

**Central Administrative Tribunal
Principal Bench**

OA No.1589/2020

MA No.2023/2020

New Delhi, this the 26th day of October, 2020

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)

Prabhu Narayan Singh Tolia
Age 45 years,
Designation Assistant Engineer (Group B)
S/o Sh. Nathu Singh Tolia
R/o B-2/501, Satyam Apartments,
20-B Vashundara Enclave, Dallupura,
East Delhi 110 096.

.... Applicant.

(By Advocate : Shri S.P. Rana)

Versus

1. East Delhi Municipal Corporation
Through Commissioner
Vigilance Department
2nd Floor, 419 Udyog Sadan,
Patparganj Industrial Area,
Delhi 110 092.
2. East Delhi Municipal Corporation
Through Commissioner
Disciplinary Authority
2nd Floor, 419 Udyog Sadan,
Patparganj Industrial Area,
Delhi 110 092.

...Respondents.

(By Advocate : Shri R.K. Jain)

: O R D E R (ORAL) :

Justice L. Narasimha Reddy, Chairman:

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This application is filed with a prayer to condone the delay in filing the OA. The applicant is working as Assistant Engineer in the East Delhi Municipal Corporation. He was issued a charge memo dated 15.10.2013 alleging that he appeared as a witness in a criminal case, referable to FIR No.159/2003 on 02.08.2013 before the Court of Metropolitan Magistrate, Karkardooma, in a state of intoxication. The applicant denied the same and the Inquiry Officer submitted a report on 22.06.2016 holding that the report of medical examination dated 02.08.2013 cannot be accepted as an evidence since it was not authenticated and held the charge as 'not proved'. The Disciplinary Authority issued a Disagreement Note and through an order dated 17.10.2016 imposed the punishment of stoppage of three increments with cumulative effect.

2. Aggrieved by that, the applicant filed an appeal dated 15.03.2017 to the Lt. Governor. The same was rejected through an order dated 16.03.2017 and communicated vide order dated 29.03.2017. The applicant contends that the order of punishment and that of Appellate Authority could not be challenged due to the pendency of the criminal case.

3. We heard Shri S. P. Rana, learned counsel for the applicant and Shri R. K. Jain, learned counsel for the respondents.

4. The delay involved is more than 3 years. The charges are referable to the year 2013. The disciplinary proceedings came to be initiated in the light of the observations made by the learned Metropolitan Magistrate. The delay is said to have occurred on account of the fact that the criminal proceedings were still going on. On the earlier date of hearing, notice was issued to the respondents.

5. It is no doubt true that the delay is enormous. However, in view of the fact that the applicant was pursuing the remedies may be in the other forum, we are of the view that the delay deserves to be condoned, and with a condition that in case any relief is granted, the applicant shall not be entitled to be paid any arrears till the date of filing the OA. The MA is accordingly allowed.

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6. The brief facts relating to the applicant are stated in the order passed in the MA for condonation of delay. The charge leveled against him is that he deposed as a witness in an intoxicated condition. The observation was made by the Court itself. Though the Inquiry Officer submitted his report holding that the charge as not proved, the Disciplinary Authority disagreed with the findings, duly assigning valid reasons. We are in agreement with the view expressed by the DA.

7. Being a responsible officer of the Corporation, the applicant was required to maintain basic discipline. Being in an intoxicated condition while on duty, itself is a serious misconduct. Added to that, it was in a court of law. Hence, it cannot be said that there was no basis for the DA to impose the punishment.

8. However, the punishment needs to be more in the form of a warning than the one that would adversely affect the pay structure of the applicant. When we pointed out that the punishment can be treated as the one without cumulative effect, the applicant, through his counsel stated that he is agreeable for the same. Learned counsel for the respondents, however, opposed for this. We are of the view that ends of justice would be met if the punishment is modified to the one of stoppage of 3 increments without cumulative effect.

9. The OA is accordingly allowed in part, modifying the punishment to the one without cumulative effect. On

account of such modification, the applicant shall not be entitled to be paid any arrears, and the modification, in turn shall be effective from December, 2020.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

pj/jyoti/rachna/sd