

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**M.A. No.1442/2016 In
O.A. No.613/2016**

New Delhi this the 2nd day of September, 2016

**HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MR. V.N. GAUR, MEMBER (A)**

B.D. Sharma ..Applicant

(Argued by: Shri S.K. Tyagi, Advocate)

Versus

Commissioner,
North Delhi Municipal Corporation
and OthersRespondents

(By Advocate: Shri R.V. Sinha)

ORDER (ORAL)

Justice M. S. Sullar, Member (J)

M.A. No.1442/29016

The crux of the facts and material, which needs a necessary mention, for the limited purpose of deciding the instant Miscellaneous Application (MA), bearing No.1442/1996, is that, applicant B.D. Sharma, Assistant Engineer (Building), remained incharge of the area at the relevant time. He was duty bound to prevent and demolish the unauthorized constructions at its initial/ongoing stage as and when carried out in the area under his charge. He was also required to prosecute the persons responsible for unauthorized constructions u/s 343/344 & 345-A and 332/461 & 466-A of D.M.C. Act.

2. According to the respondents, due to unauthorized construction, the unauthorized building collapsed on 29.03.2008, resulting thereby death of 9 labourers and serious injuries to 12 labourers.

3. Moreover, applicant was required to exercise proper supervision & control over the functioning of his subordinate staff and to ensure proper & timely action to control the unauthorized constructions. Thus, he was stated to have committed grave misconduct in performance of his duties.

4. As a consequence thereof, a joint Departmental Enquiry (DE) was initiated against the applicant and other co-delinquents. He was served with the following statement of allegations:-

“Shri B.D. Sharma while working as AE in Building Deptt., Shah (North) Zone, remained incharge of the area of Brahmputri w.e.f 01.9.2007 to 19.02.2008 & 12.03.2008 to 29.03.2008. He was duty bound to get stopped/demolished the unauthorized construction at initial/ongoing stage as and when carried out in the area under his charge. He was also required to get booked the unauthorized construction for taking action u/s 343/344 and to get initiated action u/s 345-A and 332/461 or 466-A of the DMC Act. He was also required to exercise proper supervision and control over the functioning of his subordinate staff to ensure proper and timely action against the unauthorized construction.

On receipt of a reference from Commissioner to carry out the investigation into the collapse of building situated in property No.C-85, Gali No.8, Brahmputri, investigation was conducted by vigilance deptt. The investigation revealed that this property was purchased by the owner/builder in the year 2006 with built up area at ground floor and first floor. The owner/builder wrote to MCD for seeking permission to repair of the building vide his letter dated 15.01.2007 as brought out by him in his reply of the show cause notice but the MCD officials failed to take action on the request of the owner/builder and as per available record the application of the owner/builder remained unattended. The builder started construction on the site unauthorizedly in the shape of walls at ground floor which was detected by JE & AE on 7.11.2007. After detection stop work notice was issued vide Bo.D-2555/EE(B)-I/SN dated 07.11.2007 and the copy of the same was sent to P.S.

Usmanpur on the same day. The Zonal staff took a demolition action on 07.01.2008 with the help of police on 2nd floor only and a letter was sent to the police station, Usmanpur on 7.1.2008 for keeping a watch on building activities pertaining to this property. As per record it is noticed that further demolition programme was fixed for 14.1.2008 on this property but police force was not made available due to requirement of sufficient force for arrangements of Republic Day. In spite of above said actions the owner/builder did not stop building activities in the said premises. After that the file was put up by JE (B) through AE, EE & SE to DC for seeking approval of sealing notice. DC ordered to issue show-cause notice to the owner/builder for sealing on 23.1.2008. Accordingly the show-cause notice was issued under the signatures of the Dy. Commissioner on 23.01.2008 for unauthorized construction at ground floor, first floor and second floor without sanctioned building plan. The owner/builder was given time for 3 days for response. The owner/builder submitted the reply of this show-cause notice on 25.01.2008. The owner/builder also asked for personal hearing from DC. The Dy. Commissioner gave the hearing to the owner/builder on 19.02.2008. After the hearing to the owner/builder, Dy. Commissioner ordered for demolition of second floor on 29.02.2008 and marked the file to EE(B), who further marked it to AE and AE marked the file to JE concerned. After that no action was taken by the office of the Zone. Ultimately the unauthorized building collapsed On 29.03.2008 resulting thereby death of 9 labourers and serious injuries to 12 labourers.

From the foregoing, it is evident that Shri B.D. Sharma, AE failed to maintain absolute integrity, devotion to duty and committed gross misconduct in as much as he allowed the owner/builder to carry out the unauthorized construction in property No.C-85, Gali No.8, Brahmpuri, and failed to get stopped/demolished the same at initial ongoing stage. He has also failed to get booked any sort of unauthorized construction in the property for taking action u/s 343/344 of DMC Act. He also failed to get initiated action for prosecution of the owner/builder u/s 345-A of DMC Act. He also failed to get initiated action for prosecution of the owner/builder u/s 332/461 or to file a complaint u/s 466-A of the DMC Act. He also failed to comply with the direction of DC/Shah/(North)Zone dated 29.02.2008 as he failed to get demolished the U/C carried out in SF in the property against which DC/Shah(North) passed orders for demolition. He also failed to exercise proper supervision and control over the functioning of his subordinate JE who did not take proper and timely action against U/C.

He, thereby, contravened Rule 3(1)(i)(ii)(iii) and 3(2) of CCS(Conduct) Rules,1964 as made applicable to the employees of MCD".

5. After following the due procedure of enquiry, the Enquiry Officer (EO) concluded, that charge No.2 was partly proved, whereas Charges Nos.4, 5 & 6 were duly proved against the applicant, vide impugned enquiry report dated 07.03.2014 (Annexure A-4).

6. Thereafter, the Disciplinary Authority (DA) has imposed a penalty of reduction in rank, i.e., AE to JE on the applicant. The appeal filed by him dismissed vide impugned order dated 01.12.2015 the Appellate Authority (A) and conveyed to the applicant vide impugned Memo dated 27.01.2016 (Annexure A-1).

7. Aggrieved thereby, the applicant has preferred the main OA bearing No.613/2016, challenging the impugned enquiry proceeding and orders on the variety of grounds, pleaded therein, being arbitrary, illegal and without jurisdiction, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

8. The respondents have refuted the claim of the applicant, and filed the reply denying all the allegations & grounds contained in the OA and prayed for its dismissal.

9. The applicant has also filed the present MA No.1442/2016, for stay of the impugned orders, during the pendency of the main OA.

10. We have heard the learned counsel for the parties and gone through the record with their valuable help.

11. As is evident from the record that indeed serious allegations of misconduct are assigned to the applicant that due to unauthorized construction, the unauthorised building collapsed causing 9 deaths and injuries to 12 labourers in the area of the applicant. The charge No.2

stand partly and whereas charges No.4 to 6 stand duly proved, as per impugned enquiry report dated 07.03.2014 (Annexure A-4) of the EO.

12. Having completed all the codal formalities and agreeing with the findings of the EO, a penalty of reduction in rank, i.e., from AE to JE was imposed on the applicant, vide impugned order dated 20.05.2015 by the Disciplinary Authority (DA). Similarly, the appeal filed by the applicant was dismissed, vide detailed impugned order dated 01.12.2015 by the Lt. Governor, New Delhi (Appellate Authority)(AA), which was conveyed to the applicant vide impugned Memo dated 27.01.2016 (Annexure A-1).

13. Ex-facie, the arguments of learned counsel, that the operation of the impugned order is liable to be stayed as charge is defective and there is no evidence on record. There are many flaws in the conduct of the DE and since the DA and AA have not considered all the issues raised by the applicant, so the impugned orders are arbitrary and illegal, are not only devoid of merit but misplaced as well at this stage.

14. All the indicated points, urged on behalf of the applicant, cannot legally be decided at the stage of consideration of matter of interim injunction, and can only effectively be decided at the time of final disposal of the main OA, which is listed for final hearing on 23.11.2016. If

the operation of the impugned orders is stayed, it will amount to acceptance of the grounds contained in the OA, which is not legally permissible.

15. As indicated hereinabove, a penalty of reduction in rank was imposed on the applicant as back as on 20.05.2015, which was maintained by the Lt. Governor, Delhi, in appeal. It is not a matter of dispute that the reversion order has already been implemented by the respondents. In that eventuality, operation of the impugned order cannot legally be stayed without deciding the real controversy between the parties in the main OA.

16. Therefore, the applicant is not at all entitled to claim the stay of operation of the impugned order at this stage.

17. In the light of the aforesaid reasons, without commenting further anything on merits, lest it may prejudice the case of either side, during the course of hearing of the main OA, as there is no merit, the instant MA is hereby dismissed, as such.

Needless to mention, that nothing observed hereinabove, would reflect in any manner on the merits of the case, as the same has been so recorded for a limited purpose of deciding the matter of interim stay. No costs.

(V.N. GAUR)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)
02.09.2016

Rakesh