

**Central Administrative Tribunal
Principal Bench**

OA No.962/2012

New Delhi, this the 15th day of February, 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Shekhar Agarwal, Member (A)**

Prakash Chand
AO, CAU North Zone
Ashok Vihar
Delhi 110 052.
R/o K-3A,
Malviya Nagar,
New Delhi 110 017.

.... Applicant.

(By Advocate : Shri Ajesh Luthra)

Vs.

1. Delhi Development Authority
Through Vice Chairman
Vikas Sadan, INA,
New Delhi 110 023.

2. Finance Member
Delhi Development Authority
Vikas Sadan, INA,
New Delhi 110 023.

... Respondents.

(By Advocate : Shri Manjeet Singh Reen)

: O R D E R (ORAL) :

Justice Permod Kohli, Chairman:

While working as Assistant Accounts Officer (AAO) with Delhi Development Authority (DDA), the applicant was served with a charge memo dated 08.04.2009 for initiating disciplinary proceedings under Regulation-25 of the DDA Conduct, Disciplinary and Appeal Regulations, 1999. He was required to submit his written statement of defence within ten days. The charge memo was accompanied with statement of articles of charge framed against the applicant, as also the statement of imputations of misconduct or misbehaviour, list of documents and list of

witnesses as required under the relevant rules. Following two articles of charge were framed against him:-

“Article-1

Sh. Prakash Chand, AAO recommended the payment beyond the amount of original budget slip issued by the competent authority.

The estimated cost and tendered cost of the work was Rs. 64,18,876/- and Rs.50,90,470/- respectively. The original budget slip for the work was issued by Sr. AO/CAU(SEZ) for Rs. 68.61 lacs vide no. F.1(10) CAU/SEZ/DDA/2002-2003/1222 dt. 11.2.2003. As per the record, it is seen that the work was deviated upto the tune of Rs. 86.02 lacs in 7th R/A bill paid on 13.4.2004 and upto Rs.110.47 lacs in 11th R/A bill paid on 27.10.05. The payment of these 7th R/A bill to 11th R/A bill were recommended by Sh. Prakash Chand, AAO beyond the amount of original budget slip without getting the revised budget slip in violation of the instruction contained in Circular No. 19 dated 19.6.95 issued by C.A.O., which was reiterated in minutes of the meeting dt. 20.4.07.

Article-2

Sh. Prakash Chand, AAO recommended the payment for deviated quantities in R/A bill prior to the approval of deviation statement.

The deviation statement of the work was approved by SE/CC – 16 in June, 2006 while Sh. Prakash Chand, AAO recommended the payment of deviated quantities beyond the permissible limit as per the circular issued vide F.5(287) 96-97/PC/DDA/183 dated 27.7.01 in 7th R/A bill (amounting to Rs.86.02 lacs) to 11th R/A bill (amounting to Rs.110.47 lacs) prior to the approval of deviation statement by the competent authority. 11th R/A bill was paid on 27.10.05 and hence Sh. Prakash Chand, AAO, violated the Para 4(ii) & (iii) of the Circular dt. 27.7.2001 issued by CE(HQ), DDA.

That the said Sh. Prakash Chand, AAO, by his above act exhibited lack of devotion to duty, and conduct unbecoming of an employee of the Authority, thereby violating sub-rule 1(i) & 1(iii) of Regulation 4 of the DDA Conduct, Disciplinary and Appeal Regulations, 1999.”

2. The Disciplinary Authority on consideration of the written statement of the applicant constituted an Inquiry Committee, and also appointed Presenting Officer. The Inquiry Officer submitted his report dated 30.11.2009 to the Disciplinary Authority holding Charge No.1 as

proved, and Charge No.2 as not proved. The Inquiry Report was served upon the applicant for his response. On receipt of the Inquiry Report, the applicant submitted his representation dated 27.01.2010. The Disciplinary Authority not satisfied with the representation of the applicant passed impugned order dated 22.07.2010 imposing penalty of reduction of pay including grade pay in the pay scale of his pay by one stage for a period of one year with cumulative effect with immediate effect. The applicant will earn increment during the period of reduction and after expiry of the penalty period this will not have the effect of postponing his future increment of pay.

3. An appeal preferred against the penalty order was partially allowed. The Appellate Authority vide order dated 30.06.2011 (Annexure A-2) held that there is a procedural lapse and, therefore, taking lenient view penalty of reduction of pay including grade pay in the pay scale of his pay by one stage for one year with cumulative effect was reduced to “without cumulative effect”.

4. This Application has been filed claiming following reliefs:-

- “(a) to pass orders setting aside the impugned penalty order dated 22.07.2010 and the impugned order dated 30.06.2011 passed by the Appellate Authority; and/or
- (b) to pass orders directing the respondent authority to give the applicant his appropriate seniority over his juniors and grant all consequential benefits including fixation of pay & allowances; and/or
- (c) to release the arrears of pay that have been deducted on account of order of penalty passed by the respondent authority and/or
- (d) to call for the records of the department and hold that the act of the respondents is illegal, arbitrary and discriminatory against the applicant; and/or
- (e) pass any other order or orders that may deem fit in the circumstances of the case.”

5. The main contention of learned counsel appearing for the applicant is that Charge No.2 has been held not proved against the applicant, whereas the findings of the Inquiring Authority on Charge No.1 are totally perverse. He submitted that there is no material or evidence to establish the charge, and thus the findings on the said charge are liable to be set aside. His further contention is that the penalty order as also the appellate order also suffer from non application of mind, hence are liable to be rejected.

6. We have carefully considered the record.

7. The Charge No.1 against the applicant is that the original budget slip for work was Rs.68.61 lacs during the year 2002-2003. The work was deviated upto the tune of Rs.86.02 lacs in 7th R/A (running account) bill paid on 13.04.2004 and upto Rs.110.47 lacs in 11th running account bill paid on 27.10.2005. The payments of these 7th and 11th running account bills were recommended by the applicant beyond the amount of original budget slip without getting the revised budget slip in violation of the instructions contained in Circular No.19 dated 19.06.95 issued by C.A.O. which was reiterated in minutes of the meeting dated 20.04.2007.

8. The Inquiry Officer in its Inquiry Report dated 30.11.2009 held Charge No.2 as "Not Proved" and Charge No.1 as "Proved". While considering Charge No.1, the Inquiry Officer has relied upon exh S-2 which is a Circular dated 19.06.95. The relevant observations of the Inquiry Officer are noticed hereunder:-

"The most important document concerning this Article of Charge is exhS-2 which is a circular dt. 19.6.95 issued through approval of VC, DDA in order to maintain FINANCIAL DISCIPLINE in the Zone through budgetary control. This exh S-2 contains very important mandatory directions which all finance officers of DDA should be aware of. This exhibit states under para 5 that all types of payments chargeable to work shall be covered under the

budgetary control system and payments released through budget slip without exception.”

“S-2 contains very important mandatory direction which all finance officers of DDA should be aware of in order to maintain financial discipline in the Organization.

As per this Circular it is mandatory pre requirement that no liability should be committed without obtaining budget slip and all types of payment chargeable to work shall be released through budget slip without exception. CO as an important and senior functionary of division is fully responsible and duty bound as per para V above to ensure above. But in the present case CO recommended release of payment although bill amount had exceeded the budget slip amount.

As per exh S-2 proforma A, the responsibility of initiation of budget slip exclusively lies on Divisional Account and then the same is sent to EE/SE/CAU. In this case CO, although very much aware that bill amount has exceeded the budget slip amount failed to initiate revised budget slip in proforma B thereby failing in his duty to perform.

The charge sheet states that payments released by CO in excess of original budget provision of 68.61 lac are irregular. But I hold a different view. Going through exh S-6 it is clear that this budget slip is issued only for the purpose of inviting tender. Once the tender is invited, the use of this budget slip ends and this budget slip has nothing to do with release of payment. Exh S-6 is proforma C as contained in Circular dt. 19.6.95(exh S-2). This proforma C states at the bottom para no 4 that after award of work separate moving budget slip will be sought for release of payment.

In view of above, I would consider not the payment in excess of 68.61 lac but the whole payment of Rs.110.47 lac recommended by the CO on five occasions is absolutely irregular & I would term it as illegal also as the same have been released by blatant violation of norms and procedures and rules of the office every time on five occasions.”

Based upon the above observations, the Inquiry Officer returned the findings which reads as under:-

FINDINGS:

In view of detailed assessment made above, as well as analysis of oral and documentary evidence produced during the inquiry the charges under Article-1 is proved.”

These findings are seriously disputed by learned counsel for the applicant. Shri Luthra has referred to Circular No.19 dated 19.06.95, a

copy whereof has been placed on record as Annexure-A/9. He has referred to the following conditions of the document:-

“4. No liability will be committed without obtaining budget slip which means budget slips will be required for awarding the works on the basis of tenders, work orders and placing supply orders.

5. All type of payments chargeable to work shall be covered under this system and payments released through budget slips without any exception. The Dy. CAO (CAU)/F.O. will ensure compliance with all codal provisions.”

“8. The requisition for issue of budget slip will be sent in Proforma ‘A’ or ‘B’ and the Budget Slip will be issued in Proforma ‘C’ or ‘D’ as applicable.

The work of issue of budget slips will be assigned to Dy. CAO posted in the centralized account units and in other zones the work will be handled by the respective FOs.

The above system will come into force with effect from the date of issue of these orders.

This issues with the approval of VC/DDA.”

Based upon the above stipulations, it is contended that the budget slip is required for awarding the works on the basis of tenders, work orders and placing supply orders, and all type of payments chargeable to work shall be covered under this system. His contention is that budget slip is not the mandatory requirement if there is a deviation during the currency of work and the estimated cost of the work is revised. His further contention is that even the aforesaid document was never implemented in practice. In order to prove his contention, he has referred to and relied upon minutes of meeting dated 20.04.2007 issued by Finance and Expenditure Department of DDA. This meeting was held by the following Officers:-

- | | | |
|-----|-------------------------------|-------------|
| “1. | Shri Nand Lal, Finance Member | Chairperson |
| 2. | Shri Rajiv Pandey, CAO | as Member |
| 3. | Shri U. N. Behera, CVO | as Member |
| 4. | Shri A. P. Singh, CE (QC) | as Member |
| 5. | Shri R. C. Gupta, CE (HQ) | as Member” |

In the aforesaid meeting, following observations were made:-

“1. It was observed in the meeting the F & E Circular 19 dated 19.06.1995 vide which it was decided that payment would be released through Budget Slip/moving budget slips/payment slips etc. is not being implemented in toto. As such decision was taken to enforce the observance of Circular 19 dated 19.06.1995. Divisional Officer as required to incur expenditure within the limit as stipulated in the budget slip. But the Divisional Officers are executing the works in excess of these limits and furnishing passed bills to CAU for making payment which is further complicating the problem. In case any additional expenditure is proposed against the sanctioned budget slip it would be the duty of the Divisional Officer to obtain revised budget slip.”

Based upon the aforesaid minutes of the meeting, Shri Luthra has further argued that till 2007, the said circular was not being applied in any of the departments. The allegations against the applicant pertain to the period 11.02.2003 to 27.10.2005 when the payments of 7th and 11th running account bills were made to the contractors. Shri Luthra has further drawn our attention to Circular dated 16.05.2007 in implementation of the minutes of the meeting dated 20.04.2007. The said circular was issued to all Executive Engineers, East Zone, DDA regarding the issue of revised budget slip and completion of other codal requirements. The relevant extract of the said circular is reproduced hereunder:-

“To

All Executive Engineers
East Zone, DDA.

Sub: Regarding issue of revised budget slip and completion of other codal requirements.

Please refer to this office letter No.F.14(1)CAU/EZ/2006-07/86 dt. 30.4.07 on the subject cited above. It is seen that no action has been taken by any of the divisions to get the revised Budget Slip issued. In this connection minutes of the meeting conveyed by CAO(DDA) vide reference No.F.E16(11)2006/CAU/155 dt. 20.4.07 have now been received and circulated wherein it has been clearly stated that revised Budget Slip is compulsory in case the amount/expenditure exceeds the limit stipulated in the Budget Slip.”

This circular clearly provides that now onwards the revised budget slip is compulsory. The contention on behalf of the applicant is that prior to this circular, there was no requirement of revised budgetary slips for payment of running account bills or payment on the basis of the deviations.

9. The applicant also sought information under the Right to Information Act, 2005. He made a query regarding applicability of revised budget slips which was answered by the Finance and Expenditure Department of the DDA. The relevant query and reply are reproduced hereunder:-

Sl. No.	Para	Reply
1	Are there any order regarding issue of Revised Budget Slip? If so, from when these orders became effective? Copy of the said orders may kindly be supplied alongwith the proforma for the Revised Budget Slip.	<u>The orders regarding the issue of revised Budget Slip were issued vide No. FE 16(11)2006/CAU/155 dated 20.04.2007 (Minutes of Meeting). The orders were effective from the date of issue of Minutes of Meeting. No proforma for Revised Budget Slip was issued along with the aforesaid Minutes of Meeting. The Copy of Minutes of Meeting dated 20.04.2007 is enclosed.</u>
2	Whether the main purpose of issue of Budget Slip is to ensure the availability of Budget Provision for the Particular work or not?	The main purpose of issue of Budget Slip is Budgetary Control System.

From the above reply, we find that it was for the first time in the meeting held on 20.04.2007 that the issue of revised budget slips was enforced. This decision was circulated vide circular dated 16.05.2007 as noticed hereinabove.

10. Another RTI query was made by the applicant, which was also answered. The relevant query and reply from the concerned authorities reads as under:-

Sl. No.	Question	Reply from SE(HQ) EZ/PIO	Reply from SE(HQ)SZ/PIO
3/7	List of all Divisions who have taken Revised Budget Slip if the works exceeds the amount allocated in the Budget Slip.	<u>None of the division of East Zone has taken revised Budget Slip, if the work exceed the amount allocated in the Budget Slip.</u>	Previously, the revised budget slip was not being issued. But now as per minutes issued by CAO/DDA dt.20.4.07 the revised budget slips are being proposed and being issued by CAU/SWZ & CAU (SEZ) in all cases where works exceeds the amount allocated in the budget slip.

From the perusal of the aforesaid reply, it becomes evident that none of the division of East Zone has taken revised budget slip if the work exceeds the amount allocated in the budget slip. The decision to obtain revised budget slips was virtually taken in the minutes of meeting dated 20.04.2007, meaning thereby, prior to that no such system was prevalent in DDA.

11. Shri Luthra has also taken us to the evidence recorded during the inquiry. One Shri D. P. Singh, Superintendent Engineer, Circle-3, DDA who appeared as SW-1 was cross examined with regard to the circular dated 19.06.1995, and marked as exh S-2 before the inquiry. The following deposition is made by the said witness:-

“Seen exh. S-2. There is no mention of revised budget slip.
The issue of obtaining the revised budget slip has been introduced vide exh S-3.

I was AE when the system of budget slip was introduced. I had worked as EE for 8 years and there was no system of issue of revised budget slip during that period. It has only been introduced after April, 2007.”

On his further cross examination regarding the responsibility of the AAO following was deposed:-

“Seen Exh D-2, the revised budget slip. It is a matter of record.

Seen exh D-4/dt. 28.12.06, vide which EE/SED-7 send a letter to Sr. AO/CAU/SEZ having the subject matter requirement of revised budget slip. The same has been returned by the CAU with the remarks that there is no procedure for issue of revised budget slip.

Seen exh D-5, written by Director (Finance) on 12.1.09, seen exh D-6, D-7, D-8 & D-9. It is a matter of record.

Duties of the Divisional Accountant are defined in CPW Account Code.

AAO alone is not competent to release the payment. He has to get the proposal approved from Dy. CO through Account Officer of CAU.

Seen 7th to 12th RA Bill of exh S-4. These are the photocopies and no distinction can be made between initials of AAO/AO/CAU.

Seen exh D-10. These are the Bill Forwarding Memo (4 in nos.) No where the AAO/CAU has recommended the release of payment.”

From the cross examination of the key witnesses of the prosecution during inquiry we notice that the document relied upon by the Inquiry Officer, i.e., S-2 do not mention about the revised budget slip. Otherwise also, this system was not being adopted in DDA till the decision was taken on 20.04.2007. Further cross examination also reveal that the applicant has not recommended the release of payment and AAO alone is not competent to release the payment. He has to get the proposal approved from Dy. CAO through Accounts Officer of CAU.

12. From the above deposition, responsibility cannot be imposed upon the applicant. Thus, the findings of the IO are not based upon the evidence and material produced before him. As a matter of fact, while returning the findings that charge against the applicant is proved, the

deposition of SW-1 has not been taken into consideration at all. The finding is thus perverse in nature. It is not sustainable in law.

13. During the course of hearing, we enquired from the respondents' counsel as to whether the deviations referred to in the article of charge No.1 were ultimately approved by the competent authority or not, and whether there is any loss to the state exchequer, and accordingly the respondents were directed to file an additional affidavit on the above two issues. In compliance to the directions of the Tribunal, the respondents have filed additional affidavit dated 02.01.2017.

14. On the first question as to whether the revised budget slip has been approved, the following statement is made in para 6 & 7 of the affidavit:-

"6. That the Revised budget estimate provisions made for the year of 2003-04 to 2007-08, that provide for a budget provision of 305.0 Lakh. A perusal of payments made to the agency reveal that payments are within the limit of revised provisions. However, revised budget slip was not obtained before recommending of payment in excess of original budget slip, to the agency by the applicant, thereby not complying with prevalent department order vide circular No.19 dated 19.6.95. Photocopies of Revised budget estimates are annexed as Annexure R-1 for ready reference.

7. That the copy of approval deviation statement dated 12.6.2006 along with a copy of the final bill wherein a certificate is recorded that deviation of Non AHR/ALR items has been approved by the competent authority. Copy of letter dated 12.6.2006 is enclosed as Annexure R-2.

From the above statement and perusal of Annexure R/1 and R/2, we find that the deviations regarding execution of the work were duly approved by the competent authority and the original budget which was only of 68 lacs was enhanced up to 305 lacs. It is also evident that the payments made to the agency were within the limit of the revised provisions. However, the respondents have reiterated their stand that budget slips were not obtained before releasing the payment. On this question, we had already recorded our opinion that it was not the

requirement, and in any case at the relevant time this procedure was not being followed. On the 2nd question posed by us regarding loss to the state exchequer, the additional affidavit makes following statement:-

“8. It is further submitted as per the Article of Charge No.I & II of the charge-sheet no financial loss was caused to DDA as a result of acts of misconduct by the applicant.”

From the above affidavit, it becomes abundantly clear that no loss was caused to the state exchequer. From the detailed discussion of the material on record what emerges is that the applicant was not the person responsible for payment. It has come in evidence that he did not recommend the release of payment. Even if, it is assumed that any recommendation was made by him for release of payment, firstly the recommendations have been approved by the competent authority for the purposes of release of payment as is evident from the following statement in the affidavit:-

“The deviation statement of the work was approved by SE/CC-16 in June, 2006 while Shri Prakash Chand, AAO recommended the payment of deviated quantities beyond the permissible limit as per the Circular issued vide F.5 (287)96-97/PC/DDA/183 dated 27.7.01 in 7th R/A bill (amounting to Rs.86.02 lakh) to 11th R/A bill (amounting to Rs.110.47 Lakh) prior to the approval of deviation statement by the competent authority. 11th R/A bill was paid on 27.10.05 and hence the applicant AAO violated the Para 4(ii) & (iii) of the Circular dt. 27.7.2001 issued by the CE(HQ), DDA.

It is further established that there was no procedure for obtaining revised budgetary slip for making payment. The circular relied upon by the respondents, i.e., 19.06.1995 was never enforced in any of the departments, at least during the period payments were made to the agencies (contractors). Even if, there was any norm, it simply signifies the procedural lapse and not any illegality or dereliction of duty. There is no loss to the state exchequer nor any allegation of personal benefit drawn by the applicant has been made. Even the appellate authority has recognised this fact that there is only procedure lapse, if any.

15. Under the totality of circumstances, Charge No.1 against the applicant is not proved and findings are perverse in nature.

16. For the above reasons, this OA is allowed. Impugned orders dated 22.07.2010 passed by the Disciplinary Authority and order dated 30.06.2011 passed by the Appellate Authority are hereby quashed. As a consequence of quashment of the impugned orders, respondents are directed to restore the position of the applicant and release all arrears of pay deducted from his salary on account of impugned penalty orders within a period of three months from the date of receipt of copy of this order. No order as to costs.

(Shekhar Agarwal)
Member (A)

(Justice Permod Kohli)
Chairman

/pj/