

Central Administrative Tribunal, Principal Bench

OA No. 2522 of 1994

New Delhi this the 22nd day of November, 1999

Hon'ble Mr. Kuldip Singh, Member (J)
Hon'ble Mrs. Shanta Shastri, Member (A)

Shri Dalip Singh
S/o Late Shri Nirmal Singh
R/o House No. H-52, Rajouri Garden
New Delhi-27.

...Applicant

By Advocate Shri G.D. Gupta.

Versus

1. Union of India through
Secretary to the Government of India,
Ministry of Urban Development,
Nirman Bhavan,
New Delhi.
2. The Director General of Works,
Central Public Works Department,
Nirman Bhavan,
New Delhi.
3. Superintending Engineer, ce,
CPWD Circle V(DA), MSO Building,
New Delhi.

...Respondents

By Advocate Shri P.H., Ramchandani.

ORDER

By Hon'ble Shri Kuldip Singh, Member (J)

In this case the applicant Shri Dalip Singh has assailed an order Annexure A-1 and has also assailed the Enquiry Report, Annexure A-2, show cause notice, Annexure A-3 whereby impugned order of penalty of dismissal from service had been imposed on the applicant. He has also challenged the order Annexure A-4 vide which he was relieved from duty, Annexure A-5 and the order whereby his appeal was rejected, Annexure A-6 and as such, he has prayed for declaration that the charge-sheet, enquiry report, show cause notice and order imposing the penalty of dismissal and the order of relieving from the office and the order rejecting the appeal be held as illegal and void and his dismissal from service be set aside and the respondents be

directed to reinstate the applicant in service.

17

2. The facts in brief are that the applicant had joined as Junior Engineer in C.P.W.D. in the year 1956. In the year 1976 he was promoted as Assistant Engineer. In the year 1979 he was selected for deputation with D.D.A. as Assistant Engineer and continued to work there till 1985.

3. He further alleged that in the year 1981, a particular project of the DDA for construction of 228 MIG flats in Pocket KGI at Vikas Puri was started and applicant was asked to work in that project as Assistant Engineer. Besides that he was also looking after certain other works of DDA which were also relating to construction of MIG flats at Vikas Puri. In addition to this, he also stated that he was given the work relating to construction of flats at the Asiad Village in the Asiad Project as the same was ^{lagging} ~~looking~~ behind the target schedule. Thus, in nutshell, he says that he was assigned various projects and was overburdened.

4. It is further stated that suddenly on 29/30.12.1982, he was placed under suspension vide Annexure A-7. Then subsistence amount was fixed vide Annexure A-8. However, by 3.8.1983, the applicant made a request to the Vice-Chairman, DDA for reinstatement as the charge-sheet has not been supplied to him. Accordingly, he was reinstated on 27.2.1984.

5. It is further stated that in December, 1983, the applicant was issued a charge-sheet stating that it is proposed

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to hold an enquiry against the applicant under Regulation 16 of the DDA (Salary, Allowances and Conditions of Service) Regulations, 1961. The applicant stated to have denied all these charges vide Annexure A-11.

6. It is further stated that by an order dated 23.5.1984 an order of holding common disciplinary proceedings against the applicant, Shri M.L. Varshney, Executive Engineer and Shri H.L. Sharma, Junior Engineer was issued by the Vice-Chairman of the DDA.

7. The applicant has further alleged that since the common enquiry was to be held against Assistant Engineer, Executive Engineer and Junior Engineer, so it was to be seen that who was the disciplinary authority competent to order common enquiry against these three persons. As per the law, the disciplinary authority of the highest ranking officer is the competent authority and in any case Vice-Chairman, DDA was not competent to order common enquiry against Executive Engineer for whom the competent authority was Government of India. Since the basis of the start of the enquiry being an illegal order of holding of enquiry was bad in law, so the entire edifice built on this foundation of illegal order of appointment of Enquiry Officer for holding common enquiry is itself bad and has to fall as a house of cards.

8. It is further alleged that on 27.10.1984 Presenting Officer before the Enquiry Officer, submitted his brief. Thereupon, the Enquiry Officer asked the applicant to submit his

19

defence by 31.10.1984. However, unfortunately on 31.10.1984, the then Prime Minister late Smt. Indira Gandhi was assassinated and there was curfew all around in Delhi because of riot which had broken out and the applicant belonging to a Sikh community was subject to wrath of rioters and was not able to submit his defence and he also informed so to the PA of the Enquiry Officer and the PA, on instructions, informed the applicant to submit his defence brief as soon as normalcy returns. Accordingly, on 6.11.1984, the applicant submitted his defence to the Enquiry Officer. But the Enquiry Officer did not wait for the defence and submitted his report on 31.10.1984 itself. This shows that the Enquiry Officer was prejudiced and biased against the applicant.

9. He has also alleged that he had asked for certain documents during the enquiry which were not supplied to him and principles of natural justice had been violated. Some of the witnesses were also withheld particularly Shri Vaish was not produced. So it is stated that in these circumstances, the enquiry report as well as the findings arrived at by the Enquiry Officer and consequently the punishment awarded to the applicant, are liable to be quashed.

10. The O.A. was contested by the respondents and they have stated that the applicant while on deputation to the DDA committed some misconduct whereby he exhibited lack of integrity and conduct unbecoming of a Government servant and thereby violated CCS (Conduct) Rules.

11. They have further stated that the applicant failed to exercise proper supervision for construction of MIG houses and allowed use of sub-standard material thereby causing an accident of the collapse of certain portions of the project came down where the work was in progress and 9 flats collapsed. Since the applicant had denied the charges, so the enquiry was held against him. The Enquiry Officer conducted preliminary enquiry and regular hearing was conducted on various dates giving full opportunity to the applicant to defend himself.

12. However, it is admitted that during the enquiry, procedure for common enquiry proceedings were adopted against Shri M.L. Varshney, Executive Engineer, Shri Dalip Singh, Assistant Engineer and Shri H.L. Sharma, Junior Engineer as involvement of all these officers were alleged in the collapse of the flats due to lapses on their parts. The Enquiry Officer found that the charges against all these officers were established. It is also admitted that though the Enquiry Officer had observed that the AE's contention that his being busy with various projects, had to attend many other works, but the same could not be accepted at the cost of safety of structures.

13. It is further stated that the memorandum and article of charges issued against the applicant were signed by the Vice-Chairman, DDA, who was the competent authority to issue charge-sheet in the case of the applicant.

14. It is further stated that the penalty orders issued against the applicant was signed by the Director General of

Works, CPWD, who was also the disciplinary authority and was the competent authority for issue of penalty order against Assistant Engineer of the CPWD.

15. It is also stated that the plea of non-filing of defence by 31.10.1984 was not accepted by the Enquiry Officer and the Enquiry Officer proceeded to give his report and as such it is submitted that the applicant was rightly punished.

16. We have heard the learned counsel for the parties and have gone through the records.

17. Shri G.D. Gupta appearing for the applicant submitted that the order for holding common disciplinary proceedings against the applicant, Shri M.L. Varshney, Executive Engineer and Shri H.L. Sharma, Junior Engineer was issued by the Vice-Chairman, DDA in the exercise of power conferred upon him by DDA Regulations, 1961. He further stated that as per the Regulations in common proceedings, the disciplinary authority has to be the authority who is the disciplinary authority of the co-accused in the common proceedings having the highest rank. In this case from amongst the co-accused persons Shri M.L. Varshney was holding the highest rank of Executive Engineer and as per the Regulations, the disciplinary authority in his case was the Central Government. So it was essential that the Central Government should have made the orders for holding common proceedings. As such, the issue of the charge-sheet as well as the appointment of the Enquiry Officer and the Presenting Officer by the Vice-Chairman of the DDA, was manifestly illegal and to

support his contention, the learned counsel for the applicant referred to a judgment given by Hon'ble Delhi High Court in CWP No. 2402/1991 entitled as R.P. Sharma Vs. Vice Chairman, DDA and Another wherein it was held that the Vice-Chairman, DDA was not the competent authority for imposing penalty on Class-I officers and it was the Central Government who was competent to impose the penalty.

18. The counsel for the applicant further submitted that based on this judgment, two other co-accused, namely, Shri M.L. Varshney, Executive Engineer and Shri H.L. Sharma, Junior Engineer had also filed Writ Petitions before the Hon'ble High Court of Delhi and relying upon the judgment of R.P. Sharma (Supra), the Hon'ble High Court of Delhi quashed the proceedings in respect of Shri M.L. Varshney and Shri H.L. Sharma and the impugned orders were quashed and it was held that the petitioners are entitled to all consequential benefits. In this case also the learned counsel for the applicant submitted that since the applicant was also one of the co-accused and the Hon'ble High Court of Delhi had given its clear finding that the orders imposing penalty on their co-accused Shri M.L. Varshney, Executive Engineer and Shri H.L. Sharma, Junior Engineer cannot be sustained, since the Vice-Chairman, DDA was not the competent authority, so the applicant is also entitled for quashing of the entire enquiry proceedings and appointment of the Enquiry Officer etc. because Vice-Chairman, DDA, who had passed an order for holding common proceedings, had also appointed Enquiry Officer, so that order suffers from lack of jurisdiction in the appointment of Enquiry Officer as well as in the Presenting

23

officer and the order passed by the Vice-Chairman, DDA for holding common enquiry is also void ab initio since Vice-Chairman, DDA was not competent.

19. In reply to this Shri P.H. Ramchandani appearing for the respondents submitted that in case of the applicant the order imposing penalty had been passed by the competent authority since applicant was on deputation with the DDA. After the enquiry, he was reverted back to his parent department and the order of punishment had been passed by the competent authority in respect of the applicant since the authority passing the order of punishment was the disciplinary authority and the appointing authority in the case of the applicant. He further submitted that it is not important as to who had conducted the enquiry, so the order imposing penalty on applicant should not be quashed and it should be sustained.

20. To our understanding, the contentions raised by the learned counsel for the respondents have no merits because it is not a question only confined to the passing of the penalty order or imposing the penalty, but it is to be seen whether the enquiry proceedings on the basis of which the order imposing penalty has been passed, were conducted in a lawful manner or not and whether the person who conducted the enquiry was competent to conduct the enquiry. Further, whether the officer who conducted the departmental enquiry could be validly appointed as an Enquiry Officer and if answer to all these questions is in negative, then it would mean that the officer who conducted the enquiry had no jurisdiction at all to conduct the enquiry because his

2

24

appointment itself was not validly made and it was made by an order passed by a person who was not competent to appoint the Enquiry Officer. So that order being void ab initio itself, cannot confer jurisdiction in the Enquiry Officer to proceed with the enquiry even against the applicant, and to find an answer to all the questions raised by us, we find that the answer has already been given in two judgments separately given by the Hon'ble High Court of Delhi in the case of Shri M.L. Varshney, Executive Engineer and Shri H.L. Sharma, Junior Engineer, both co-accused who had faced the common enquiry along with the applicant. The judgment in the case of Shri M.L. Varshney was given in CWP No. 1091/85 and in the case of Shri H.L. Sharma was given in the case of CWP No. 2863 of 1987 and in both the cases the Hon'ble High Court of Delhi had considered the questions relating to Regulations vide which the order for holding common enquiry was passed and finding that the order was not passed by the competent authority, the same was quashed. So on the same lines, we are of the considered opinion that in case of the applicant itself the order directing holding of the enquiry, the appointment of the Enquiry officer and the Presenting Officer are also bad in law and are void ab initio since the same had not been passed by an officer who was competent to pass the same and there is no dispute to this fact, that the Vice-Chairman, DDA was not competent to pass this order and it was only the Central Government who could have passed the order of holding of an enquiry.

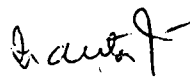
21. Once we have reached to the conclusion that the order directing the holding of the enquiry and appointment of Enquiry

2

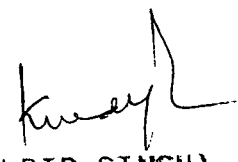
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Officer and Presenting Officer as void ab initio, then the entire proceedings conducted by these officers in pursuance of the orders passed by the Vice-Chairman, DDA for holding of an enquiry, is vitiated and the proceedings conducted by these officers had been conducted without jurisdiction since their appointment itself was not valid. So on the face of it, these proceedings cannot be sustained and have to be quashed. Since we are of the considered opinion that the enquiry proceedings itself suffers from lack of jurisdiction, we need not go into the other contentions raised by the learned counsel for the applicant. It is suffice to say that on this short ground alone, the impugned orders passed by the Vice-Chairman, DDA are liable to be quashed and the same are hereby quashed.

22. In view of the above, the OA is disposed of accordingly. No costs.


(SHANTA SHASTRI)
MEMBER (A)

Rakesh


(KULDIP SINGH)
MEMBER (J)