

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.158/2014
MA No.165/2014

Order Reserved on: 01.03.2016

Pronounced on:02.05.2016.

**Hon'ble Mr. Justice M.S. Sullar, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Ranjeet Sharma,
S/o Sh. Janardhan,
R/o H.No.53, Ward No.9,
Shastri Nagar, Gannaour,
Distt. Sonepat, Haryana.

-Applicant

(By Advocate Shri M.K. Bhardwaj)

-Versus-

North Delhi Municipal Corporation & Ors. through:-

1. The Commissioner,
North Delhi Municipal Corporation,
Civic Centre, New Delhi.
2. The Addl. Commissioner (Engineering),
North Delhi Municipal Corporation,
Civic Centre,
New Delhi.

-Respondents

(By Advocate Mr. M.S. Reen)

O R D E R

Mr. K.N. Shrivastava, Member (A):

This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985. The specific prayers made in the OA read as under:

- “(i) To quash and set aside impugned punishment orders dated 07.05.2010 & 10.08.2010.
- (ii) To declare the action of respondents in initiating disciplinary proceedings vide Charge Memo No.3/516/2006/CPC/Vig./DA-III/07/210 dated 01.08.2007 as illegal and unjustified and direct the respondents to restore the pay of the applicant with all consequential benefits including promotion and arrears of pay.
- (iii) To quash the punishment orders with further directions to restore the pay of the applicant with arrears and interest @18%.
- (iv) To award exemplary costs in favour of the applicant.
- (v) To pass such other and further orders which their lordships of this Hon’ble Tribunal deem fit and proper in the existing facts and circumstances of the case.”

2. The brief facts of this case are as under.

2.1 The applicant at the relevant point of time was working as J.E. (Civil) in Municipal Corporation of Delhi (MCD). On 12.01.2007, he was placed under suspension on the allegation that he misrepresented the facts regarding de-sealing of Shop No.1 of Property No.F-19, Rajouri Garden in violation of the orders of the Hon’ble High Court dated 21.11.2005 in Civil Writ Petition No.684/2005. A disciplinary proceeding was held against him in which applicant had participated. The Enquiry Officer (EO) submitted his report in which he held that the charge levelled against the applicant

was not proved. The concluding part of the EO's report reads as under:

"CO has not mis-represented the facts regarding desealing of Shop No.1 of Property No.F-19, Rajouri Garden in violation of the orders of the Hon'ble High Court dated 21.11.2005 in Civil Writ Petition No.684/2005, however, he has complied with the orders of the Hon'ble High Court dated 21.11.2005, therefore the charge levelled against Shri Ranjeet Singh, CO stands not proved."

2.2 The Disciplinary Authority (DA) rejecting the findings in the EO's report, vide the impugned Annexure A-1 order imposed the penalty of reduction by two stages in his pay for a period of two years with cumulative effect on the applicant. The said order was challenged by the applicant before the departmental Appellate Authority (AA), who rejected the appeal and vide impugned Annexure A-2-A order dated 10.08.2010 confirmed the punishment imposed by the DA on the applicant.

2.3 Aggrieved by the impugned orders of DA and AA, the instant OA has been filed. The applicant has also filed MA No.165/2014 in which he has prayed for condonation of delay in filing the OA.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. The applicant filed his rejoinder thereafter. With the completion of pleadings, the case was taken up for hearing the arguments of the parties on

01.03.2016. Shri M.K. Bhardwaj, learned counsel for the applicant and Shri M.S. Reen, learned counsel for the respondents argued the case.

4. The learned counsel for the applicant, besides stressing on the points raised in the OA and the rejoinder, stated that the DA, without issuing a disagreement note, has gone ahead and passed the impugned Annexure A-1 order rejecting the EO's report in which the EO had held that the charge against the applicant was not proved. Although this discrepancy was brought out by the applicant in his appeal before the AA but the AA did not consider the matter and vide the impugned Annexure A-2-A order, rejected the appeal. The learned counsel vehemently argued that the DA was obliged to issue a disagreement note in case he had decided to reject the EO's report and in the disagreement note he was also required to give his detailed reasoning as to why he was doing so. Since this process has not been followed, the impugned Annexure A-1 order passed by the DA is bad in law and consequently the AA's impugned A-2-A order is also bad in law. Hence both the impugned orders should be quashed and set aside and the prayers made in the OA may be granted; learned counsel argued.

5. Per contra, learned counsel for the respondents submitted that the OA is hopelessly time barred. He submitted that the impugned Annexure A-2-A order passed by the AA is dated 10.08.2010 whereas the OA has been filed on 31.12.2013, i.e., after a gap of over three years. The applicant has not explained this inordinate delay in challenging the impugned orders in the OA. The learned counsel further argued that the Hon'ble Supreme Court in catena of judgments has held that the Courts/Tribunal cannot go into the correctness of the charges, re-appreciate the evidences, step into the shoes of the DA and that the employee must establish with rules as to what prejudice has been caused to him. In this regard, he placed reliance on several judgments of the Hon'ble Supreme Court, some of which are:

- i) **Sushil Kumar Banerjee v. State of West Bengal & Ors.** [(1980) 3 SCC 304];
- ii) **Bank of Bikaner & Jaipur v. Prabhu Dayal Grover** [1996 (1) SLJ SC 145]; and
- iii) **Apparel Export Promotion Council v. A.K. Chopra** [JT 1999 (1) SC 61.

The learned counsel for the respondents denied the allegation of the learned counsel for the applicant that no disagreement note was issued by the DA before passing the impugned Annexure A-1 order. In this connection he drew our attention

to Annexure A-5 letter dated 01.10.2009 from DA to the applicant.

6. We have considered the arguments put-forth by the learned counsel for the parties carefully and have also perused the pleadings and documents annexed thereto. We find substance and logic in the argument of the learned counsel for the respondents that the OA is barred by limitation of time. In this connection we would like to refer to Section 21 of the Administrative Tribunals Act, 1985 which deals with the issue of limitation. Sub Section (1) of Section 21 states that the Tribunal shall not admit an application where a final order has been made in connection with the grievance unless the application is made within one year from the date on which such final order has been made. The applicant has not explained the delay of over three years in filing the instant OA considering the fact that the AA's order is dated 10.08.2010 whereas the OA has been filed on 31.12.2013. On this ground itself the OA deserves to be dismissed. We do not agree with the the contention of the learned counsel for the applicant that the inordinate delay in filing the OA is not attributable to the applicant as the respondents took time in making a copy of the AA's order available to him, as he has not produced any documentary evidence in support of this contention.

7. In view of this, we would not like to go into the other issue of DA not issuing the disagreement note before passing the impugned Annexure A-1 order, which was contended by the learned counsel for the applicant during the course of the arguments. However, we would like to observe that Annexure A-5 letter dated 01.10.2009 which the learned counsel for the respondents had tried to present it as the disagreement note, is not a 'disagreement note' in the eyes of law. We have seen that, which certainly is not in the nature of disagreement note.

8. Be that as it may, on the ground of limitation we would not like to entertain the OA. The OA is accordingly dismissed.

9. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice M.S. Sullar)
Member (J)

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