

**Central Administrative Tribunal
Principal Bench**

OA No.1610/2012

Order reserved on: 26.08.2016
Order pronounced on: 28.10.2016

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

Sh. Sushil Kadyan
S/o Sh. Balwan Singh
R/o H.No.61, Village Bhalaswa,
Delhi.

- Applicant

(By Advocate:Mr. M.K.Bhardwaj)

Versus

MCD & Ors. through

1. The Commissioner,
North Delhi Municipal Corporation,
Civic Centre, JLN Marg,
Minto Road, New Delhi.

2. Deputy Commissioner,
North Delhi Municipal Corporation,
16, Rajpur Road, Civil Lines Zone,
Delhi-110054.

- Respondents

(By Advocate:Mr. R.K.Jain)

ORDER

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

The applicant has made the following prayer in this OA:

- “(i) To quash and set aside the impugned punishment order dated 25.8.2011 and appellate authority order dated 21.2.2012.

- (ii) To direct the respondents to restore the pay of the applicant and release the consequential benefits including arrears of pay with 18% interest.

- (iii) To declare the action of respondents in holding departmental proceedings against the applicant as illegal and unjustified and issue direction to give all consequential benefits.
- (iv) To allow the OA with costs.
- (v) To pass any such other order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

2. Briefly stated, the applicant, who is an Assistant Teacher in Primary School, Majlis Park-II Civil Line Zone, Delhi under respondent no.2 was served with a major penalty charge sheet vide memo dated 12.09.2008 wherein it was alleged that he had misbehaved with Sh. Inder Lal Sharma, Head Master, MC Primary School, Azad Pur Colony and also beaten him up on 28.04.2008 thereby contravening Rule 3 (I) (ii) (iii) of CCS (Conduct) Rules, 1964. The applicant denied the charges. However not convinced, the Disciplinary Authority (DA) conducted a departmental enquiry. The Inquiry Officer (IO) submitted his report dated 14.12.2009 giving his finding that the allegation of misbehaviour and beating up Sh. Inder Lal Sharma was not proved. The DA did not agree with the findings of the IO and imposed major penalty on the applicant by order dated 03.02.2010 and the Appellate Authority rejected his appeal by order dated 22.04.2010. These orders passed by the DA and AA were challenged in OA no.2385/2010 and this Tribunal vide order dated 03.12.2010 quashed the impugned orders with liberty to the respondents to

take up the proceedings from the stage of disagreement. The DA issued a fresh memorandum on 27.05.2011 enclosing therewith the disagreement note and the applicant submitted his representation thereon on 09.06.2011. Vide the impugned order dated 25.08.2011 the DA again imposed the same penalty. The appeal filed by the applicant was also rejected by the AA, communicated vide office order dated 21.02.2012.

3. Learned counsel for the applicant submitted that the orders of DA and AA suffer from procedural lapses as the contentions raised by the applicant in his representation submitted in response to the disagreement note were not dealt with in the order of DA dated 25.08.2011. It is trite that the DA and AA being quasi judicial authorities are required by law to deal with all the contentions that have been raised in the representations submitted by the applicant. The DA while issuing this disagreement note did not consider that the IO had given his finding after taking into account all the evidence that came up during the enquiry. None of the prosecution witnesses supported that the applicant had beaten up Sh. Inder Lal Sharma, HM. The only alleged eye witness Smt. Rani Kashyap, Principal (Nursery), Azadpur Colony also during her deposition as defence witness denied that she used the toilet of the school on 28.04.2008 as claimed by Sh. Inder Lal Sharma. Nobody had made any enquiry

from her with regard to any incident. Thus, it was a clear case of no evidence which led to the finding of the charges not proved. Learned counsel further argued that the DA had given a disagreement note on 27.05.2011 in which he had already come to the conclusion that there was adequate evidence to hold him guilty of misconduct and he also indicated the proposed penalty. It was not a tentative finding of the DA as was required in terms of the CCS (CCA) Rules, 1965. The disagreement note, therefore, was vitiated and was liable to be quashed on this ground alone as the applicant was not given any opportunity of hearing before the DA held him guilty. It was further submitted that the complainant Sh. Inder Lal Sharma during his cross-examination had admitted that the applicant had only misbehaved with him and whatever happened on that day was at the heat of the moment and the applicant was not pre-determined to indulge in such a thing. The impugned orders, therefore, needed to be quashed and set aside. Learned counsel also stated that the applicant was not provided with the copies of the documents that were relied upon by the IO.

4. Learned counsel for the respondents denied all the arguments put forward by the learned counsel for the applicant and stated that the DA had after careful consideration of the enquiry report come to the conclusion that there was enough evidence to prove the charge against the applicant. Even though

Smt. Rani, Principal had not confirmed the incident, neither she nor other prosecution witnesses stated that no such incident had taken place. The statement of PW-1 that misbehaviour of the applicant was limited to shouting and that he did not show any disrespect, was considered by the IO out of context, which lead to wrong conclusion. Learned counsel further submitted that the DA and AA had considered the contentions raised by the applicant in the representations and appeal of the applicant and dealt with those contentions in their respective orders. Therefore, it cannot be said that these are non-speaking orders. He also stated that in the disagreement note though the word 'tentative' was not used it was apparent that the conclusions were only tentative because the applicant had been given opportunity to make representation within 10 days. If the DA would have come to a firm conclusion, the question of inviting representation would not arise. The order dated 21.02.2012, which is said to be the non-speaking order of the AA and enclosed by the applicant as Annexure A-2, is only an order communicating the order of the AA. The respondents have filed the order dated 26.12.2011 passed by the AA along with the counter reply. With regard to the non-supply of documents, learned counsel stated that the applicant never asked for any document.

5. We have heard the learned counsel for the parties and perused the record. The main grounds of challenge to the impugned orders are:

- (i) It was a case of no evidence as none of the PWs supported the version of prosecution.
- (ii) The disagreement note was not tentative.
- (iii) The orders of DA and AA were non-speaking.
- (iv) Certain documents were not supplied.

6. Learned counsel for the applicant has placed heavy reliance on the fact that none of the PWs except the complainant Sh. Inder Lal Sharma, HM supported the version of the prosecution. It was therefore a case of 'no evidence'. From a perusal of the enquiry report which has been enclosed as Annexure A-8 of the OA, it can be seen that the prosecution witnesses have only stated that they had not witnessed the incident of misbehaviour/beating up by the applicant but were informed about the incident by the Principal. Thus the PWs have not denied their statements recorded in closed proximity of the time of the alleged incident, therefore, these have corroborative value viewed in the background of reiteration of his version by Sh. Inder Lal Sharma during his deposition.

7. It has been further argued from the applicant side that Sh. Inder Lal Sharma had only stated during the cross examination that there was a misbehaviour at the heat of the moment and consisted of shouting and not showing due respect to an elder

man. However, reading from the charge at examination-in-chief of Sh. Inder Lal Sharma, it is seen that the allegations were in two parts – one was about misbehaviour and the other was beating. In the cross examination the question apparently was directed to misbehaviour as recorded in the IO's report “misbehave was consisted of in the fact that CO was shouting and was not showing due respect to an older man”. It nowhere said that apart from misbehaviour there was no beating involved. Applicant has also argued that there was no ill will being shown by him against Sh. Inder Lal Sharma or vice versa as confirmed during the examination of Sh. Inder Lal Sharma. In that case the applicant has not been able to show any reason as to why Sh. Inder Lal Sharma would have gone to the extent of alleging the act of beating besides misbehaviour and standing firm with regard to the allegation of beating during his deposition in the disciplinary enquiry. In the absence of any evidence, to the contrary, the evidence of Sh. Inder Lal Sharma and corroborative evidence of other PWs cannot be discarded.

8. In the 'disagreement note' there is mention of the word 'tentative' but the fact remains that it was conveyed to the applicant vide memorandum dated 27.05.2011 giving him an opportunity to make representation on the conclusion/proposal contained in the disagreement note. We, therefore, agree with the

learned counsel for the respondents that the omission of the word 'tentative' alone will not invalidate the 'disagreement note' and the order passed by the DA thereafter.

9. In his representation to the disagreement note, the applicant has raised certain issues which are adequately covered in the 'disagreement note' itself. The 'disagreement note' discussed in detail why the DA came to the conclusion that the enquiry was conducted in a negligent manner with casual approach. The same issue has been raised by the applicant in the subsequent representation. Merely because those reasons have not been reproduced in the order of DA dated 25.08.2011, the order would not get vitiated. The order of AA dated 21.02.2012 had considered the main contention of the applicant that it was a case of no evidence as none of the prosecution witnesses supported the version of the prosecution. We, therefore, do not find any substance in the argument that the orders of AA and DA were non-speaking.

10. With regard to supply of documents, we do not find any mention of this fact in the defence statement submitted by the applicant (Annexure A-7), which would have been the case if it had caused any prejudice to his defence.

11. We, therefore, do not find anything irregular or illegal in the disagreement note or the subsequent orders passed by DA and

AA. In the background of preceding discussion and the reasons stated, the OA is dismissed being devoid of merit. No costs.

(V.N.Gaur)
Member (A)

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

‘sd’

28 October, 2016