

Central Administrative Tribunal  
Principal Bench  
New Delhi

O.A.No.2406/2012

Order Reserved on: 13.07.2016  
Order pronounced on 19.07.2016

Hon'ble Shri V. Ajay Kumar, Member (J)  
Hon'ble Dr. Birendra Kumar Sinha, Member (A)

Shri Vinay Awasthy  
S/o Late Shri R.S.Awasthy  
Aged about 47 years  
R/o B-7/29, Krishana Nagar  
Delhi – 110 051. .... Applicant

(By Advocate: Mr. Shyam Moorjani for Sh. Sidharth Joshi)

Versus

1. North Municipal Corporation of Delhi  
Through its Commissioner  
Dr. Shyama Prasad Mukherji Civic Centre  
New Delhi – 110 002.
2. Commissioner  
(Appellate Authority)  
North Municipal Corporation of Delhi  
Dr. Shyama Prasad Mukherji Civic Centre  
New Delhi – 110 002.
3. The Addl. Comm. Establishment  
(Disciplinary Authority)  
North Municipal Corporation of Delhi  
Dr. Shyama Prasad Mukherji Civic Centre  
New Delhi – 110 002. .... Respondents

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

## **ORDER**

### **By V. Ajay Kumar, Member (J):**

The applicant, an UDC, in the respondent-North Municipal Corporation of Delhi, filed the OA questioning the Annexure A1, Office Order dated 26.09.2011 and Annexure A2, Office Order dated 21.02.2012.

2. The admitted facts of the case are that the respondents vide Annexure A3 proceedings No.3/126/09/Vig./CPC/DA-II/09/248 dated 10.09.2009 issued a Charge Memorandum, containing the following two charges, to the applicant in respect of certain alleged omissions and commissions of the applicant:

**"STATEMENT OF CHARGE FRAMED AGAINST SHRI VINAY AWASTHY S/O LATE SHRI R.S.AWASTHY, UDC/FACTORY INSPECTOR, FACTORY LICENSING DEPTT., MCD.**

Shri Vinay Awathy, UDC while functioning as Factory Inspector in the Factory Licensing Deptt. w.e.f. 11.8.2003 onwards was posted in the office of SDM, Preet Vihar to carry out sealing work. He failed to maintain absolute integrity devotion to duty and committed gross misconduct on the following counts:

1. He remained unauthorisedly absent from his duty w.e.f 24.9.2004 to 18.5.2006 without prior sanction of leave from the Competent Authority.
2. He has been running unauthorisedly absent from his duty w.e.f. 7.7.2006 without prior sanction of leave from the Competent Authority.

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

Sd/-  
Addl. Commissioner (Revenue)  
Disciplinary Authority"

3. In pursuance of the said Charge Memorandum, a departmental inquiry was conducted and that the Inquiry Officer vide his Inquiry

Report held that the 1<sup>st</sup> charge is proved and the 2<sup>nd</sup> charge is partly proved.

4. After the representation of the applicant against the said inquiry report and the proposed punishment, was considered, the Disciplinary Authority imposed the penalty of 'stoppage of two increments without cumulative effect' and to 'treat the period of his unauthorized absence w.e.f. 24.09.2004 to 18.05.2006 and from 29.08.2006 to 01.06.2009 as *dies-non* which will not count for any service or retirement benefits' vide its orders dated 30.08.2011. The Deputy Law Officer (Vigilance) vide the impugned Annexure A1 Office Order dated 26.09.2011 informed to the applicant about the aforesaid fact of imposition of the said punishment by the Disciplinary Authority.

5. Against the said Office Order dated 26.09.2011, the applicant preferred an appeal on 15.11.2011, and that the Appellate Authority upheld the penalty order dated 30.08.2011 and accordingly disposed of the appeal of the applicant vide his orders dated 02.02.2012. This fact was again communicated to the applicant by the Deputy Law Officer (Vigilance) vide the impugned Annexure A2 Office Order dated 21.02.2012.

6. The applicant, by raising various grounds filed the OA seeking the following relief(s):

"(i) Quash/set aside the order dated 26.09.2011 passed by the respondent No.3 i.e. order of punishment passed by Disciplinary Authority.

(ii) Quash/set aside order dated 21.02.2012 passed by Respondent No.2 (Appellate Authority) i.e. order of upholding the order of punishment.

(iii) Quash the Inquiry Proceeding

(iv) Quash the Memo of charge sheet dated 10.09.2009.

(v) Award all consequential benefits

(vi) Cost against the Respondents

(vii) Pass such other and further orders which this Hon'ble Tribunal may deem fit and proper in the interest of justice."

7. Heard Shri Shyam Muorjani proxy of Sh. Sidharth Joshi, the learned counsel for the applicant and Shri R.K.Shukla, the learned counsel for the respondents, and perused the pleadings on record.

8. When this OA was taken up for hearing on 22.09.2015, noticing that both the impugned orders are not the actual penalty and appellate orders, but the same are only letters issued by Deputy Law Officer (Vigilance) to the applicant communicating the essence of the penalty and appellate orders, as the case may be, and also noticing that either in the applicant's pleadings or in the respondents' pleadings, no mention was made whether the penalty order dated 30.08.2011 of the Disciplinary Authority and the Appellate Authority's order dated 02.02.2012 were communicated to the applicant along with impugned Annexures A1 and A2, as the case may be, specifically directed the respondents on 22.09.2015 to file an additional affidavit, stating whether the Disciplinary and Appellate orders were served on the applicant or not, and if served by what mode and when, by enclosing the copies of the said orders, as the applicant specifically denied the service of the said orders on him. The learned counsel for the applicant submits that though the applicant was not served with the

penalty order dated 30.08.2011, but he filed the appeal dated 15.12.2011 on the basis of disciplinary inquiry record which was in his position.

9. In pursuance of the aforesaid observation and direction of this Tribunal, the respondents, though filed an additional affidavit on 24.09.2015, neither stated anywhere therein that the penalty order dated 30.08.2011 and the appellate order dated 02.02.2012 were served on the applicant nor filed copies of the same along with the said additional affidavit.

10. When the matter taken up for hearing again on 13.07.2016, the learned counsel appearing for the respondents not able to state that whether the penalty order was served on the applicant, before filing appeal by him. However, he submits that since the applicant made an appeal against the penalty order now he cannot allege that the same was not served on him.

11. Imposing a punishment without serving the actual penalty order passed by the disciplinary authority is a clear violation of principles of natural justice, and against to all canons of service jurisprudence. Making of a statutory appeal by an employee against a punishment order, which was not served on him, cannot waive his right of service of the penalty order on him. Hence, the appellate order dated 02.02.2012 is liable to be quashed on this ground alone.

12. In the circumstances and for the aforesaid reasons, the OA is partly allowed and the appellate order dated 02.02.2012 is quashed and set aside. The respondents are directed to serve the copy of the disciplinary order dated 30.08.2011, on the applicant within four weeks from the date of receipt of a copy of this order. On service of the said order, the applicant shall be permitted to prefer a fresh appeal, if so advised, within eight weeks from the date of service of the penalty order on him. The appellate authority, thereafter, shall consider the said appeal, if preferred, within the said time, and to pass appropriate speaking and reasoned orders thereon within 90 days therefrom and to serve the said appellate order on the applicant. It is needless to mention that if the applicant is still aggrieved with the said appellate order, he may question the same along with any other disciplinary action, by way of filing a fresh OA, in accordance with law. No costs.

(Dr. Birendra Kumar Sinha)  
Member (A)

(V. Ajay Kumar)  
Member (J)

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