sheet for making payment of Rs.3,96,08,952/- and finally for Rs.3,77,87,508/- which resulted into the excess payment of Rs. 1,69,13,867/- to the Contractor M/s S. A.Builder during the year 2010 pertaining to construction work approaches to flyover at the level crossing on New Rohtak Road with clover leaf, slip road and service road etc. awarded to M/s S.A. Builder vide work order No. 343/EEVIII/83-84 dated 10.11.1983.

He, thereby, contravened Rule 3 (1) (i) (ii) (iii) of CCS (Conduct) Rules 1964 as made applicable to the employees of NDMC."



5. Along with the statement of allegations, list of witnesses and list of documents were served on the applicants. As the applicants did not admit the allegation, an Inquiry Officer was appointed. The Inquiry Officer following the principles of natural justice and the relevant rules regarding holding of the departmental enquiry conducted joint departmental enquiry with respect to applicants and other co-delinquent employees and examined PW-1 to PW-5 and the defence witnesses and taken on record the defence statement of all the delinquent employees and analyzed the deposition of all the witnesses and went through all the documents and came to the conclusion that the charges leveled against the applicants were not proved vide his inquiry report dated 14.01.2016. The disciplinary authority after perusing the enquiry report disagreed with the inquiry report and prepared a disagreement note dated 28.01.2016. This disagreement note was served on the applicant. The some of the delinquent employees submitted representation to the disagreement note. The disciplinary authority after considering the evidence on record, the inquiry report, disagreement note and the



representation submitted vide order dated 26.05.2016 imposed penalty of reduction of pay of the applicants by two stages in the time scale for two years with cumulative effect. The applicants filed appeals. The appellate authority, the Lt. Governor of Delhi after discussing the entire material in the departmental enquiry and the disagreement note and the representation and the appeal and also giving the applicants personal hearing rejected the appeal vide order dated 12.04.2017. The relevant portion of the order passed by the appellate authority is extracted below:-

"9....I have gone through the contentions of the appellant in his appeal petition and during personal hearing, his representations to the Disciplinary Authority, the impugned penalty order and relevant records of the case. The limited issue on which the appellant has been penalized by the Disciplinary Authority, after a regular departmental proceedings is the overpayment of Rs.1,69,13,867/- to the contractor. The appellant has admitted appending his signature on the note amounting to Rs.3,96,08,952/- albeit, on the direction of higher officers. The appellant has not cogently explained the reason for appending the signature if he did not contribute in the preparation, checking or forwarding the alleged note. Similarly, the appellant while admitting appending his signature to the contingent bill, has claimed that it was done in 'good faith'. The appellant's claims are to be considered as an afterthought, weaved to extricate himself from the admitted involvement in the matter. It is not in dispute that undue payment/benefit accrued to the contractor mentioned in the Statement of Imputation of Misconduct, though the appellant has blamed the Accountant and other dealing assistant as responsible. It is also admitted that the appellant had appended his



signature to the contingent bill. Hence, his other contentions are not germane to the misconduct evident against the appellant. As a municipal employee, the appellant is expected to exercise due diligence at all times. Evidently, lapse was committed in this regard. The Disciplinary Authority has justifiably held the Article of Charge as 'proved', disagreeing with the findings of the Inquiring Authority. The averments of the appellant cannot be mitigating factor to grant immunity from legitimate penal consequences for the omission/commission of the appellant in the instant case.

10. In view of the totality of facts and circumstances of the case, I am of the considered view that the averments made by the appellant in his appeal are devoid of merit. The evident misdemeanor committed by the appellant renders him unbecoming of a Municipal employee. I, therefore, see no reason to interfere with the impugned penalty order passed by Commissioner, North DMC as the Disciplinary Authority. The appeal petition is hereby rejected."

6. The counsel for the applicants vehemently and strenuously submitted that from the perusal of the charge sheets it is seen that the applicants are shown to have been working in Maintenance Department whereas from the disagreement note it is seen that the applicants are shown to have been working in the Project Division, as such the entire disagreement note is perverse and requires to be set aside. He brought our attention to the following para in the disagreement note:

"I am not inclined to agree with the findings of the IO to the extent that primarily all the COs were working in the said Project Division during the relevant period and were duty bound to check and calculate all dues properly and should have ensured that no excess payment is made to the contractor. But they failed to do so. The responsibility on the



Executive Engineers i.e. Shri Rajesh Wadhwa and Siri Kishan Singhal was still higher since they were the officers to finally pass the bill. It was their duty to first see the correctness of the bill and should have strictly ensured that no excess payment is made. But still the same thing did happen and excess payment of huge amount was made to the contractor putting huge pecuniary loss to the Corporation. I, therefore, hold that the charges leveled against all the IO COs, charge sheeted in this case, mentioned above, are proved as aforesaid."

7. The counsel for the respondents equally vehemently submitted that the Maintenance Division and the Project Division are working in close coordination and from the perusal of even enquiry report it is clear that this aspect is clear from the enquiry report itself which has gone in favour of applicants and as such simply because in the disagreement note the applicants are shown to have been working in Project Division does not prejudice the applicants so as to go to the very root of the enquiry. He invited our attention to the following paragraphs in the inquiry report:-

"Hence on the basis of above detailed analysis the following conclusions are drawn.

1. Shri Ram Prakash, Chief Engineer-IX who dealt this case of payment of award to M/s A.A. Builders in the year 2010 has been examined as DW-1. He has deposed, that his matter for payment of arbitration award was thrust upon EE (M-II), Rohini Zone and this Division had made sustained efforts to procure the relevant records of this case from E.E.(Project) Rohini. All these notings are available in Exhibit D-1.



2. The records pertaining to the relevant case was not adequately handed over to the Division M-II from Rohini Project Division. That as per the o/o no. F-507/E-in-C/2007/2010 dated 22.11.2007 (D-1) all the record pertaining to the court case and payment etc was to be retained by the previous division i.e. EE (Pr)/RZ because this was a running matter and court case and was not finalized being pending in the Hon'ble Supreme Court vide SLP No. 7474/2002. This case was being contested by the EE(Pr) RZ.
3. Sh.Manoj Gupta, the then J.E.(Project) in 2010 was appointed to calculate the remaining awarded amount since the records were available with him

The calculated report of Shri Manoj Gupta, JE was verified by Shri J.B.Bhatia, E.E.(Project) vide his note dated 26.5.2010 (Page 9/N of Exhibit D-1).
4. As per the Account Manual code the accounts branch check the arithmetical accuracy of the bill after the entries of the claim of bill is made in the measurement book by the Junior Engineer or Assistant Engineer, technically.
5. The matter was in the knowledge of all Higher Authorities i.e. Chief Engineer and Engineer-in-Chief and the final payment was made with due care and precautions after taking concurrence from Finance Department and approval of the competent authority. It is also evident from page 10/N, 11/N of Exhibit D-1 that the Commissioner had marked the file in question to CA-cum-FA for scrutiny thereof. DCA (FMB) cleared the said proposal with due concurrence of CA-cum-FA. It clearly show that the entire matter was done with a fair intention.
6. No malafide intention, conspiracy or connivance is established of the office of E.E (Maintenance) II Rohini Zone, from the inquiry proceedings and documents, records available in the inquiry file. The approval of competent authority and the concurrence of Finance Department was also taken by EE(M-II) Division Rohini Zone of the amount paid as arbitration award. Best efforts were made by EE (Maintenance) II Division Rohini Zone to implement the arbitration award within the limitations.



7. The responsibility for the calculation of the bill amount leading to excess payment in 2010 year primarily is of Junior Engineer, Assistant Engineer Project Rohini Zone who were fully conversant and were directly dealing with the arbitration/court case and the Project. The accounts branch only checks the arithmetical accuracy of the bill and technical accuracy was the responsibility of the then JE & AE Project i.e. Shri Manoj Gupta and Shri J.B.Bhatia (Project). The excess payment made in the year 2010 as the amount was primarily calculated by Sh. Manoj Gupta, J.E and verified by Shri J.B.Bhatia (EE) Project in the year 2010.
8. From the perusal of Ex-2 it would be seen that the PW-1 did not fix any responsibility on the officials of EE(Bridge-III)/EE(Pr)/RZ responsible for the avoidable payment of Rs.5.82 crore of Interest as indicated in the audit para and also for the excess payment made in the year 2010.
9. Shri Manoj Gupta Junior Engineer (Project) who primarily calculated the amount to be paid and Shri J.B.Bhatia EE (Project) who verified the amount come under different line of authority and supervision these 2 officers are not supervised by the Office of EE (Maintenance) II Rohini Zone.

In the light of above detailed analysis and findings the charge (I) and (2) against Shri Krishan Singhal Executive Engineer, Smt. Gurmeet Kaur Divisional Accountant are NOT PROVED.

The first charge which is the only charged against Shri Arun Awasti LDC (Cashier),

Shri Ramesh Chander(UDC) and Shri D.K.Sharma (UDC) is NOT PROVED."



Counsel for the respondents further submitted that the applicants have not pointed out any violation of principles of natural justice or violation of any rules governing the holding of the departmental enquiry and the scope of judicial review of this Tribunal is limited as such there is no merit in these OAs.

9. The law relating to judicial review by the Tribunal in the departmental enquiries has been laid down by the Hon'ble Supreme Court in the following judgments:

(1). In the case of **K.L.Shinde Vs. State of Mysore** (1976) 3 SCC 76), the Hon'ble Supreme Court in para 9 observed as under:-

"9. Regarding the appellant's contention that there was no evidence to substantiate the charge against him, it may be observed that neither the High Court nor this Court can re-examine and re-assess the evidence in writ proceedings. Whether or not there is sufficient evidence against a delinquent to justify his dismissal from service is a matter on which this Court cannot embark. It may also be observed that departmental proceedings do not stand on the same footing as criminal prosecutions in which high degree of proof is required. It is true that in the instant case reliance was placed by the Superintendent of Police on the earlier statements made by the three police constables including Akki from which they resiled but that did not vitiate the enquiry or the impugned order of dismissal, as departmental proceedings are not governed by strict rules of evidence as contained in the Evidence Act. That apart, as already stated, copies of the statements made by these constables were furnished to the appellant and he cross-examined all of them with the help of the police friend provided to him. It is also significant that Akki



admitted in the course of his statement that he did make the former statement before P. S. I. Khada-bazar police station, Belgaum, on November 21, 1961 (which revealed appellant's complicity in the smuggling activity) but when asked to explain as to why he made that statement, he expressed his inability to do so. The present case is, in our opinion, covered by a decision of this Court in *State of Mysore v. Shivabasappa*, (1963) 2 SCR 943=AIR 1963 SC 375 where it was held as follows:-

"Domestic tribunals exercising quasi-judicial functions are not courts and therefore, they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can, unlike courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against who it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case, but where such an opportunity has been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts.

2. In respect of taking the evidence in an enquiry before such tribunal, the person against whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the explanation of the witness will in its entirety, take place before the party charged who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him, and admitted in evidence, a copy thereof is given to the party and he



is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word and sentence by sentence, is to insist on bare technicalities and rules of natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged and he is given an opportunity to cross-examine them."

Again in the case of **B.C.Chaturvedi Vs. UOI & Others** (AIR 1996 SC 484) at para 12 and 13, the Hon'ble Supreme Court observed as under:-

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice be complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. **Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding.** When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation



of statutory rules prescribing the mode of inquiry of where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India v. H. C. Goel* (1964) 4 SCR 718 : (AIR 1964 SC 364), this Court held at page 728 (of SCR): (at p 369 of AIR), that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued".

Recently in the case of **Union of India and Others Vs. P.Gunasekaran** (2015(2) SCC 610), the Hon'ble Supreme Court has observed as under:-

"Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under [Article 226/227](#) of the Constitution of India, shall not venture into re- appreciation of the evidence. The High Court can only see whether:



- a. the enquiry is held by a competent authority;
- b. the enquiry is held according to the procedure prescribed in that behalf;
- c. there is violation of the principles of natural justice in conducting the proceedings;
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous consideration;
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- i. the finding of fact is based on no evidence."

10. In view of the facts of the case narrated above and in view of the law laid down by the Hon'ble Apex Court referred to above and in view of



the fact that the counsel for the applicant has not brought to our notice violation of any procedural rules or principles of natural justice, the OAs require to be dismissed.

11. Accordingly, OAs are dismissed. No order as to costs.

(Mohd. Jamshed)
Member (A)

(S.N. Terdal)
Member (J)

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