

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No. 2455/2011

Date of Reserve : 26.02.2016
Date of Pronouncement : 16.03.2016

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

Sh. Kuldeep Singh,
J.E (Electrical) aged about 58 years,
Working in ED-7, DDA,
Lawrence Road,
New Delhi.

.....Applicant

(Argued by: Mr. Malaya Chand, Advocate)

Versus

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

...Respondents

(By Advocate : Mr. Atul Kr. Sharma for Mr. Karunesh Tandon)

O R D E R

Justice M. S. Sullar, Member (J)

The challenge in this Original Application (OA) by the applicant, Kuldeep Singh, JE is to the impugned Memorandum/Article of Charge dated 28.05.2013 (Annexure A-1), disagreement note dated 09.10.2007 (Annexure A-2) and order of punishment dated 11.02.2008 (Annexure A-3) by means of which a penalty of reduction by two stages in the time scale of pay for a period of one year was imposed on the applicant by the competent authority. He has assailed the impugned order dated 10.08.2009 (Annexure A-4) as well by virtue of which his appeal was dismissed by the Appellate Authority, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

2. The matrix of the facts, material and evidence culminating in the commencement, relevant for deciding the core controversy involved in the instant OA and emanating from the record is that applicant, Kuldeep Singh was working as JE, Horticulture Division No.7 of Delhi Development Authority (DDA) at the relevant time. In the year 1998-99, he prepared the estimate for the commencement of work of M/o CGHBS in Zone E-13 for supply and installation of submersible pump set and accessories in park near railway line, in the area of Mandavali, Fazalpur. After approval of the estimates, prepared by the applicant, by the competent authority, tenders were floated. Having completed all the formalities, ultimately the work was awarded on 08.09.1988 to M/s. Perfect Electric Work. Thereafter, the applicant recorded measurement of the work in question in Measurement Book (MB) No. 288 at page 28 to 37 of the relevant Register. Consequently, the payment amounting to Rs.43,193/- was released to M/s. Perfect Electric Work by Joint Director, Horticulture Division 7, DDA without commencement of the work.

3. Sequelly, the aforementioned site was inspected by the Vigilance Team on 22.06.2001 along with the Site staff of Horticulture Division 7, SO Shri Harpal Singh, SO Shri Chop Singh, Shri T. R. Sharma, AD (Horticulture) and K. K. Verma, JE (Electrical). During the course of the inspection, the site staff of Horticulture Division no. 7 could not locate the actual installation of submersible pump set at the park near Railway line in the area of Mandavali, Fazalpur. However, the vigilance inspection team noticed the submersible pump installed in another park (entirely different site) near Maitri Apartment which was installed in the year

2001 and the work was executed by M/s. Hindustan Enterprises through award letter No. F.7 (112) Horticulture.7/DDA/2000-2001/676 dated 24.03.2001. It revealed that the work of installation of submersible pump in the park near railway line in the area of Mandavali, Fazalpur was not actually executed during the period 1998-99. The payment of Rs.43193/- was illegally made to M/s. Perfect Electric Work on the basis of bogus entry in MB Register No. 288 made by the applicant.

4. Consequently, the applicant was charge sheeted and impugned Memorandum and Article of Charges dated 28.05.2010 were served to him for recording fake entries in the aforesaid MB and for causing financial loss to the tune of Rs.43,193/- to the DDA. An Enquiry Officer (for short "EO") was also appointed.

5. After recording the evidence, the EO concluded that charges are not proved against the Delinquent Officer (for brevity "DO") vide inquiry report dated 25.03.2004. However, the Disciplinary Authority did not agree with the same and recorded the impugned disagreement note dated 09.10.2007 (Annexure A-2). Thereafter, a show cause notice was issued to which the applicant filed the reply.

6. Taking into consideration the nature of the allegations and evidence, a penalty of reduction by two stages in the time scale of his pay for a period of one year was imposed on the applicant by means of impugned order dated 11.02.2008 (Annexure A-3). The appeal filed by him was also dismissed vide order dated 10.08.2009 (Annexure A-4) by the Appellate Authority. The applicant has now challenged the charge sheet, impugned punishment and appellate orders in the instant OA.

7. At the very outset, it will not be out of place to mention here that earlier this OA was dismissed as time barred vide order dated 25.09.2012 by this Tribunal. In the wake of Writ Petition No. 1737/2014, the Hon'ble High Court of Delhi set aside the order and remitted the matter to the Tribunal for decision on merits.

8. The case set up by the applicant, in brief, in so far as relevant is that all the indicated disciplinary proceedings carried out by the disciplinary and appellate authorities are arbitrary, illegal and against the canon of natural justice. According to the applicant, the second work was got executed in the interest of department and with the consent of his superior, by M/s. Hindustan Enterprises near Maitri-Apartment. The EO considered the evidence on record and held that charge against the applicant is not proved. It is further stated that the park near Nav Kranti Society was not in existence during the year 1998-99 when the work in question was executed. The disciplinary and appellate authorities did not consider the statements of the witnesses in the right perspective. Even the name of the work was not correctly mentioned by the department. Neither any boundaries nor relevant surroundings were correctly mentioned. It was pleaded that the impugned charge sheet was issued without any substance and truth to support it and that too after a considerable delay. Even the penalty imposed is unjustifiable under the present circumstances.

9. Levelling a variety of allegations and narrating the sequence of events, in all, the applicant has challenged the impugned orders of the respondents on the following main grounds:-

“(i) that disciplinary authority was under obligation to supply photocopy of the listed documents as per Annexure-III and pre

recorded statements of the listed witnesses as per Annexure-IV of the impugned memorandum of charges in order to facilitate the delinquent officer to file his statement of defence effectively.

- (ii) that the charges were based on conjectures and surmises.
- (iii) departmental proceedings could not have been initiated against him without asking the applicant to explain his conduct.
- (iv) the matter was kept pending in the vigilance department for a long period and charge sheet was issued after delay.
- (v) the statement of Chowkidar could not have been formed basis of charge sheet.
- (vi) the allegations were hypothetical and in the absence of sufficient evidence, the charge sheet could not have been issued.
- (vii) mere holding of high post by the applicant could be no ground for issuance of charge sheet and allegations should have been proved.
- (viii) the submersible pump installed in the park adjoining Maitri Apartment which was the only park near the Railway line where boring had already been done about 8 to 10 years prior to installation of submersible pump during the year 1998 through NIT No. 2/Hort.7/98-99.
- (ix) Shri Ranvir Singh, Chowkidar denied his statement made before the Vigilance team.
- (x) the applicant is made victim of the circumstances. During the enquiry proceeding, the aforementioned charge alleged against him was held not proved.
- (xi) the disciplinary and appellate authorities just ignored the evidence, the report of the EO and relied upon the inadmissible evidences".

10. On the basis of the aforesaid grounds the applicant has challenged the impugned orders in the manner indicated hereinabove.

11. The respondents contested the claim of the applicant, filed the reply, inter alia, pleading therein that a complaint dated 18.07.1998 was received from M/s. Pumps and Projects Contractor's Association alleging therein that the record of work in question was manipulated. Consequent upon the complaint, an investigation was carried out by the vigilance department. After investigation, the case was referred to CVC, who tendered their advice for initiation of departmental inquiry for major penalty against the applicant, Shri. P. K. Chopra, Assistant Engineer (Electrical) and Shri B. D. Ram, the then Deputy Director (Horticulture) and Others. In view of the advice of CVC, the departmental inquiry was initiated against the applicant under Regulation 25 of DDA Conduct (Discipline and Appeal) Regulations, 1999 (hereinafter referred to as Conduct Rules). The applicant was accordingly charge sheeted for causing financial loss of Rs.43,193/- to the authority. Thus the applicant has exhibited lack of absolute devotion to duty, lack of absolute integrity and acted in a manner unbecoming of a Government servant thereby contravened the Rule 4.1 (i) of the Conduct rules.

12. According to the respondents, the applicant duly participated in the departmental inquiry and after following the rules and considering all the facts and circumstances, the disciplinary authority has rightly charged him. It was alleged that the EO has altogether ignored the relevant surroundings without referring to Railway line and wrongly took into consideration another site where second submersible pump and other equipments were installed near

Maitri Apartment, which is altogether a different site than the site in dispute in Zone No. 13 in the area of Mandavali, Fazalpur. The findings of EO was termed to be illegal, speculative and the result of non-application of mind vis-a-vis relevant oral as well as the documentary evidence brought on record by the department. Consequently, the disciplinary authority rightly disagreed with the finding of inquiry officer vide a detailed order and issued a show cause notice along with the disagreement note. The applicant filed his reply. He was granted proper opportunity before the impugned order was passed.

13. The case of the respondents further proceeds that when the matter was again referred to S.E. (QC)/EE (Elect.)(QC) with a request to get the relevant site inspected by an expert team. The expert team did not find installation of any submersible pump set and other accessories on the site in question in the area of Mandavali, Fazalpur. Thereafter, the matter was again referred to CVC who vide their letter dated 07.09.2007 advised for imposition of suitable major penalty on both the delinquent officers, namely, P. K. Chopra, AE and applicant, Shri Kuldeep Singh. The appellate authority was stated to have rightly dismissed his appeal vide detailed impugned appellate order. In all, according to the respondents, the disciplinary authority has rightly ignored the report of inquiry officer and considered the relevant oral as well as documentary evidence. After following the due procedure/rules and principles of natural justice, the disciplinary authority has rightly imposed the penalty on the applicant. The respondents have stoutly denied all allegations contained in the main O.A and prayed for its dismissal. That is how, we are seized of the matter.

14. At the very outset, the learned counsel for the applicant has contended with some amount of vehemence that the inquiry officer has rightly concluded that charge against the applicant is not proved but, the disciplinary authority has illegally ignored the report of the inquiry officer and recorded the disagreement note on it. He further argued that DW II and III have stated that the work was executed at the park near Maitri Apartment which is near the Railway line. Even the investigating team has mentioned in its report that submersible pump set and the electrical panel have been installed near the Maitri Apartment. His argument is that although there is sufficient evidence on record that the applicant is not at fault and infact the submersible pump set has been installed in the park of Maitri Apartment but still the disciplinary authority has ignored the evidence and recorded the disagreement note. Thus, he prayed for quashing the impugned orders of disciplinary and appellate authorities.

15. On the contrary, learned counsel for respondents has vehemently urged that there is no dispute with regard to installation of submersible pump set and other electrical equipments near the park of Maitri Apartment (entirely a different site) in the year 2001 executed by M/s. Hindustan Enterprises. However, the applicant was charge sheeted for preparing bogus documents and entry in the relevant register culminating in the payment of Rs.43,193/- to M/s. Perfect Electric Work, without actual installation of the submersible pump. The argument is that the installation of submersible pump at Maitri Apartment which is entirely a different site, has no relation with the bogus papers of installation of submersible pump near Railway line in Zone no. E - 13, in the area of Mandavali, Fazalpur

which is an entirely different site. Hence, he prayed for dismissal of the O.A.

16. Having heard the learned counsel for the parties, having gone through the records with their valuable help and after considering the entire matter deeply, we are of the considered view that as there is no merit in the OA and hence deserves to be dismissed for the reasons mentioned herein below.

17. As is evident from the records that the applicant was charge sheeted vide impugned Memorandum dated 28.05.2003 (Annexure A-1) which, in substance, is as under:-

“Shri Kuldeep Singh, Junior Engineer (Elect.) while working in Horticulture Division No. 7, DDA during the year 1998-99 was responsible for recording fake entries in the Measurement Book No. 288 at page 28-37 in respect of the work M/O CGHBS in Zone E13 Mandavali Fazalpur – SH: Supply and Installation of Submersible pump set and accessories etc. at park near Railway line, without the execution of the aforesaid work at site causing a financial loss of Rs.43193/- to the Authority.

By his above act Shri Kuldeep Singh, JE exhibited lack of absolute devotion to duty, lack of absolute integrity 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 Regulation 1999 as made applicable to the employees of the Authority.”

18. During the course of inquiry, the department has examined PW-I, K. K. Gupta, A.E.(C), DDA, PW-II Mr. K. K. Verma, J.E, Electrical, PW-III- Latoor Hasan, DD/Hort. Division VII, DDA, besides considering the evidentiary documents exhibit P-I, P-II, P-III, P-VI, P-VIII and P-XI whereas the applicant in his defence has produced documents at exhibit D-I to D-VII. Most of the documents produced on record by the applicant pertained to the execution of work near Maitri Apartment in the year 2001 executed by M/s. Hindustan Enterprises. It is clear from the report of inquiry officer

that even the applicant, Shri Kuldeep Singh did not dare to appear in the witness box in the inquiry to rebut the evidence brought on record by the department. The Enquiry Officer without appreciating the relevant evidence has vaguely concluded as under:-

“ From above, the following situation is arrived at –

(i) The name of work should have been given correctly by the CO mentioning therein the relevant surroundings without referring to railway line which is about $\frac{1}{2}$ - 1 km. Away as deposed by various witnesses. This has resulted into doubt in the mind of vigilance team. However, so far false entries/bogus payment for the work at sl. No. 5 in Ex.P-9 is concerned, this could not be substantiated from various documents made available in the inquiry and also from the deposition of the various witnesses. I am therefore, not upholding the charge against Shri P. K. Chopra, AE (Elect)/CO, as the work of pump set near Maitri Apartment marked as '5' on Ex. P-11 was also executed among various other works in the parks.

CONCLUSION :

From the above findings, the following is the outcome in brief regarding charge brought against Shri Kuldeep Singh, JE (Elect.) DDA/C.O:

As the main allegation in the charge sheet about fake entries made by the CO could not be substantiated, I am not holding CO responsible for any fake entries and the charge under this Article is not proved. But he should be careful in future for putting the nomenclature correctly so as to avoid such unwarranted situations.”

19. That means the findings of the EO are based on speculative assumption and presumption. The conclusion arrived at by EO is not in sync with the evidence on record led by the parties. Therefore, taking into consideration the evidence on record, the disciplinary authority has rightly ignored the report of the inquiry officer, considered the relevant evidence of record, rightly recorded the disagreement note and issued show cause notice to the applicant. The perusal of the disagreement note of the Disciplinary

Authority would reveal that the same is based on relevant evidence on record.

20. Ex-facie, the celebrated arguments of learned counsel that since it has come in the evidence that work was actually executed at the site (park near Railway line) so the applicant was wrongly charge sheeted, is not only devoid of merit but misplaced as well. The applicant has not come to the Court with clean hands. He has rather tried to confuse the matter. As indicated hereinabove, he was specifically charge sheeted for preparing bogus entries in relevant register/measurement book no. 288 at page 28 to 37 relatable to the installation of **submersible pump set and accessories etc in park in question near Railway line within the area of Mandavali, Fazalpur**. On the basis of these false entries, the payment of Rs.43,193/- was wrongly made to M/s. Perfect Electric Work.

21. The only ground pressed into service by the applicant that in fact the work was executed in the year 2001 in the park near Maitri Apartment which was executed by M/s. Hindustan Enterprises (which is entirely different site), has got no bearing on the specific charge framed against the applicant.

22. Meaning thereby, the execution of work and installation of submersible pump set near Maitri Apartment in 2001 by Hindustan Enterprises, would not wash away the misconduct committed by the applicant with regard to the preparation of bogus record and making bogus payment to M/s. Perfect Electric Work in the year 1998-99 which indeed was to be installed in Zone No. E-13 in the area of Mandavali, Fazalpur which is entirely a different site.

23. Similarly, the next argument of learned counsel that since the disciplinary and appellate authorities have ignored the cross examination of the witnesses, so the entire inquiry proceedings stand vitiated is again not tenable. As indicated hereinabove, the disciplinary authority has rightly ignored the speculative report of the inquiry officer after taking into consideration the entire relevant oral as well as documentary evidence available on record. In his findings, the Disciplinary Authority has clearly recorded that it is proved from the records that the applicant had prepared bogus record with respect to installation of submersible pump set in the year 1998-1999 in the Zone E-13 in the area of Mandavali Fazalpur and payment was made without actual installation of the submersible pump set. It is also clear from the statement of PWI and exhibit P-IV that applicant was in charge of the work. He made a bogus entry in record on 24.09.1998 and an amount of Rs.43,193/- was paid to M/s. Perfect Electric Work without actual installation of the submersible pump at the actual site in the year 1998-99.

24. The disciplinary authority has considered that the site was inspected by the vigilance inspection team along with staff of Horticulture Division No. VII on 26.06.2001, and did not find any submersible pump installed at the relevant place for which the payment was made to M/s. Perfect Electric Work. A pump was installed at second site in the year 2001 by M/s. Hindustan Enterprise vis-à-vis the award letter No.F-7 DDA 2000-2001 dated 24.03.2001 (which is altogether a different site), is not at all relevant for this case. The disciplinary authority in its disagreement note has recorded his findings based on evidence that work of installation of submersible pump at the park near Railway line in the area of

Mandavali, Fazalpur awarded to M/s. Perfect Electric Work on 08.09.1998 was not actually executed during the year 1998-99 and bogus payment was made to agency on the basis of a vague entry in the Measurement Register No. 288 at page 28 to 37 and that the said entry was made by the applicant, Shri Kuldeep Singh culminating into the financial loss of Rs.43,193/- to the authority.

25. We hold that the competent and appellate authorities have recorded cogent findings based on evidence that charge levelled against the applicant is fully proved and have rightly punished him.

26. The scope of judicial scrutiny of orders passed by the competent authorities in a disciplinary enquiry case is limited as held by the Hon'ble Supreme Court in catena of its judgments. The Tribunal cannot interfere with the findings of competent authority when they are not arbitrary or perverse. The power to impose penalty on a delinquent employee is conferred on the competent authority by the relevant rules made under the proviso to Article 309 of the Constitution. If the findings of the competent authority are consistent with the evidence, rules and in accordance with principles of natural justice and punishment meets the ends of justice, no judicial interference is to be made to such findings. It is now well settled principle of law that if the penalty can lawfully be imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty, unless it is mala fide or is so disproportionate to the offence committed as to shock the conscience, is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of competent authority is

based on evidence, even if some of it is found to be irrelevant or extraneous to the matter.

27. Therefore, taking into consideration the totality of the facts and circumstances, as discussed hereinabove, we are of the firm opinion that no fault can possibly be traced with the findings and punishment imposed on the applicant by the disciplinary and appellate authorities. Thus, contrary arguments of learned counsel for applicant "*stricto-sensu*" deserve to be and are hereby repelled given the facts and circumstances of the case.

28. No other point, worth consideration, is either urged or pressed by the learned counsel for the parties.

29. In the light of aforesaid reasons, as there is no merit in it, the OA is dismissed as such in the obtaining circumstances of the case.

No costs.

(K. N. Shrivastava)
Member (A)

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

Rakesh