

New Delhi, this the 9th day of January 2017

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Page 1 of 10

- b) This Honøble Tribunal may kindly pass the Orders to quash the impugned Orders of the respondents as illegal land unconstitutional.
- c) This Honøble Tribunal may kindly pass the Orders to grant all the consequential benefits to the applicant.
- d) This Honøble Tribunal may pass any other order/direction as deemed fit and proper in the circumstances of the present case and in the interest of justice.ö

2. Resisting the O.A., the respondents have filed a counter reply.
The applicant has also filed a rejoinder reply thereto.

3. Brief facts: A charge memo dated 20.8.2010 was issued and served upon the applicant under Regulation 8 of the DMC Services (Control& Appeal) Regulations, 1959, calling upon the applicant to file his written statement of defence, if any, within 15 days of receipt of the charge memo. The statements of charge, and of allegations against him, annexed to the charge memo, were as follows:

Statement of Charge:

Sh.V.S.Chauhan while working as AE in Building Department, C.L.Zone remained incharge of the area of Ward No.12 during the year 2009-10. He failed to maintain absolute integrity, devotion to duty and committed gross misconduct which is unbecoming of MPL employee in as much as he failed to comply with the directions of senior officers by not returning/handing over the building file No.99 dated 28.5.09 in respect of property no.2542 Hudson Lane to OI (B)/CL Zone in spite of issuing various reminders.

He, thereby, contravened Rule 3(1)(i)(ii)(iii) of CCS (Conduct) Rules 1964 as made applicable to the employees of MCD.ö

Statement of allegations:

öSh.V.S.Chauhan, while working as AE in Building Department, C.L.Zone, remained in charge of the area of Ward No.12 during the year 2009-10.

Sh.V.S.Chauhan, AE (B) had booked the unauthorized construction carried out in the property No. 2542, Hudson Lane vide building file No.99 dated 28.5.2009. The demolition notice was issued on 4.6.2009 but thereafter he neither took any further action in the file nor handed over the same to OI (B), C.L.Zone. Accordingly, memos bearing No.1681/EE(B)/CLZ/2009 dated 25.11.2009, 1698/EE(B)/CLZ/2009 dated 1.12.2009 and 1530/EE(B)/CLZ/2009 dated 26.10.2009 were issued to Sh.V.S.Chauhan, AE to explain the reasons for not handing over the file to OI (B), C.L.Zone. He was further directed to hand over the building file dated 28.5.2009 immediately to OI(B), C.L.Zone. Sh V.S.Chauhan, AE submitted the reply dated 15.1.2010 to the aforesaid memos in which he tried to mislead the authorities that show cause notice was not put up to him by concerned JE. The said contention of Sh.V.S.Chauhan AE was not correct because he himself was working as JE (B) in the area and booking was also made by him. Thereafter a number of memos dated 19.1.10, 5.2.10 and 23.4.10 were issued to Sh.V.S.Chauhan AE to return the building file but he did not return the Building file so far.ö

The applicant did not submit his written statement of defence. The Special Inquiry Officer conducted departmental inquiry. The applicant participated in the inquiry. Five witnesses examined on behalf of the Department were also cross-examined by the applicant. On behalf of the applicant, Sri Atul Kumar, formerly working as JE (B), Building Department, Civil Lines Zone, was examined as D.W.1. The relevant documents produced during the enquiry were also marked as Exts. The Special Inquiry Officer submitted his report dated 22.2.2013 holding that the charge against the applicant was proved. The applicant also submitted his reply to the enquiry report, a copy of which was supplied to him. Upon hearing the applicant in person, and after considering the enquiry report, the applicant's reply thereto and written

submission, and other materials available on record, the Additional Commissioner (Engg.) proposed to inflict on applicant the penalty of “*stoppage of three increments with cumulative effect*”, vide order dated 1.7.2013. Accordingly, a show-cause notice dated 26.8.2013 was issued and served upon the applicant. The applicant submitted his reply thereto. After considering the entire record and reply of the applicant to the show-cause notice, the Additional Commissioner (Engg.) found no new material warranting any modification in the penalty proposed in the order dated 1.7.2013. Accordingly, the Additional Commissioner (Engg.), vide his order dated 12.3.2014, confirmed the said notice of penalty of *stoppage of three increments with cumulative effect*, which was notified vide office order dated 9.4.2014. Being aggrieved by the said penalty order, the applicant preferred an appeal to the Commissioner. The Commissioner, after considering the enquiry report, applicant's appeal, allied records of the case, etc., and also upon hearing the applicant in person, proposed to inflict the penalty of “*reduction in rank*” on the applicant, vide his order dated 10.11.2014. Accordingly, a show-cause notice dated 17.11.2014 was issued and served upon the applicant. The applicant submitted his reply dated 4.12.2014. The Commissioner, after considering the applicant's reply and allied records of the case, confirmed the proposed penalty of *reduction in rank* on the applicant and further ordered that the earlier penalty passed by the Additional Commissioner (Engg.) might be treated as revoked, vide order dated 19.1.2015, which was notified as office order dated 3.2.2015.

Being aggrieved by the order of penalty of *reduction in rank*", the applicant preferred an appeal dated 11.2.2015 before the Honøble Lt. Governor of Delhi. The Honøble Lt. Governor of Delhi, in the capacity of Appellate Authority, after considering the applicant's appeal and allied records of the case, rejected the applicant's appeal. However, the Honøble Lt. Governor ordered that the impugned penalty be modified as, *the appellant is reduced to the lower post of Junior Engineer, until he is found fit, after a period of two years from the date of the order of Disciplinary Authority, to be restored to the post of Assistant Engineer.*"

4. We have carefully perused the records, and have heard the applicant in person, and Mr.M.S.Reen, the learned counsel appearing for the respondents. We have also perused the written arguments filed by the applicant.

5. During the course of oral arguments and also in his written arguments, the applicant took us through the enquiry report and submitted that the Inquiry Officer, the Disciplinary Authority, and Appellate Authority have failed to appreciate the facts/materials available on record that in case no demolition order is passed, the file is not required to be submitted to the OI(B); that he was not the custodian of the U.C. file which consisted only three loose papers, namely, copies of FIR, show-cause notice, and demolition notice; and that Shri Atul Kumar, JE(B), who was examined as D.W.1 and was the custodian of the said U.C. file, had handed over the same to his successor. It was also submitted by the applicant that the Inquiry

Officer and the respondent-authorities have also failed to appreciate the statement of Shri Atul Kumar, JE(B), Building Department, Civil Lines Zone (D.W.1) that he was the sole custodian of the FIR book, Notice u/s 344(1) and 343 book, and demolition notice u/s 343 book.

6. *Per contra*, it was submitted by Mr.M.S.Reen, the learned counsel appearing for the respondents that there was sufficient evidence to prove the charge against the applicant. The Disciplinary Authority and Appellate Authority have all recorded the findings in fair manner. The procedure established by law has been duly followed. Thus, there is no infirmity in the orders passed by the authorities.

7. It is no more *res integra* that the power of judicial review does not authorize the Tribunal to sit as a court of appeal either to reappraise the evidence/materials and the basis for imposition of penalty, nor is the Tribunal entitled to substitute its own opinion even if a different view is possible. Judicial intervention in conduct of disciplinary proceedings and the consequential orders is permissible only (i) where the disciplinary proceedings are initiated and held by an incompetent authority; (ii) such proceedings are in violation of the statutory rule or law; (iii) there has been gross violation of the principles of natural justice; and (iv) on account of proven bias and mala fide. The Honøble Supreme Court in **B.C.Chaturvedi Vs. Union of India & others**, [(1995) 6 SCC 749], while examining the scope of judicial review, held as under:

õ12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made.

Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.ö

8. We have examined the inquiry report. On consideration of the evidence/materials produced during the course of inquiry, the Special Inquiry Officer has recorded thus:

- (i) öí .the Charged Official, while working as AE(B)/Building Department, C.L.Zone, had booked the unauthorized construction carried out in P.No.2542, Hudsan Lane, Delhi, in the capacity of JE (B) vide U/C file bearing No.99/B/UC/CLZ/2009 dated 28.5.2009. As per procedure, n noticing the unauthorized construction, first of all FIR is prepared by the J.E.(B) mentioning therein necessary details of the property i.e. property number in which the unauthorized construction is being

carried out, floor on which the construction is carried out, quantum of construction, nature of construction, material used in the construction, number of masons, labourers and carpenters present at site of work and rough sketch map of construction etc. Thereafter, the AE (B) passes orders on the original FIR put up by the area J.E.(B) for issuance of show-cause notice, taking action as per DMC Act. After that orders for issuance of demolition notice and demolition orders are passed and the file is handed over to the OI (B) of the zone for taking action as per policy of the Building Department.ö

- (ii) öí The original FIR, second copy of show-cause notice, second copy of demolition notice and demolition orders (i.e. complete U/C file No.99 dated 28.5.2009) were in the custody of the Charged Official in the shape of Building File No.99 dated 28.5.2009 in respect of P.No.2542, Hudson Lane. But he failed to return/hand over the building File No.99 dated 28.5.09í ö
- (iii) öThe pleas taken by the Charged Official in his written arguments and evidence of DW-1 that copy of FIR and both Notices regarding booking file No.99 dated 28.5.2009 were available in relevant books when he handed over the charge to Shri Rajpal, JE(B) is not convincing because DW-1 had handed over the copy of FIR and copies of notices i.e. show cause notice and demolition notice and not the original FIR which was prepared by the Charged Official on 28.5.2009 and second copies of show-cause notice and demolition noticeí .ö
- (iv) öí .The charge Official should have immediately handed over the Building File No.99 dated 28.5.2009 to the OI (B)/ C.L.Zone after passing of demolition orders. But he failed to do soí ..

The above observations/findings are based upon evidence/materials, and it cannot be said that there was no evidence before the Special Inquiry Officer to substantiate the charge.

9. In the order dated 2.6.2015 (Annexure A2) the Honøble Lt. Governor, i.e., the Appellate Authority has recorded as under:

õ8. I have gone through the contentions of the appellant in his appeal petition and during the personal hearing, his representations to the Additional Commissioner (Engg.) and Commissioner, North DMC, the impugned penalty order and relevant records of the case. Admittedly the appellant had booked the impugned property no.2542, Hudson Lane in the dual capacity of Assistant Engineer and Junior Engineer of Ward 12 of CL Zone. Therefore, it was his responsibility to have completed all the requisite formalities, which he has eloquently brought in his appeal petition. As per the submission of the Vigilance department due to the non availability of building file no.99 dated 28.5.2009 no further action under the DMC Act could be taken against the of the (sic) impugned property and the Owner/Builder till date. The applicant has claimed immunity from any penal action by evidencing the reply of record keeper dated 24.9.2013, in response to his RTI application, ID No.21.06.2013. The evidence of the availability of the relevant FIR Book and show cause notice book, with original FIR and duplicate & triplicate copy of show cause notice respectively, which was to be the enclosures of UC file No.99, actually establishes the professional misconduct of the appellant, which read with the acknowledgement of prescribed procedure mentioned in the appeal petition, only points towards a preponderance of the applicant having knowingly committed the omission/commission, for reason best known to him. The appellant was posted a field officer in the area and was mandated to enforce the Municipal Building Bye Laws in letter and spirit. Non submission of the building file no.99 dated 28.05.2009 had prevented prompt follow-up action against the impugned property and the Owner/Builder. Therefore, the records beyond any reasonable doubt reflect that the appellant had been grossly lackadaisical in discharge of his duties. Such attitude amongst the Municipal employees has been the bane for mushrooming unauthorized construction and resultant social maladies that plague this metropolis. Hence such misconduct cannot go unpunished, in fact merits to be meted out commensurate punitive action, so as to be an adequate deterrent for others.ö

Perusal of the above observations recorded by the Appellate Authority reveals that the points urged by the applicant before this Tribunal were also

raised by him in his appeal petition, and the Appellate Authority duly considered those points on the basis of materials available on record, but did not find any substance therein.

10. In the light of our above discussions, we do not find any merit in the O.A. Accordingly, the O.A., being devoid of merit, is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SHEKHAR AGARWAL)
ADMINISTRATIVE MEMBER

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