

CENTRAL ADMINISTRATIVE TRIBUNAL**PRINCIPAL BENCH: NEW DELHI****O.A No. 1571/2012****New Delhi this the 14th day of July, 2016.****Hon'ble Mr. Justice M. S. Sullar, Member (J)**
Hon'ble Mr. V. N. Gaur, Member (A)

Shri H.K. Sharma
UDC, aged about 51 years
House No.12,
S/o Asha Ram Sharma
R/o Village Bakoli,
Delhi-110036.Applicant

(Argued by: Shri Malaya Chand, Advocate)

Versus

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

(By Advocate : Shri Manish Garg)

ORDER(ORAL)**Justice M. S. Sullar, Member (J)**

The challenge in the instant Original Application (OA), filed by applicant, H.K. Sharma, Upper Division Clerk (UDC) in Slum and J.J. Department (S&JJ) of Government of Delhi, is to the impugned Memorandum of charge sheet dated 11.05.2007 (Annexure A-1), enquiry report dated 04.11.2008 (Annexure A-2) and order dated 21/26.4.2011 (Annexure A-3), whereby a penalty of reduction of pay by 3% of his basic pay plus Grade Pay (one increment for one year), in the time scale of pay with cumulative effect, with a further stipulation that, he will not earn increment of his pay during the period of his

reduction and after expiry of penalty period, reduction will have the effect of postponing his future increments of pay, was imposed by Disciplinary Authority (DA). Applicant has also assailed the impugned orders dated 05.09.2011 (Annexure A-4), vide which his appeal was dismissed by the Appellate Authority (AA) and dated 17.02.2012/01.03.2012 (Annexure A-5), by means of which his Revision Petition was dismissed by the Revisional Authority (RA) as well.

2. The matrix of the facts and material, which needs a necessary mention, for the limited purpose of deciding the present OA, and emanating from the record is that, the applicant, while working as UDC in the S&JJ Department of Government of Delhi, was stated to have not maintained the proper record of allotment of plots and committed grave misconduct in this regard.

3. As a consequence thereof, applicant was served with the impugned Memorandum, Statement of Imputation of Misconduct or Misbehaviour and following Article of Charge dated 11.05.2007 (Annexure A-1 Colly.):-

“Shri H.K. Sharma, UDC was working as UDC in the Office of Assistant Director/West Zone in Slum Department. He failed to maintain the record of allotment files in AD/W.Zone/Slum Office which resulted in loss of more than 900 allotment files in West Zone as a result of which the department is facing difficulties in recovering Licence Fee, Ground Rent etc. from the Plot Holders.

By his above acts, Shri H.K. Sharma, UDC exhibited lack of absolute devotion of duty, lack of absolute integrity and acted in a manner unbecoming of a Government Servant thereby contravened Rule 4.1(1)(ii) and (iii) of DDA Conduct Disciplinary and Appeal Regulations 1999 as made applicable to the employees of the Authority.

4. Although the applicant has denied the allegations contained in the charge, however, the regular Departmental Enquiry (DE) was ordered against him under the provisions of Regulation 25 of the DDA Conduct, Disciplinary and Appeal Regulations, 1999 [hereinafter to be referred as "Service Regulation"]. Consequently, an Enquiry Officer (EO) was appointed, who completed the Departmental Enquiry (DE) and came to the conclusion that, the charge framed against the applicant, is duly proved vide his impugned enquiry report dated 04.11.2008 (Annexure A-2).

5. Agreeing with the findings of the enquiry report, the DA initially awarded the indicated penalty on the applicant vide earlier punishment order dated 02.07.2009, which was upheld in appeal by means of an order dated 02.11.2009 by the AA.

6. Dissatisfied with the above orders, the applicant had filed OA bearing No.534/2010 which was accepted. The impugned orders (therein) were set aside with a liberty to respondent to resume the proceedings from the stage of passing an order by the DA, in the light of aforesaid observations, vide order dated 11.11.2010 (Annexure A-11) by this Tribunal.

7. Thereafter the remand of the case, the same punishment was awarded to the applicant vide fresh impugned order (Annexure A-3) by the DA.

8. Sequelly, the appeal and revision filed by the applicant were also dismissed vide impugned orders dated 05.09.2011

(Annexure A-4) and dated 17.02.2012/01.03.2012 (Annexure A-5) by the Appellate/Revisonal Authorities respectively.

9. Aggrieved thereby, the applicant has preferred the instant OA challenging the impugned enquiry proceedings and the orders, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985 (hereinafter to be referred as "Act").

10. The case set up by the applicant, in brief, in so far as relevant, is that, there is no cogent evidence on record to prove the charges against the applicant but the EO has wrongly held that the charges against him stand proved. The Disciplinary, Appellate and Revisonal Authorities have just ignored the material issue and accepted the report of the EO in a mechanical manner. He is held guilty out of malice and not on the basis of evidence on record.

11. Further, it was alleged that even the applicant was not working on the relevant seat, when the allotment files of the plots were misplaced. He cannot be held responsible for an act which was done by several other persons. It was pleaded that there is a delay/laches of more than 12 years between the alleged occurrence and issuance of charge sheet, which is unreasonable and illegal.

12. According to the applicant, the action of the respondent is bad in law. He has been discriminated, as similarly situated co-charge sheeted employees have been exonerated by the competent authority, whereas he (applicant) was punished on

the similar allegations. Thus, the impugned action of respondent is violative of Articles 14 & 16 of the Constitution of India.

13. Levelling a variety of allegations, and narrating the sequence of events, in detail, in all, the applicant claimed that impugned enquiry report and orders are illegal, arbitrary, whimsical and violative of principles of natural justice. On the basis of the aforesaid, the applicant sought to challenge the enquiry proceedings and orders, in the manner indicated hereinabove.

14. The respondent has refuted the claim of the applicant and filed the reply, wherein it was pleaded that the applicant has committed the pointed misconduct while performing his official duty as UDC in S&JJ Department. He was accordingly charge sheeted and departmental enquiry was initiated. Thereafter, an EO was appointed. After following due procedure and recording the evidence, the EO submitted his report on the basis of which, the DA has rightly awarded the pointed punishment. The appeal and revision filed by the applicant were termed to be rightly dismissed. In all, the respondent claimed that the applicant was rightly punished after taking into consideration the totality of facts, circumstances and evidence on record by the Disciplinary Authority. However, the respondent has not denied the exoneration of other similarly situated co-employees by the competent authority.

15. Virtually acknowledging the factual matrix and reiterating the validity of the enquiry proceedings & the impugned orders, the respondent has stoutly denied all other allegations and grounds contained in the main OA and prayed for its dismissal.

16. After hearing the learned counsel for the parties at quite some length, going through the record with their valuable assistance and after considering the entire matter, we are of the firm view that the present OA deserves to be accepted for the reasons mentioned hereinbelow.

17. What cannot possibly be disputed here is that, applicant was promoted and posted in the year 2004 as UDC in S&JJ Department of Government of Delhi. The DA has acknowledged that applicant has joined the relevant seat on 3.6.2004. The EO has observed in his impugned report that as per document exhibit D-3, it becomes clear that files in question were missing before 22.06.1992. The Director Headquarter gave directions dated 26.03.2001, to assess how many files were missing, i.e. much prior to the joining of applicant as UDC at the relevant seat. That means the fact of missing files was already known to the Department. The prosecution has miserably failed to produce any cogent evidence on record to connect the applicant with regard to the missing of files and non-maintenance of record by him. The suspicion, howsoever strong may be, cannot take the place of proof. It is now well settled principle of law that a Government employee cannot be punished without any

evidence and deserves to be exonerated, however, painful the same may be. Therefore, indeed the applicant cannot and should not be held liable for the files which were already missing during the tenure of some other officials. In this manner, the findings of EO are based on speculative assumptions and without any cogent evidence on record.

18. The Hon'ble Apex Court in cases of ***Roop Singh Negi Vs. Punjab National Bank and Others (2009) 2 SCC 570*** and ***State of Uttar Pradesh and Others Vs. Saroj Kumar Sinha (2010) 2 SCC 772*** has ruled that function of Enquiry Officer is quasi-judicial in nature and Enquiry Officer acting in quasi-judicial authority, is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/ Government. His function is to follow the statutory procedure of enquiry and then to submit the report in accordance with law and not otherwise. Hence the enquiry report is vitiated, illegal and the EO has exceeded his jurisdiction, while performing his quasi judicial duty.

19. Likewise, the Disciplinary, Appellate & Revisional Authorities also perform quasi judicial functions in the regular departmental enquiry. Not only that, the indicated vital issues were just ignored by the DA, AA and RA with impunity as well, at the same time. They have not examined the matter in the right perspective to decide the real controversy between the parties. Therefore, any such punishment/appellate/revisional order passed on the basis

of such illegal enquiry report, would automatically fall on their ground on its own legs and cannot legally be sustained.

20. Therefore, the crux of law laid down in the aforesaid judgments is *mutatis mutandis* applicable to the facts of the present case and is a complete answer to the problem in hand. Thus seen from any angle, the impugned enquiry report and orders cannot legally be sustained and deserve to be set aside.

21. There is yet another aspect of the matter which can be viewed entirely from a different angle. The applicant has specifically pleaded that he has been discriminated by the relevant authorities. The applicant has brought the fact of discrimination to the knowledge of authorities. Not only that, he has also specifically mentioned in ground of appeal (Annexure A-13) (ground No.3) that similarly situated 4(four) Charged Officials (COs) of S&JJ Department, were also separately proceeded with the departmental enquiry. All those employees have already been exonerated and charges were dropped against them vide order No.D/46/JLO(V)DUSIB/2011 dated 26.04.2011 relating to one of the Co-COs Shri Narender Pal Malik, LDC and order No.D/78/JLO(1)DUSIB/2011 dated 26.04.2011 in respect of Shri Dalip Singh Yadav, LDC. Applicant has also attached these orders exonerating them with the appeal. Likewise, in the grounds of revision/review (Annexure A-14), the applicant has pleaded as under:-

"In this connection, it is submitted that I am not at all guilty as the issue of so called missing files was taken up years before my joining in

Slum & JJ/MCD. A copy of Minutes of Meeting held on 06.05.1992 under the Chairmanship of Director (S&JJ) was also given to IO in which it was decided to prepare a list of properties where files are not available. In fact the files were never constructed. Further Dir. (HQ) vide his note dated 26.03.2001 ordered all concerned to put up a list of all those files which are in existence in the offices to Vigilance Department. At the time of my joining (S&JJ)/MCD on 20.05.2004 there were no so called missing files. In the year 2005, as per instructions of Vigilance Branch (S&JJ)/MCD, list of missing files were prepared on the basis of record available. On receipt of list of files, charge sheet was issued to following clerks:-

| | |
|--------------------------|-----|
| 1. Balkishan Mehndiratta | UDC |
| 2. H.K. Sharma | LDC |
| 3. Dalip Singh Yadav | LDC |
| 4. Narender Pal Malik | LDC |
| 5. Anil Tanwar | LDC |

It is pertinent to mention here that above named four c-charged officials of Slum & JJ Department were also separately proceeded with departmental enquiry in S&JJ and on the basis of facts, record, witnesses in the inquiry, all four employees have been fully exonerated and charges dropped. Copies of order No.D/46/JLO(V)DUSIB/2011 dated 26.04.2011 relating to Co-charged official Shri Narender Pal Malik, LDC and order No.D/78/JLO(1)DUSIB/2011 dated 26.04.2011 along with copy of charge sheet in respect of Shri Dalip Singh Yadav, LDC in enclosed for ready reference. All four officials have also been exonerated fully from the charges.

Only my case was decided in DDA and therefore only I have been punished in the same case in which all 4 officials have been fully exonerated in Slum & JJ which is against the natural justice. I have submitted all the relevant documents but my submission was not considered by the IO. Even my case was not reviewed by the Appellate Authority considering Hon'ble CAT orders (copy of appeal is also annexed herewith for ready reference). Sir, I am feeling harassed as there is no one to hear me correctly. I have been single out for facing penalty without any fault on my part".

22. This is not the end of the matter. As is evident from the record, that a joint departmental enquiry was conducted against S/Shri Dalip Singh Yadav, LDC, Bal Kishan Mehndiratta, UDC (since deceased), Anil Kumar Tanwar, LDC and Narender Pal Malik, LDC with reference to the charge sheet dated 21.12.2006 on the allegations that "Dalip Singh Yadv, LDC has failed to maintain the record of allotment files of plots in the office of AD/WZ/S&JJ Department properly, which resulted into loss of more than 2500 allotment files in West Zone causing difficulties to the department in recovering the licence fee, ground rent etc. from the plot holders". Likewise, Anil Kumar Tanwar, LDC and

Narender Pal Malik, LDC were charged with similar allegations of not maintaining the record and loss of 700 and 1600 allotment files respectively of S&JJ Department. The EO, after taking into consideration the entire material (therein), came to a definite conclusion that charge framed against them are not proved vide enquiry report dated 18.12.2009 (pages 109 to 120). Concurring with the findings of the enquiry report, the DA fully exonerated Dalip Singh Yadav, LDC and Narender Pal Malik, LDC from the charges vide orders dated 26.04.2011 (Annexure A-15 Colly.), whereas the applicant was punished on the similar charges without any evidence by the competent authority.

23. Meaning thereby, the case of the applicant from the very beginning is that, he has been discriminated and was given different treatment than those of similarly situated persons/employees working in S&JJ Department of Delhi Government.

24. Strangely enough, neither AA nor RA has specifically dealt with this vital issue of parity in the right perspective and just ignored this aspect of the matter with impunity, which is not legally permissible. Hence the impugned orders are not legally tenable.

25. Therefore, in this view of the factual backdrop, we are of the considered view, that respondent cannot legally be permitted to resort to selective/different treatment to the applicant, contrary to those already granted to Dalip Singh Yadav, LDC and Narender Pal Malik, LDC, similarly situated

persons, who were working in the same Slum & J.J. Department of Government of Delhi under the same set of facts and circumstances. Thus, the departmental proceedings and impugned orders passed against the applicant cannot legally be sustained as well on the principle of parity. This matter is no more res integra and is now well settled.

26. An identical question came to be decided by Hon'ble Apex Court in case of ***Man Singh Vs. State of Haryana and others AIR 2008 SC 2481***. Having considered the scope of Articles 14 & 16 of the Constitution, it was ruled that the concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of 'fair play' and reasonableness.

27. Again, the Hon'ble Supreme Court has reiterated the Doctrine of parity in awarding the penalty in departmental proceedings in case of ***Rajendra Yadav Vs. State of M.P. and Others 2013 (2) AISLJ 120***, wherein it was held as under:-

“11. We have gone through the inquiry report placed before us in respect of the appellant as well as Constable Arjun Pathak. The inquiry clearly reveals the role of Arjun Pathak. It was Arjun Pathak who had demanded and received the money, though the tacit approval of the appellant was proved in the inquiry. The charge levelled against Arjun Pathak was more serious than the one charged against the appellant. Both appellants and other two persons as well as Arjun Pathak were involved in the same incident. After having found that Arjun Pathak had a more serious role and, in fact, it was he who had demanded and received the money, he was inflicted comparatively a lighter punishment. At the same time, appellant who had played a passive role was inflicted with a more serious punishment of dismissal from service which, in our view, cannot be sustained.

12. The Doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate, i.e., lesser punishment for serious offences and stringent punishment for lesser offences.

13. The principle stated above is seen applied in few judgments of this Court. The earliest one is **Director General of Police and Others v. G. Dasayan (1998) 2 SCC 407**, wherein one Dasayan, a Police Constable, along with two other constables and one Head Constable were charged for the same acts of misconduct. The Disciplinary Authority exonerated two other constables, but imposed the punishment of dismissal from service on Dasayan and that of compulsory retirement on Head Constable. This Court, in order to meet the ends of justice, substituted the order of compulsory retirement in place of the order of dismissal from service on Dasayan, applying the principle of parity in punishment among co-delinquents. This Court held that it may, otherwise, violate Article 14 of the Constitution of India. In Shaileshkumar Harshadbhai Shah case (supra), the workman was dismissed from service for proved misconduct. However, few other workmen, against whom there were identical allegations, were allowed to avail of the benefit of voluntary retirement scheme. **In such circumstances, this Court directed that the workman also be treated on the same footing and be given the benefit of voluntary retirement from service from the month on which the others were given the benefit.**

14. We are of the view the principle laid down in the above mentioned judgments also would apply to the facts of the present case. We have already indicated that the action of the Disciplinary Authority imposing a comparatively lighter punishment to the co-delinquent Arjun Pathak and at the same time, harsher punishment to the appellant cannot be permitted in law, since they were all involved in the same incident. Consequently, we are inclined to allow the appeal by setting aside the punishment of dismissal from service imposed on the appellant and order that he be reinstated in service forthwith. Appellant is, therefore, to be re- instated from the date

on which Arjun Pathak was re-instated and be given all consequent benefits as was given to Arjun Pathak. Ordered accordingly. However, there will be no order as to costs.

28. Therefore, the protection under Articles 14 and 16 of the Constitution of India and principles of equality/parity and *stare decisis* are fully attracted to the case of the applicant as well and the epitome of indicated law laid down by the Hon'ble Apex Court is *mutatis mutandis* applicable to the facts of the present case and is complete answer to the problem in hand. Thus, seen from any angle, indeed the impugned orders cannot and should not legally be sustained and deserve to be quashed in the obtaining circumstances of the case.

29. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

30. In the light of aforesaid reasons, the instant OA is allowed. The impugned report of the Enquiry Officer dated 04.11.2008 (Annexure A-2), impugned order dated 26.04.2011 (Annexure A-3) passed by the Disciplinary Authority, order dated 05.09.2011 (Annexure A-4) of Appellate Authority and order dated 17.02.2012/01.03.2012 (Annexure A-5) of the Revisional Authority, are hereby set aside. The applicant is exonerated of all the charges framed against him. Needless to mention that naturally he will be entitled to all the consequential service benefits. However, the parties are left to bear their own costs.

**(V.N. GAUR)
MEMBER (A)**

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

Rakesh