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CENTRAL ADMINISTRATIVE TRIBUNAL

~~MUMBAI BENCH~~

Principal Bench

ORIGINAL APPLICATION NO.: 1591/2000

Dated this New Delhi, the 12th day of November, 2001.

Shri R.S. Sethi Applicant.

Shri Gopal Subramaniam Advocate for the
Applicant.

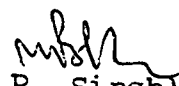
VERSUS

Union of India & Another Respondents.

Shri K.C.D. Gangwani Advocate for the
Respondents.

CORAM : Hon'ble Shri M.P. Singh, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

- (i) To be referred to the Reporter or not ? Yes.
- (ii) Whether it needs to be circulated to other
Benches of the Tribunal ?
- (iii) Library. Yes.


(M.P. Singh)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1591/2000

New Delhi, this 12th day of November, 2001

Hon'ble Shri M.P. Singh, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

R.S. Sethi
C-II/I, Court Lane
Near Raj Niwas, Delhi-110 054 .. Applicant

(By Shri Gopal Subramaniam, Senior Counsel)

versus

1. Union of India, through its
Secretary
Ministry of Home Affairs
North Block, New Delhi-110 001

2. Secretary
Union Public Service Commission
Dholpur House, Shahjahan Road
New Delhi .. Respondents


(By Shri K.C.D. Gangwani, Senior Counsel)

ORDER

By Shri M.P. Singh, Member(A)

By the present OA, the applicant, an IAS Officer of AGMU Cadre of 1973 Batch, has challenged the order dated 26/27.8.1997 passed by the respondents imposing upon him the penalty of reduction of his pay by one stage for the period of two years with the further direction that he would not earn any increment during the said period of two years and that on expiry of the period, the reduction of pay would have the effect of postponing the future increments of pay.

2. The facts leading to the present OA are as under. The Hon'ble Supreme Court in its orders dated 29.11.94 requested Mr. Justice O. Chinnappa Reddy, former judge of the Supreme Court to investigate into the conduct of the officers of Delhi Development Authority (DDA, for short) including its ex-officio Chairman at the relevant time, in



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handing over the possession of the suit land to M/s. Skipper Construction Company Private Limited before receiving the auction amount in full and also in conniving at the construction thereon as well as at the advertisements given by it for booking the premises in the building in question. Mr. Justice O. Chinnappa Reddy was further requested by the Supreme Court to look into the legality and propriety of the order dated 4.10.88 passed by the then ex-officio Chairman, DDA and the directions given by the Central Government under section 45 of the Delhi Development Act, 1957.

3. In accordance with the request made by the Supreme Court, Mr. Justice O. Chinnappa Reddy held an inquiry and submitted a detailed report dated 7.7.1995 to the Supreme Court, wherein he observed that irregularities had been committed by certain officers of DDA including the applicant, who dealt with the case of allotment of commercial tower plot in Block 'E', Jhandewalan during the period 28.8.85 to 30.9.87. During the aforesaid period, the applicant was working as Commissioner (Lands) in DDA. After examining Mr. Justice Chinnappa Reddy's report, the Supreme Court passed order dated 29.11.1995 in SLP No. 21000/1993, inter alia directing the Government of India (Dept. of Personnel) to initiate disciplinary proceedings against the applicant for imposing a major penalty and observed that the report of and the material gathered by Mr. Justice Chinnappa Reddy shall constitute the basis for taking such action.



4. Pursuant to the aforesaid directions of the Supreme Court, applicant was issued Memo dated 26.2.1996 under Rule 8 of All India Services (Disciplinary & Appeal) Rules, 1969 for holding enquiry on the following charges:

"Shri R.S.Sethi while working as Commissioner (Lands), DDA during the period 28.8.1985 to 30.9.1987 committed the following grave irregularities in the case pertaining to commercial plot in 'E' Block, Jhandewalan measuring 2548 sqm, auctioned on 8.10.1980 on leasehold basis to M/s.Skipper Construction Co. Pvt. Ltd.

(i) Shri Sethi intentionally delayed implementation of DDA Resolution permitting payment of dues by defaulting auction purchaser, viz. M/s.Skipper Construction Co. Pvt. Ltd. on execution of agreement, licence deed and bank guarantee;

(ii) Shri Sethi failed to recommend the appropriate course of action to cancel the bid of M/s. Skipper Construction Co.

(iii) Shri Sethi facilitated the delaying tactics of M/s. Skipper Construction Co. in making payment of premium and interest charges and execution of agreement, licence deed and bank guarantee.

5. Departmental inquiry was conducted against the applicant by the Director, Central Vigilance Commission, who submitted his report on 10.10.1996 concluding that 'the charge against Shri R.S.Sethi, the then Commissioner (Lands), DDA is substantially proved'. A copy of this report was also sent to the applicant to make representation, if any. On the basis of the evidence on record and the representation made by the applicant against the findings of the IO and all other relevant facts, the disciplinary authority (DA, for short) referred the matter to the Union Public Service Commission (UPSC, for short) for advice for imposition of major penalty on the applicant. UPSC disagreed with the proposal of the disciplinary authority for imposing major penalty and advised exoneration of the applicant of the

charges and dropping the proceedings vide its letter dated 28.2.97. The matter was referred back to UPSC again which vide its letter dated 11.6.1997 reiterated its earlier advice. However, the DA vide its letter dated 26/27.8.1997 imposed the aforesaid penalty on the applicant. The applicant submitted a detailed representation on 25.8.98 to the President of India and thereafter challenged this order before the Supreme Court through WP(C) No.351/2000 which was disposed of by order dated 24.7.2000 permitting the applicant to approach this Tribunal. That is how the applicant is before us seeking direction to quash the order dated 26/27.8.1997.

6. Respondents in their reply have opposed the case. They have stated that after examining the report of Mr. Justice O.Chinnappa Reddy, the Supreme Court passed an order on 29.11.95 directing institution of major penalty proceedings against the applicant and that the report of Mr. Justice Reddy would constitute the basis of the proceedings to be instituted against the applicant. Thereafter, major penalty proceedings were instituted against the applicant under Rule 8 of AIS(D&A) Rules, 1969 vide Ministry of Home Affairs OM dated 26.2.96. On applicant's denial of the charges, an oral enquiry was conducted in accordance with the provisions contained in Rule 8 of AIS (D&A) Rules, 1969. The IO on the basis of his findings held the charges framed against the applicant as substantively proved and a copy of the inquiry report was also furnished to the applicant to make representation if any. The DA, on the basis of the evidence on record and the representation made by the applicant against the findings of the IO and all other relevant facts, tentatively proposed imposition of a

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suitable major penalty on the applicant and referred the matter to UPSC. UPSC disagreed with the tentative proposal of the DA and advised exoneration of the applicant of the charges and dropping of proceedings vide its letter dated 28.2.97. However, the DA again referred the matter to UPSC, which in turn, reiterated its advice vide letter dated 11.6.97. The DA after carefully going through the advice of UPSC, case records of the disciplinary proceedings, report of IO and representation submitted by the applicant against the findings of IO, observed that UPSC's advice is not based on sound legal principles for the reasons recorded by him and imposed the aforesaid punishment i.e. reduction of pay by one stage from Rs.7100 (Rs.6700+400 as stagnation increment) to Rs.6900 (Rs.6700+200 as stagnation increment) in the time scale of pay of Rs.5900-6700 for a period of two years on the applicant with further directions that he will not earn increments of pay during the said period of two years and that on the expiry of this period, the reduction in pay will have the effect of postponing future increments of pay. Therefore, there is no merit in the submissions made by the applicant and the OA is liable to be dismissed. However, the representation dated 25.8.1998 submitted by the applicant is pending decision with the respondents.

7. Heard the learned counsel for the parties and perused the records.

8. During the course of the arguments, Shri Gopal Subramaniam, learned senior counsel appearing for the applicant, has vehemently argued to contend that he is challenging the impugned penalty order mainly on three

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grounds namely (i) it is a case of no evidence; (ii) copy of the advice tendered by the UPSC disagreeing with the tentative proposal of DA for imposing punishment on the applicant was not furnished to the applicant to enable him to make his defence effectively and (iii) DA has not applied his mind while imposing the penalty. These are discussed in seriatim:

9. As regards the first ground, the learned counsel for the applicant drew our attention to a series of correspondence exchanged between DDA and the Ministry of Urban Development (MUD, for short) available at Annexure A/3 to A/22 seeking clarification regarding ban on construction of high-rise building in Jhandewalan area and contended that there was no delay on the part of the applicant. He submitted that the applicant has been held responsible for delay by the IO for the period from 23.9.85 to 25.10.85; 25.10.85 to 5.11.85 and 3.12.85 to 19.11.86. The delay from 23.9.85 to 25.10.85 is alleged to have been caused by raising the query about the payment supposed to have been made by the party. The applicant could have easily rung up OSD to Vice Chairman DDA and ascertained the position instead of recording on the file and directing the Director (CL) to check up the position. The learned counsel for the applicant submitted that as per standing instructions of the Government of India, the oral information received from any quarter be confirmed in writing as soon as possible. In the light of this established practice, the applicant thought it fit to seek written confirmation of the information given to him on telephone by OSD to VC. It was also all the more necessary as he was dealing with sensitive land matters. The learned counsel further

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submitted that applicant has been held responsible for causing delay from 25.10.85 to 5.11.85 on the ground that he had asked the Director to put a self-contained note indicating the course of action recommended, keeping in view the representation of M/s. Skipper. The material record indicate that on the representation of M/s. Skipper of 14.10.85, the VC had desired examination. Instead of examining the representation, Shri Guha merely stated that the representation had been received and placed opposite at flag 'X'. Shri Guha was required to submit a precise and detailed note in the light of VC's direction. Moreover, Shri Guha took 10 days to re-submit the file for which applicant could not be held responsible. As regards the alleged delay from 3.12.85 to 19.11.86, the learned counsel for the applicant submitted that it is a matter of record that the ban orders were imposed on construction of multi-storeyed building in New Delhi and South Delhi by MUD in October, 1985 on the specific direction of the P.M.'s office. He also submitted that Shri Guha in his note dated 2.12.85 did not mention anything whether the ban was applicable to Jhandewalan area. Thereafter, Shri Guha in his note dated 3.12.85 had himself raised the issue of making a reference to MUD to ascertain whether Jhandewalan area was covered within the ambit of the ban order or not. Accordingly, a reference was made to MUD to seek clarification. Thereafter, the VC in his letter dated 27.7.88 addressed to the Secretary, MUD, clearly stated that there was a ban in Jhandewalan area which was subsequently lifted in October, 1986. The point regarding ban on construction of multi-storeyed building was very much relevant to the issue of submission of Bank Guarantee etc. as no banker would possibly give Bank Guarantee in respect of any plot

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which is attracted by the ban order. Moreover, once the matter relating to the ban order has been referred to MUD and MUD had stated in an interim reply that the matter was under consideration, the applicant could not have taken any further action in the matter except expediting a reply from the Ministry in this regard. This was done by the applicant by sending reminders to MUD at regular interval of time. The applicant had discharged his duties as Commissioner (Lands) in DDA honestly and strictly in consonance with the relevant rules and regulations on the subject and keeping in view the larger public interest. It is for these reasons that the UPSC which is an independent body has also recommended dropping of the proceedings against the applicant and has totally exonerated him of the charges. In view of these submissions, there is no evidence against the applicant for holding him guilty of the charges.

10. As regards the second ground, the learned counsel for the applicant submitted that the DA has referred the matter to UPSC twice for their advice before imposing the penalty on the applicant. UPSC after taking into consideration all aspects relevant to the case had recommended that ends of justice would be met in this case if the proceedings against the applicant be dropped. This advice of the UPSC has not been communicated to the applicant and he has been denied the opportunity of hearing. The learned counsel for the applicant also submitted that the DA while passing the order of imposing penalty had stated that the ban order was not at all extended to Jhandewalan area. However, the correspondence exchanged between the MUD and DDA clearly

show that the ban was imposed in the Jhandewalan area. It only shows that there is no application of mind by the DA while passing the impugned order.

11. On the other hand, the learned counsel for the respondents submitted that there is an ample evidence against the applicant to cause delay for payment of premium and interest charges by defaulting auction purchaser, viz., M/s. Skipper Construction Co. Pvt. Ltd. The charge is substantially proved in the report of IO. As regards the furnishing of UPSC report is concerned, he drew our attention to the decision of the Full Bench of this Tribunal in OA No.1744/97 ^{22.4.1999} ~~8807~~ wherein it has been held that it is not necessary to furnish a copy of the advice of UPSC in the matter of disciplinary proceedings where there is a disagreement. In view of this position, the second ground taken by the applicant is liable to be rejected.

12. As regards the third ground, the learned counsel for the respondents had submitted that since the DA has recorded reasons for disagreeing with the advice tendered by the UPSC while imposing the penalty and has issued a reasoned and speaking order, the applicant cannot take the plea that the DA has not applied its mind and therefore this ground is also liable to be rejected.

13. In the present case, the applicant has been issued a charge memo under Rule 8 of All India Services (Disciplinary & Appeal) Rules, 1969 for imposing a major penalty in pursuance of the Supreme Court order dated 29.11.95 in SLP No.21000/93. The applicant had filed Interlocutory Application in the Supreme Court and the

Hon'ble Court had passed the order^{dated 2-2-96} to the effect that any observations made by them in the order dated 29.11.95 shall not be construed as expressing any opinion on the merits of the case against these officers. All the questions arising in the inquiry and all the issues therein shall be considered and decided on their own merits uninfluenced by any observations made by them in the said order, directing inquiry.

14. We are aware about the settled legal position that in case of departmental enquiries and the findings recorded therein, the Court/Tribunal does not exercise the powers of appellate Court/authority. The jurisdiction of the Tribunal/Court in such cases is very limited, for instance where it is found that the domestic enquiry is vitiated because of non-observance of principles of natural justice or findings are based on no evidence. In the instant case, the main charge against the applicant is that he has intentionally delayed implementation of DDA resolution permitting payment of dues by M/s. Skipper Construction Co. Pvt. Ltd. on execution of agreement, licence deed and bank guarantee and failed to recommend the action to cancel the bid of M/s. Skipper. The departmental enquiry against the applicant has been conducted by the Director, Central Vigilance Commission. The IO in his report has held that the charge against Shri R.S.Sethi, the then Commissioner (Lands), DDA is substantially proved. A copy of the IO's report dated 10.10.96 was sent to the applicant to enable him to submit his representation. The DA, after taking into consideration the representation of the applicant dated 26.11.96, the report of the IO and all other relevant factors came to the conclusion that the charges

stood substantially established. The UPSC was consulted as required under the Rules. The Commission vide its letter dated 28.2.97 advised for dropping of proceedings as the charges framed against the applicant were not established. The DA disagreed with the advice of the UPSC and imposed the penalty of reduction of pay of the applicant by one stage for a period of two years with the effect of postponing future increments. From the report of IO, it is observed that the applicant has been held responsible for delay between 23.9.85 to 25.10.85; 25.10.85 to 5.11.85 and 3.12.85 to 19.11.86. The DA while passing the impugned order has taken into consideration the delay only for the period from 23.9.85 to 25.10.85 and from 3.12.85 to 19.11.86. The applicant had worked in DDA as Commissioner (Lands) during the period from 28.8.85 to 30.9.87. The alleged delay caused by the applicant from 23.9.85 to 25.10.85 is on the ground of raising the query about the payment supposed to have made by the party. The DA while imposing the penalty has taken this as one of the grounds and has stated that the applicant could have easily ascertained the position on telephone from OSD to VC. This ground taken by the DA is not correct as the applicant had raised the query in writing as per established practice and office procedure. Moreover, since the applicant was dealing with sensitive land matters, it was all the more essential to have such clarification in writing. As a matter of record the file was not put up to the applicant from 23.9.85 to 14.10.85 and during this period, it remained with other officers. It was only on 14.10.85 that Director(CL) had put up the file to the applicant along with a copy of the representation of M/s.Skipper with the information that no payment had possibly been

received. The applicant thereupon had directed that the case be put up with original representation dated 12.10.85. In view of the aforesaid facts, the applicant cannot be held responsible to cause delay from 23.9.85 to 25.10.85.

15. The other period for causing alleged delay is from 3.12.85 to 19.11.86 wherein the respondents have held that the applicant engaged himself in a wild goose chase to discover a ban where none existed. We find from the record that the Director (CL) in his note dated 3.12.85 which was recorded by him after discussing the matter with Commissioner (Lands) has raised the issue of making a reference to MUD to ascertain whether the Jhandewalan area was covered by the ban order. The applicant had agreed with the proposal and submitted the same for the approval of VC. A reference has been made to MUD with approval of VC. MUD vide their letter dated 21.3.86 had informed the DDA that "the matter is still under consideration. A reply will be sent to DDA in due course in this regard". Thereafter reminders had been sent to MUD to expedite the clarification.

16. During the oral examination, Shri Guha has admitted that he was under no pressure to record the note on 3.12.85. It is also an admitted position that whatever action has been taken by the applicant had the approval of VC. From the letters exchanged between DDA and MUD (Annexures A/3 to A/19) it is amply clear that MUD which is a nodal Ministry and was concerned with the policy of imposing/lifting ban for constructing multi-storeys have not given any instructions or clarification stating that Jhandewalan area is not covered by the ban order nor was



there any direction from them to cancel the bid. The applicant, therefore, appears to have taken action in a bonafide manner which was in consonance with the rules and regulations and also keeping in view the larger public interest. It is also not in dispute that the office of PM has directed that multy-storeys in New Delhi and South Delhi which include areas under DDA/MCD must be stopped immediately vide letters dated 18.9.85 and 6.10.85. The matter all along was under consideration of MUD. The Planning Division of DDA could not have decided this matter as the issue relating to the ban order was a policy matter and was under examination by MUD. Therefore, the plea taken by the respondents that the said information was available in other Division of DDA is not tenable. MUD was also aware of the fact that in view of blanket ban imposed by the Government of India in New Delhi and South Delhi areas, it was difficult for the DDA to sanction the building plan so as to enable M/s. Skipper to furnish bank guarantee (Annexure A/7). The applicant was not working in DDA independently and had not referred the matter to MUD for obtaining the clarification regarding ban order on his own. In fact, apart from Director (CL), it was VC himself who had recorded a note on the representation of M/s. Skipper on 20.11.1985 (Annexure A/4) stating that "This may be examined very carefully and put up quickly. If necessary, we have to go to Ministry or Lt. Governor for final instructions in the matter".

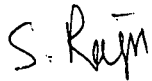
17. We have very carefully perused the entire material made available to us and we are of the considered view that the applicant cannot be held responsible for




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committing irregularities while working as Commissioner (Lands) in DDA during the period from 28.8.85 to 30.9.87 and therefore we hold that it is a case of no evidence.


18. For the detailed discussions aforementioned, the OA is allowed and the impugned order dated 26/27.8.97 is quashed and set aside. No cost.



(Shanker Raju)
Member(J)



(M.P. Singh)
Member(A)



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