

**Central Administrative Tribunal
Principal Bench
New Delhi**

**OA No.233/2016
with
OA No.880/2016**

This the 19th day of August, 2016

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)**

OA No.233/2016

M. C. Singhal, Executive Engineer
S/o O. P. Aggarwal,
R/o G-144, Preet Vihar,
Delhi-110092.

... Applicant

(By Advocate: Mr. M. K. Bhardwaj)

Versus

1. Delhi Development Authority
through its Vice-Chairman,
Vikas Sadan, New Delhi.
2. Vice-Chairman,
Delhi Development Authority,
B-Block, Vikas Sadan,
New Delhi.

... Respondents

(By Advocates: Mr. Arun Birbal)

OA No.880/2016

Brijpal, SE(Civil) S/o Chohal Singh,
R/o D-215A/SF-I, Ramprastha Colony,
Ghaziabad, UP.

... Applicant

(By Advocate: Mr. M. K. Bhardwaj)

Versus

1. Delhi Development Authority
through its Vice-Chairman,
Vikas Sadan, New Delhi.
2. Commissioner (P),
Delhi Development Authority,
B-Block, Vikas Sadan,
New Delhi.

... Respondents

(By Advocates: Mr. Arun Birbal)

O R D E R

Justice Permod Kohli, Chairman :

Issues and controversy being common in both these OAs, same are being disposed of by this common order.

2. M. C. Singhal, applicant in OA No.233/2016, while serving as Executive Engineer (Civil) in the Delhi Development Authority, was served with a memorandum dated 01.09.2015 for initiating disciplinary proceedings under Regulation 25 of the DDA Conduct, Disciplinary and Appeal Regulations, 1999. He was required to submit within ten days of receipt of the memorandum a written statement of his defence. The memorandum was accompanied with the statement of articles of charge framed against him. As many as eight articles of charge were served upon him. The charge memo was also accompanied with the statement of imputation of misconduct or misbehaviour, list of documents and list of witnesses by which the articles of charge are proposed to be

proved against the applicant. The applicant submitted his reply to the charge-sheet denying the allegations. He also gave in detail various functional requirements of the ROs regarding which the memorandum has been issued to him. The applicant has also alleged that the charge memo has been issued in a clandestine manner just to deprive the applicant of his legitimate promotion. In this regard the applicant had even submitted a representation dated 11.05.2015, i.e., prior to the issuance of the charge memorandum, to the disciplinary authority. The charge memorandum is challenged on the following grounds:

- (i) That the charge memorandum has been issued on the basis of an anonymous complaint which was against another official, but the then SE (Vigilance) used the complaint as a weapon against the applicant due to personal enmity, ignoring the guidelines of CVC issued vide circular dated 29.06.1999 and subsequent circular dated 31.01.2002.
- (ii) The respondents have manipulated the facts to say that there was no requirement of water, which stands belied from the order dated 17.08.2015 passed by the Hon'ble High Court of Delhi in WP(C) No.5813/2013.
- (iii) The respondents have based the charges contrary to the facts, inasmuch as they have stated that only 840 out of 5496 flats

were occupied where they were required to provide water, whereas 80% of the flats, i.e., about 4500, had been allotted to the allottees on the date of preparation of the estimate.

- (iv) The respondents have ignored the fact that due to their failure to supply water to the residents they could not issue any water bills, which has caused pecuniary loss to the State exchequer to the tune of approximately Rs.10 crores.
- (v) That as the estimate recommended by the applicant was never sanctioned and no work had been executed, and since no pecuniary loss has been caused to the public exchequer on this count, as no work was ever executed and payments made, the applicant cannot be held guilty of the charge.
- (vi) That the inquiry officer appointed by the respondents is biased against the applicant as he had earlier also conducted an inquiry against the applicant in some other case and held the charges to be proved.
- (vii) The inquiry officer, i.e., Shri B. G. Roy, is a retired person.

3. Brijpal, applicant in OA No.880/2016, was serving as Superintending Engineer (Civil) when the charge memorandum dated 01.09.2015 was served upon him for initiating disciplinary proceedings under Regulation 25 of the DDA Conduct, Disciplinary

and Appeal Regulations, 1999. The allegations against him are in respect of the same work. While M. C. Singhal, Executive Engineer, applicant in OA No.233/2016 had proposed and recommended installation of RO plant, Brijpal, Superintending Engineer, applicant in OA No.880/2016 had approved and technically sanctioned the said project. The grounds of challenge to the disciplinary proceedings in both the OAs are common.

4. The respondents have in their counter affidavit denied allegations of the applicants being vague and without necessary particulars. It is also stated that it is the prerogative of the disciplinary authority to appoint the inquiry officer.

5. We have heard the learned counsel appearing for the parties.

6. It is not in dispute that the disciplinary proceedings have been initiated against the applicants on the basis of an anonymous complaint. The articles of charge against the applicants are as follows:

OA No.233/2016

"Article-I:

That the said Sh. M. C. Singhal, E.E. prepared and recommended the detail estimate amounting to Rs.55,12,500/- for installation of 5 no. RO plants for treatment of tube-well water to be used for washing, bathing and toilets etc. for accord of technical sanction of SE/CC-10 instead for installation of filtration plant/

softening plant as already proposed by him in his note dated 21.06.2011. The detailed estimate was proposed without any approval of competent authority.

Article-II:

That the said Sh. M. C. Singhal, E.E. proposed and recommended for the installation of 5 nos. RO plants of 4000 litre per hour capacity each without highlighting the fact that 5 nos. of RO plants were already installed and functioning in the same pockets and were underutilized at the time of preparing the estimate for 5 nos. of additional RO plants. This is hiding of facts and reflects malafide intention on his part.

Article-III:

That the said Sh. M.C. Singhal, E.E. proposed and recommended for installation of new RO plants, taking false support of representation of the RWA dated 12.05.2011/13.06.2011. The RWA representation was regarding making available DJB water to Bakkarwala Housing and not for providing additional RO plants and scarcity of potable water. This is mis-leading and mis-representation of the facts.

Article-IV:

That the said Sh. M.C. Singhal, E.E. recommended for installation of additional 5 nos. RO plants which was falsely supported by test report issued by DJB Zonal Lab, Haider Pur signed on 10.06.2011 and having diary no.410 dated 14.06.2011. The report says that water was not fit for drinking purposes only. The report does not indicate that water was not fit for washing and bathing purposes.

Article-V:

That the said Sh. M.C. Singhal, E.E. has wrongly proposed the A/R & M/O for carrying out the said work under the head of maintenance of various colonies in East Zone for which Technical Sanction was accorded by the SE/CC-10 vide T.S. No.12/EE(P)/CC-10/DDA/2011-12. The work should have been taken through A/A & E/S being a new work.

Article-VI:

That the said Sh. M.C. Singhal, E.E. submitted the requisition for budget slip for call of tenders which was not routed through AAO. This is a violation of departmental procedure.

Article-VII:

That the said Sh. M.C. Singhal, E.E. has proposed the Press Tender Notice without issue of budget slip, which in violation of provision of F&E's circular No.19 dated 19.6.1995.

Article-VIII:

That the said Sh. M.C. Singhal, E.E. proposed and recommended for installation of 5 nos. RO plants without ensuring that proper arrangement for civil works/electrical provisions, required for installation of RO plants have been made. In addition no proper planning for use of RO waste water to be generated by these RO plants was made. This reflects poor planning on his part and malafide intention.

That the said Sh. M.C. Singhal, E.E. by his above act failed to maintain absolute devotion to duty and behaved in a manner unbecoming of an employee of the authority thereby violating sub rule 1 (i), 1(ii) & 1 (iii) of Regulation 4 of DDA Conduct, Disciplinary and Appeal Regulations, 1999."

OA No.880/2016"Article-I:

That the said Sh. Brij Pal, S.E. approved and technically sanctioned the detail estimate amounting to Rs.55,12,500/- for installation of 5 no. RO plants of capacity 4000 litres per hour capacity each for treatment of tube-well water to be used for washing, bathing and toilets etc. instead of proposing for installation of filtration plant/softening plant as already recommended by him to CE(EZ) in his note dated 21.06.2011.

Article-II:

That the said Sh. Brij Pal, S.E. approved and technically sanctioned the detail estimate amounting to Rs.55,12,500/- for the installation of 5 nos. RO Plants of capacity 4000 litre per hour each, without verifying the fact that 5 nos. of RO plants had already been installed in the same pocket and these were underutilized at the time of calling of tenders for the above referred work. This shown his malafide intention.

Article-III:

That the said Sh. Brij Pal, S.E. has accorded technical sanction vide No.12/EE(P)/CC-10/DDA/2011-12 for providing 5 nos. new ROs taking false support of representation of the RWA dated 12.05.2011/13/06.2011. The RWA representation was regarding making available DJB water to Bakkarwala Housing and not for providing additional ROs and scarcity of potable water. This is misleading/misrepresentation of the facts.

Article-IV:

That the said Sh. Brij Pal, S.E. has accorded rtechnical sanction vide no. No.12/EE(P)/CC-10/DDA/2011-12 for installation of 5 nos. ROs which was falsely supported by test report issued by DJB Zonal Lab, Haider Pur signed on 10.06.2011 and having diary no.410 dated 14.06.2011. The report says that water was not fit for drinking purposes only. The report does not indicate that water was not fit for washing and bathing purposes.

Article-V:

That the said Sh. Brij Pal, S.E. has sanctioned A/R & M/O and accorded technical sanction vide No. 12/EE(P)/CC-10/DDA/2011-12 for carrying out the said work under the head of maintenance of various colonies in East Zone for whereas the work should have been taken through A/A & E/S being a new work.

Article-VI:

That the said Sh. Brij Pal, S.E. has accorded technical sanction vide No. 12/EE(P)/CC-10/DDA/2011-12 for installation of 5 nos. RO plants

without ascertaining that if any planning/arrangement for civil/electrical provision required for installation of RO plants have been made, and also if any proposal/planning for use of RO waste water to be generated by these RO plants have been made. This reflects improper planning/malafide intention.

That the said Sh. Brij Pal, S.E. by his above act failed to maintain absolute devotion to duty and behaved in a manner unbecoming of an employee of the authority thereby violating sub rule 1 (i), 1(ii) & 1 (iii) of Regulation 4 of DDA Conduct, Disciplinary and Appeal Regulations, 1999."

7. It is admitted case of the parties that the proposal and recommendation of applicant M.C. Singhal, EE, even though approved by the SE, the then Chief Engineer never accepted the same and the project was never executed. It remained only on papers. There is absolutely no allegation that the applicants had got any benefit out of that. Admittedly, the project having not been executed, no loss has been caused to the State exchequer. The matter was considered by the vigilance, and the notings on the file, to which reference has been made by both the applicants in their OAs, speak otherwise. It is relevant to refer to the notings. Noting dated 17.06.2015 has been reproduced in the OAs. The same is noticed hereunder:

"1. They allowed the escape route to lowest tender for execution of work at unworkable rate.

2. In order to meet daily requirement of water DDA incurred around Rs.11.00 lacs per month on tankers and payment to DJB for filling water in tankers and in this process DDA incurred Rs.2/3 crores in last 2/3 years.

3. Had the R.O.s with total cost of Rs.31.74 lac installed, the DDA could have recovered water charges from habitants amounting to Rs.10.00 cr approx from the beginning.

In view of above the following is recommended:

1. Vigilance wing of DDA should carry out fresh investigation.
2. After investigation they may send report to CVC afresh, if required.
3. The present charge sheets to the officers should not be issued, otherwise it will be injustice to officers, which is unwarranted at this stage.

Submitted for perusal please.”

The above noting was accepted by then Vice-Chairman, DDA, the disciplinary authority and the recommendation of EM/DDA was forwarded to CVO/DDA. CVO recorded in its investigation as under:

“A complaint dated 13.2.2012 addressed to CVO, DDA was lodged by one Shri Manipal of Garhi Gaon alleging pooling of tenders in ED-2 (CP-98). In the press note tenders for supply/installation of R.O. plants were also invited by EE/ED-3. It was learnt by Vigilance Deptt. that 5 ROs of 3000 ltr/hr for drinking water already existed in the housing pkt of Bakkarwala and additional ROs are not required. In the Technical sanction of the work no reference was found about installed RO plants (P-73/N).

On perusal of the records, it is observed that the entire case hinges only on one basic issue i.e. whether the additional ROs were actually required to boost the water supply or not?

- As per MPD the requirement of potable water is 135 ltrs. Per person per day (refer CP-46).
- As per sanctioned water supply scheme available in the file, the requirement of potable water is 75

ltrs. Per head per day (CP-54) from public health point of view.

- The vigilance Deptt. while calculating the requirement of water has considered the same as 15 ltrs. Per head per day (refer NP-60) and have also considered that the existing ROs will work on 100% efficiency for 24 hours.
- As per vigilance report 4536 flats were already allotted and out of these flats only 840 flats were occupied (NP-77).
- Considering that the installed ROs were working on 90% efficiency and were running for 16 hours a day then the potable water available from the installation of ROs will be
- $5 \times 3000 \times 0.90 \times 16 = 2,16,000$ ltrs.

- a. As per MPD-2021 the above quantity of water will be sufficient for

$$2,16,000 / 135 \times 4.4 = 356 \text{ DUs}$$

- b. As per sanctioned water supply scheme this water will be sufficient for

$$2,16,000 / 75.4.5 = 640 \text{ DUs}$$

- c. As per vigilance this water will be sufficient for

$$2,16,000 / 15 \times 4.5 = 3200 \text{ DUs}$$

As per MPD & sanctioned W/S scheme, it is clear that the quantity of available potable water was not sufficient to feed even the occupied flat owners i.e. 840 flat though 4536 flats already handed over to the allottees.

Since the entire case is pivoted on the requirement of water and the water available from the installed ROs was not sufficient even for the occupied flats, the installation of additional ROs stand justified."

8. These specific averments quoting official record are part of Ground B taken in both the OAs, and have not been denied by the respondents. There is no reference to the notings in the counter

affidavit filed on behalf of the respondents, and thus there is no reason to disbelieve the averments made in the OAs, the same having not been controverted in any manner. The applicant in OA No.233/2016 has also placed on record copy of the complaint dated 02.10.2012 of the residents of the area. This complaint was addressed to the then Chief Minister, Delhi, with copies to various authorities, *inter alia* alleging non-availability of drinking water through Jal Board/MCD. It is also complained that the DDA is providing ground water which is not at all suitable to drink or even take bath, which is badly affecting the health of the residents.

9. From the record we find that no motive is attributed to the applicants. The recommendations were apparently in public interest as per the notings of the EM/DDA and duly approved by then VC/DDA. The applicants have alleged that the water was being supplied to the residents through tankers causing loss of crores of rupees and that seems to be the reason for not approving the recommendation of the applicants for installation of the RO plant in the area. In any case, the recommendation of applicant M.C. Singhal, EE, and the sanction granted by applicant Brij Pal, SE, has not been implemented. The project was never executed, hence no loss to the State exchequer and no person is the beneficiary of the said recommendation, even if it is assumed that the recommendations were not proper. What kind of misconduct can be attributed to the

applicants is not understandable. Even if the allegations are accepted on their face value, in absence of there being any motive attributed to the applicants, no misconduct is constituted. CVO in its investigation has categorically opined that the water available from the installed ROs was not sufficient even for the occupied flats, and the installation of additional ROs stands justified. These findings of CVO have not been controverted by any competent authority in any manner whatsoever. Under such circumstances, the charge memo containing charges which are overlapping and relate to the only incident of recommendation for additional ROs, is unjustified requiring judicial intervention by this Tribunal at this stage.

10. These OAs are accordingly allowed. The impugned memoranda dated 01.09.2015 served upon the applicants separately in these OAs are hereby quashed.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/as/