

**Central Administrative Tribunal
Principal Bench**

OA No. 1531/2013

This the 20th day of August, 2016

Hon'ble Mr. Justice M.S.Sullar, Member (J)
Hon'ble Mr. V. N. Gaur, Member (A)

Sh. Bhudev Prasad Rathore,
Son of Shri Mawasi Ram,
R/o E-200, Krishan Vihar,
Near Shrangar Jewellers, Som Bazar Road,
Delhi-110086
Presently working as J.E.,
Store Division-II, Paschim Vihar,
DDA Office, Near Jal Board Office,
Outer ring road,
Delhi
aged about 56 years

- Applicant

(By Advocate: Mr. Malaya Chand)

Versus

Delhi Development Authority
Through its Vice Chairman,
Vikas Sadan, INA,
New Delhi.

- Respondents

(By Advocate: Mr. A.K. Roy for Mr. Manish Garg)

ORDER (ORAL)

Hon'ble Mr. V.N. Gaur, Member (A)

The applicant has filed this OA with the following prayer:

“(i) Quash and set aside the Charge sheet (Annexure-A/1),
Inquiry Report (Annexure-A/2), Copy of Impugned Order of
Disciplinary Authority (Annexure-A/3) Copy of order of appellate
Authority (Annexure-A/4)

(ii) Direct the respondent to release all consequential benefits as was deducted and not released out of impugned penalty of the Disciplinary Authority.

(iii) Any other relief which the Hon'ble Court deem fit and proper may also be granted to the petitioners."

2. The respondents vide memorandum dated 06.06.2011 served a charge sheet on the applicant containing the following charges:

"Shri B.P. Rathore while working as JE (Bldg.) in C.L. Zone during the year 2003 failed to maintain absolute integrity, devotion to duty and omitted gross misconduct in as much as he failed to take action against the unauthorized construction carried out in property bearing No.1/25 Main road, Mangal Bazar Road, Burari, Delhi and 1/25, 100" Main Road, Burari when an adjacent property was booked by him 03 months before the date of booking of the two subject properties and the construction activities were in progress during his working tenure.

By his above act, Shri B.P. Rathore, J.E. exhibited lack of absolute devotion to duty and acted in a manner unbecoming of a government servant thereby contravened Rule 4 1(i) (ii) and (iii) of DDA Conduct, Disciplinary and Appeal Regulations 1999 as made applicable to the employees of the Authority."

3. As the applicant denied all the charges the department went ahead with a departmental enquiry (DE) in which the charges were found to be proved. After giving an opportunity to the applicant to make representation, the Disciplinary Authority (DA) passed an order on 16.08.2012 imposing the penalty of reduction by two stages in the scale of pay for a period of two years with cumulative effect on the applicant. It was further ordered that during the currency of penalty he will not earn increments and after expiry of period of such reduction it will have the effect of

postponing his future increments of pay. The applicant submitted his appeal against the order of the DA vide letter dated 11.09.2012 but the same was rejected by the Appellate Authority (AA) on various grounds.

4. Learned counsel saliently argued that the charge against the applicant was that he failed to take action against some unauthorised construction but the record show that there was no lapse on his part because he had submitted his report, and the concerned authority had booked that property also. It was not the duty of the applicant to organise demolition. Therefore, he could not be held responsible for the unauthorised construction that came up as has been alleged in the imputation of charges. He also questioned the report submitted by the Inquiry Officer (IO) stating that this report was based on no evidence and the IO himself has used words like 'probable' and 'grave omission' showing that the IO proved the charges not on the basis of evidence but on the basis of surmises and conjectures. It was further submitted that the applicant had raised various issues in his representation on the report of the IO on 28.03.2012 and his letter addressed to the AA dated 11.09.2012 but the DA and AA did not deal with the contentions raised by the applicant. Learned counsel also contended that the disciplinary proceeding against the applicant suffered from delay and laches as the charge sheet issued in 2011 related to the period 2003-04.

Reliance was placed on the cases of **State of Maharashtra vs. W.R. Kaidalwar**, 1981 (2) SLR 73, **M.L. Tahilani vs. Delhi Development Authority**, CWP No.6048/1998 and CWP No.6081/1998, **Bani Singh vs. State of M.P.**, AIR 1990 SC 1380, **Kundan Lal vs. Delhi Administration**, 1976 Lab IC 811, to buttress the argument that the charge sheet was liable to be quashed on the ground of delay and laches itself. He further submitted that even if there was a lapse on the part of the applicant, respondents have not been able to impute any ill motive. If the omission on the part of the applicant was due to negligence or error of judgment or an innocent mistake, that would not constitute a misconduct. Learned counsel relied on **Union of India vs. J. Ahmed**, AIR 1970 SC 1022.

5. Learned counsel for the respondents denied all the allegations made in the OA and by the learned counsel for the applicant, and submitted that the respondents have conducted disciplinary enquiry strictly in accordance with the rules and law. He was given full opportunity to defend himself and the role of the Tribunal in disciplinary matters was limited to examine whether the proceedings had been conducted in accordance with law and whether the charged officer had been given full opportunity to defend himself in accordance with the principles of natural justice.

6. We have heard the learned counsel for the parties and perused the record. The applicant in his appeal submitted to the AA has raised a number of substantial issues; namely, the charge sheet is suffering from the vice of abnormal laches and delay of more than eight long years; the applicant was pitted against the Presenting Officer, who was legally trained prosecutor; the alleged unauthorised construction had taken place prior to the applicant's taking over the charge of that area; the finding of the IO was biased as he exceeded his jurisdiction and made observations on his own perception; IO also used words like 'serious', 'deliberate' and 'malafide' and went on proving the charge without there being any evidence in support of the same; IO cross examined the applicant during the enquiry in the name of conducting general examination; and, that the entire case was based on the allegation that the alleged unauthorised construction was not booked timely when an adjacent property was booked without specifying that adjacent property. The AA in its order dated 03.04.2013 has dealt with the above contentions in the following manner:

“AND WHEREAS the undersigned being the Appellate Authority after having gone through the charges against Sh. B.P. Rathore, JE, the report of the I.O., the orders of the disciplinary authority, the contents of the appeal and the facts of the case on record finds no merit in the case. Accordingly, the appeal of Sh. B.P. Rathore, J.E. dated 11.09.12 is rejected.”

7. There can be no dispute that this would surely be one of the brief treatments of so many contentions raised by the petitioner. In **A. Palaniswamy vs. UOI & ors.**, AIR 1989 (2) CAT 205 (Madras) the Madras Bench of this Tribunal has held that the DA should consider and deal with the defence pleas put forward by the charged officer effectively and dispassionately. It is obvious that the same logic will apply to the AA as well. In **Mahabir Prasad vs. State of U.P.**, AIR 1970 SC 1302 the Hon'ble Supreme Court observed thus:

“It must appear not merely that the authority entrusted with quasi-judicial authority has reached a conclusion on the problem before him: it must appear that he has reached a conclusion which is according to law and just, and for ensuring that end he must record the ultimate mental process leading from the dispute to its solution. Satisfactory decision of a disputed claim may be reached only if it be, supported by the most cogent reasons that appeal to the authority. Recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim. If the order is subject to appeal, the necessity to record reasons is greater, for without recorded reasons the appellate authority has no material on which it may determine whether the facts were properly ascertained, the relevant law was correctly applied and the decision was just.”

8. Following the above judgment the Government of India have issued instructions under Rule 15 of CCS (CCA) Rules 1965 stressing on the need for self-contained, speaking and reasoned order to be passed by the disciplinary/appellate/ reviewing authority, for compliance of the authorities. We, therefore, find that the order passed by the AA can not be legally sustained.

9. Considering the preceding discussion, the facts of the case and the legal position, the order passed by the AA dated 03.04.2013 is quashed and set aside. The matter is remanded back to the appellate authority to pass a fresh order by dealing with all the contentions of the applicant raised in his appeal dated 11.09.2012 within a period of three months from the date of this order. The applicant will have liberty to approach this Tribunal if he is not satisfied with that order. No costs.

(V.N. Gaur)
Member (A)

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

‘sd’

20th August, 2016