Central Administrative Tribunal
Principal Bench
New Delhi

OA No.662/2011

This the 21st day of July, 2016

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

Uma Shankar Bhardwaj S/o C. L. Bhardwaj,
R/o C-67, DDA Staff Quarters,
Rajender Nagar, New Delhi. ... Applicant

(By Advocate: Shri Sidharth Joshi)

Versus

1. Delhi Development Authority
through its Vice-Chairman,
Vikas Sadan, INA, New Delhi.

2. Vice Chairman,
Delhi Development Authority,
Vikas Sadan, INA, New Delhi.

3. Finance Member,
Delhi Development Authority,
Vikas Sadan, INA, New Delhi. ... Respondents

(By Advocate : Shri J. P. Tiwari)

O R D E R

Justice Permod Kohli, Chairman :

The applicant has retired as Assistant Director on attaining the age of superannuation on 31.03.2010 from the Delhi Development Authority (DDA). While working as Assistant Director in Group Housing Society Branch, DDA, he was served with a charge memo under Regulation 25 of the DDA Conduct, Disciplinary and Appeal

Regulations, 1999, vide memorandum No.F.25(11)07/Vig./ ACBRDA/512 dated 11.11.2008. The memorandum was accompanied with the article of charge and statement of imputation of misconduct. The article of charge against the applicant reads as under:

> "Shri U. S. Bhardwaj, Asstt. Director while working in Group Housing Society Branch during the year 2003 checked/signed and put up letters to be sent to the Secretary/President of Lokvit CGHS Ltd. to the Dy. Director (GH), DDA for signature and issue at wrong address.
>
> Shri U. S. Bhardwaj while sending letters to the Lokvit CGHS Ltd. did not care to verify the various addresses of the society from the RCS office. He also did not care to see that the reply from the representative of the society received in response to various letters of DDA, where from different addresses of the society. Sh. U.S. Bhardwaj wilfully and negligently checked/signed and put up the letters with wrong address without the approval of the Competent Authority, which were neither approved by the RCS nor sent by the office of the RCS to DDA at any point. The signing and putting up these letters with wrong address of the society was a deliberate act of extending favouritism to a person/representative of the Lokvit CGHS.
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> By his above act Sh. U.S. Bhardwaj, Asstt. Director exhibited lack of absolute devotion to duty and lack of absolute integrity thereby contravened Rule 41 (i) (ii) and (iii) of DDA Conduct, Disciplinary and Appeal Regulations, 1999 as made applicable to the employees of the Authority."

2. The applicant was asked to submit his written statement of defence within ten days of receipt of the memorandum and also to state whether he desired to be heard in person. The applicant submitted his reply to the aforementioned memorandum vide his

letter dated 12.03.2008. The applicant stated that letters were put up by the dealing assistant and it was his duty to verify the address of the society. The applicant further stated that he was Assistant Director in charge and was responsible as regards the correctness of the contents, which are not in dispute. He further clarified that the dealing assistant had addressed the letters at the last/latest known address of the society and as per instructions given by the Deputy Director (GH). It is alleged that without properly considering the statement of defence, the respondent No.3 appointed inquiry officer vide order 31.03.2008. The inquiry officer conducted the inquiry and submitted his report dated 13.03.2009 (Annexure A-5) holding the charges not proved.

3. The disciplinary authority, i.e., respondent No.3, disagreed with the findings of the inquiry officer and served a notice dated 03.12.2009 (Annexure A-6) upon the applicant accompanied with copy of the disagreement note, asking the applicant to submit his representation within 15 days. On receipt of the aforesaid notice, the applicant filed a detailed representation dated 17.12.2009. The applicant referred to various paragraphs of the inquiry report wherein findings have been recorded in his favour. The disciplinary authority, however, passed the impugned order dated 16.03.2010 imposing penalty of reduction of pay by one stage (equivalent to one

increment) with cumulative effect till the date of retirement, i.e., 31.03.2010. Aggrieved of the aforesaid order, the applicant preferred an appeal before the Vice-Chairman, DDA. The said appeal has been rejected vide the second impugned order dated 04.11.2010. Both the orders, i.e., of imposition of penalty and the appellate order are under challenge in the present OA.

4. Learned counsel for the applicant has primarily attacked the impugned orders on three grounds – *(i)* that the so called disagreement note does not satisfy the requirement of law; *(ii)* that no motive has been attributed to the applicant and the allegations contained in the article of charge do not constitute any misconduct, much less a service misconduct, attracting any penalty under law; and *(iii)* that the disciplinary authority has failed to appreciate that it was not the duty of the applicant to write addresses on the envelopes, which was the duty of the dealing assistant against whom a similar charge-sheet was also issued, but he has been exonerated by his disciplinary authority.

5. From the perusal of the inquiry report, we find that the inquiry officer, based upon the material/evidence before him found the charges not proved. Relevant observations/findings of the inquiry officer are noticed hereunder:

"Shri M. C. Singhal, Director (Retd.) appeared as SW-3. He deposed that there are no separate guidelines in the Group Housing Department for societies intending to change their address. SW-3 further deposed that as per practice prevalent at that time and as per orders of the Director (RL) Exb.D-4, the society may change address at their convenient place.

CO has produced 10 Nos. Files (Exb.D-5), wherein the societies were addressed at their latest known addresses. CO also produced Exb. D-1 when DD (GH) made a policy decision, "Please put up letter in concerned file. Please see that address of the society is correct and latest". These facts are confirmed by SW-1 in his deposition."

"Group Housing Branch sent letter to the above said society at the address intimated by the Registrar, Cooperative Societies. None of the letters were sent at the changed address of the society.

There were no guidelines in place at the relevant time in the Group Housing Department for societies intending to change their addresses. Further, Director (RL) had approved for making corresponding with the societies at their new addresses.

Prosecution has not adduced any evidence to show that the CO was involved/associated in the letter (Exb.S-1) issued by DD (GH) to Lokvit CGHS Ltd.

In view of the above assessment of evidence, I hold that the ingredient of charge framed against the CO, wherein it is alleged that the CO, while working as Asstt. Director in Group Housing Branch checked/signed and put up letters to be sent to the Secretary/President of Lokvit CGHS Ltd., for signature and issued at wrong address, is **not proved**."

".....The correspondence between the Group Housing Branch and the Society was of routine nature and the same does not relate to allotment of land, and thereby no favour could have possibly been extended to the person/representative of the society. It is for that it was not necessary to be meticulous in verifying the authenticity of the society with reference to its address and the signatory, as alleged.

> In view of the assessment of the evidence in the foregoing paras 6.3 & 6.3.1, I hold that the ingredient of the charge framed against the CO, wherein it is alleged that he (CO) did not care to see that the reply from the representative of the society received in response to various letters of DDA, was from an address different from the address mentioned by the Registrar, CS, is held **not proved**.
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> The ingredient of the charge that the CO did not tally the addresses on the letters received from the society is also held not proved, for the reason that these signatures are identical.
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> In view of the assessment evidence in the foregoing paras 6.1, 6.2, 6.3 & their sub paras, I hold that the article of charge framed against the CO is **not proved**."

After recording above findings, the inquiry officer recorded the following conclusion:

> "On the basis of the documentary and oral evidence brought before me during the inquiry and after careful assessment of the said evidence as detailed in the foregoing paras, I hold that Article of the charges framed against Shri U. S. Bhardwaj, Asstt. Director, is Not Proved."

The disciplinary authority on receipt of the above inquiry report, while serving the notice dated 03.12.2009 upon the applicant, recorded the following disagreement note:

> "The undersigned being the disciplinary authority is not in agreement with the findings of I.O. The contention of I.O. that it was not necessary to be meticulous in verifying the authenticity of the society w.r.t. its address and signatory is not acceptable. The office is required to make correspondence with the Society at the address as notified by the Registrar of Societies or the address accepted by the Competent Authority in DDA. Thus, the charges stand proved against Sh. Uma Shankar Bhardwaj, Asstt. Director."

6. Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 deals with the action on the inquiry report on conclusion of the inquiry proceedings. Under rule 14 (2) the disciplinary authority may himself hold an inquiry or may appoint an authority to inquire into the charges of misconduct or misbehaviour against the Government servant. In the present case, the disciplinary authority chose to adopt the second course and appointed an inquiring authority to probe into the charges of misconduct against the applicant. Once the inquiry is complete, the next course of action is governed by rule 15 of the CCS (CCA) Rules, 1965. Rule 15 reads as under:

> **"15. Action on the inquiry report**
>
> (1) The Disciplinary Authority, if it is not itself the Inquiring Authority may, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority for further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be.
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> (2) The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the Disciplinary Authority or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen

days, irrespective of whether the report is favourable or not to the Government servant.

(2-A) The Disciplinary Authority shall consider the representation, if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rules (3) and (4)]

(3) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in Clauses (i) to (iv) of Rule 11 should be imposed on the Government servant, it shall, notwithstanding anything contained in Rule 16, make an order imposing such penalty:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the Disciplinary Authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government servant.

(4) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in Clauses (v) to (ix) of Rule 11 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the Disciplinary Authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Government servant."

On receipt of the report of the inquiring authority, the disciplinary authority is empowered to remit the case to the inquiring authority for further inquiry in terms of sub-rule (1) of rule 15. Sub-rule (2)

further imposes an obligation upon the disciplinary authority to forward or cause to forward a copy of the report of the inquiry officer received by him together with its own tentative reasons for disagreement, if any, on any article of charge requiring the charged officer to submit a written representation to the disciplinary authority within fifteen days. On receipt of the representation, the disciplinary authority is required to record its finding on all or any of the articles of charge before proceeding further in the matter, and thereafter impose penalty prescribed under law. From the reading of the disagreement note, we are of the considered opinion that it does not satisfy the mandate of rule 15 (2) which *inter alia* requires recording of reason for disagreement with the report of the inquiring authority. We find that the disciplinary authority has failed to record any reason while disagreeing with the findings recorded by the inquiry officer, noticed hereinabove. Thus the entire proceedings stand vitiated as it amounts to gross violation of principles of natural justice, the charged officer having not been provided an opportunity to rebut the reasoning, as no reasons are recorded and communicated to him. This issue is no more *res integra* having been considered by the Apex Court in a catena of judgments. A three-Judge Bench of the Apex Court in case of ***Punjab National Bank & others v Kunj Behari Misra*** [(1998) 7 SCC 84] considered a similar provision, i.e., regulation 7 (2) of the Punjab National Bank Officer Employees

(Discipline and Appeal) Regulations, 1977. Sub-regulation (2) of regulation 7, though not *pari materia*, but carries similar provision as rule 15 (2) of the CCS (CCA) Rules, 1965. For purposes of understanding the mandate of regulation 7(2), the said regulation is noticed hereunder:

> "(2) The Disciplinary Authority shall, if it disagrees with the findings of the Inquiring Authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose."

A perusal of the above regulation will definitely convey that the purpose, scope and ambit of regulation 7(2) are similar to rule 15(2) of CCS (CCA) Rules, 1965. Interpreting the said regulation, the Hon'ble Supreme Court relied upon an earlier decision in ***Ram Kishan v Union of India & others*** [(1995) 6 SC 157], wherein the following observations were made:

> "...The purpose of the show cause notice, in case of disagreement with the findings of the enquiry officer, is to enable the delinquent to show that the disciplinary authority is persuaded not to disagree with the conclusions reached by the inquiry officer for the reasons given in the inquiry report or he may offer additional reasons in support of the finding by the inquiry officer. In that situation, unless the disciplinary authority gives specific reasons in the show cause on the basis of which the findings of the inquiry officer in that behalf is based, it would be difficult for the delinquent to satisfactorily give reasons to persuade the disciplinary authority to agree with the conclusions reached by the inquiry officer. In the absence of any ground or reason in the show cause notice it amounts to an empty formality which would cause grave prejudice to the delinquent officer and would

> result in injustice to him. The mere fact that in the final order some reasons have been given to disagree with the conclusions reached by the disciplinary authority cannot cure the defect...."

The Hon'ble Supreme Court considering ***Ram Kishan***'s case (supra) and some other judgments, held as under:

> "The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7 (2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file representation before the disciplinary authority records its findings on the charges framed against the officer."

A similar view has been held by another Bench of the Hon'ble Supreme Court in a later judgment reported as ***S. P. Malhotra*** *v* ***Punjab National Bank & others*** [(2013) 7 SCC 251], wherein it is held that in case the disciplinary authority does not agree with the findings recorded by the inquiry officer in disciplinary proceedings, it must record reasons for disagreement and communicate the same

to the delinquent and seek his response and only after considering the same, pass the order of punishment.

7. In view of the mandate of rule 15 (2) of CCS (CCA) Rules, 1965, the penalty order and the subsequent appellate order which also endorses the penalty order, are both liable to be set aside on this count.

8. From the reading of the article of charge, it is evident that no motive is attributed to the applicant. There is no specific allegation of any motive attributable to the applicant. Assuming the applicant had been negligent, it does not constitute misconduct, much less a service misconduct contemplated under rule 3 of the CCS (Conduct) Rules, 1964 warranting a penalty under rule 14 or rule 16 of the CCS (CCA) Rules, 1965. In ***Union of India & others v J. Ahmed*** [(1979) 2 SCC 286], the Hon'ble Supreme Court defined 'misconduct' as under:

> **"10.** It would be appropriate at this stage to ascertain what generally constitutes misconduct, especially in the context of disciplinary proceedings entailing penalty.
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> **11.** Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see *Pierce* v. *Foster* [17 QB 536, 542]). *A* disregard of an

essential condition of the contract of service may constitute misconduct [see *Laws* v. *London Chronicle* (*Indicator Newspapers* [(1959) 1 WLR 698])]. This view was adopted in *Shardaprasad Onkarprasad Tiwari* v. *Divisional Superintendent, Central Railway, Nagpur Division, Nagpur* [61 Bom LR 1596], and *Satubha K. Vaghela* v. *Moosa Raza* [10 Guj LR 23]. The High Court has noted the definition of misconduct in *Stroud's Judicial Dictionary* which runs as under:

> "Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct."

In industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct but in *Utkal Machinery Ltd.* v. *Workmen, Miss Shanti Patnaik* [AIR 1966 SC 1051 : (1966) 2 SCR 434 : (1966) 1 LLJ 398 : 28 FJR 131] in the absence of standing orders governing the employee's undertaking, unsatisfactory work was treated as misconduct in the context of discharge being assailed as punitive. In *S. Govinda Menon* v. *Union of India* [(1967) 2 SCR 566 : AIR 1967 SC 1274 : (1967) 2 LLJ 249] the manner in which a member of the service discharged his quasi judicial function disclosing abuse of power was treated as constituting misconduct for initiating disciplinary proceedings. A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences the same may amount to misconduct as was held by this Court in *P.H. Kalyani* v. *Air France, Calcutta* [AIR 1963 SC 1756 : (1964) 2 SCR 104 : (1963) 1 LLJ 679 : 24 FJR 464] wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct. It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would *ipso facto* constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but

> would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. Leaving aside the classic example of the sentry who sleeps at his post and allows the enemy to slip through, there are other more familiar instances of which a railway cabinman signals in a train on the same track where there is a stationery train causing head-on collision; a nurse giving intravenous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine and the aircraft crashes causing heavy loss of life. Misplaced sympathy can be a great evil (see *Navinchandra Shakerchand Shah* v. *Manager, Ahmedabad Coop. Department Stores Ltd.* [(1978) 19 Guj LR 108, 120]). But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty."

9. In the present case, the charge against the applicant would not fall within the definition of 'misconduct' as no ill motive has been attributed to him, and in any case an error of judgment or innocent mistake would not constitute misconduct. Otherwise also, the applicant being of the rank of Assistant Director, was not required to himself mention the address on the envelopes, and it was not the part of his job profile or duty. It being a ministerial act, had to be performed by a much junior official, like the dealing hand. To same effect are the findings of the inquiry officer. The disciplinary authority has not recorded any reason to disagree with the findings

of the inquiry officer, nor recorded its own findings as to in what manner the applicant is responsible for not sending the documents on the correct address of the society. In paragraph 5.25 of the OA the applicant has specifically mentioned that the dealing assistant was also charge-sheeted and has been exonerated. The only reply submitted in the counter affidavit is that the two cases are different from each other. The factum of initiation of disciplinary proceedings and exoneration of the dealing assistant is not denied in any manner. The applicant thus cannot be held responsible for the alleged act or any kind of misconduct. As a matter of fact, the disciplinary authority has not addressed this issue at all despite findings by the inquiring authority, causing grave prejudice to the applicant.

10. Learned counsel for the applicant has also brought to our notice a judgment dated 15.05.2013 passed in OA No.3527/2010 with OA No.3886/2010 – ***V. S. Verma v Delhi Development Authority & others***, decided on 15.05.2013, wherein a similar article of charge was served upon one Virender Singh Verma, Assistant working in Group Housing Branch, and on the basis of similar allegations disciplinary proceedings were held against him. It is deemed proper that the charge against Virender Singh Verma is reproduced hereunder:

> "Shri Virender Singh Verma, Asstt. while working in Group Housing Branch during the year 2003 prepared and put up letters to be sent to the Secretary/President of

Shreyas CGHS Ltd. to the Deputy Director (GH) DDA for signature and issue at wrong address.

Shri Virender Singh Verma, while sending letters to the Shreyas CGHS Ltd. did not care to verify the various addresses of the society from the RCS office. He also did not care to see that the reply from the representative of the society received in response to various letters of DDA, were from different addresses of the society and did not tally the signature on this letter. Sh. V.S.Verma, Asstt. willfully and negligently prepared and put up the letters with wrong address which was neither approved by the RCS nor sent by the office of the RCS to DDA at any point. The preparation and putting up these letters with wrong address of the society was a deliberate act of extending favouritism to a person.

By his above act Sh. Virender Singh Verma, Asstt. exhibited lack of absolute devotion to duty and lack of absolute integrity thereby contravened Rule 41 (i) and (ii) of DDA Conduct, Disciplinary and Appeal Regulations, 1999 as made applicable to the employees of the Authority."

Considering similar issue, a co-ordinate bench of the Tribunal held as under:

"16 In the above fact scenario, we do not find any reason to take any different view, except, treating the subject charges, i.e., sending letters on wrong address, which has not culminated in any loss to DDA, and as there was no instructions prevalent in DDA to check the latest address from the office of the RCS, before sending letter, and that the charge does not disclose any malafide intention on the part of the applicant, as 'negligence' and a 'judgment of error', and accordingly, we are of the considered view that the impugned orders deserves to be set aside."

11. In view of the above circumstances, the impugned penalty order as also the appellate order are not sustainable in law.

This Application is accordingly allowed. Impugned penalty order dated 16.03.2010 (Annexure A-2) and the impugned appellate order dated 04.11.2010 (Annexure A-1) are hereby quashed.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/as/