

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

OA NO.2511/2014

RESERVED ON 15.09.2015
PRONOUNCED ON 01.10.2015

HON'BLE SHRI JUSTICE B.P. KATAKEY, MEMBER (J)
HON'BLE SHRI K.N. SHRIVASTAVA, MEMBER (A)

Er. Sher Singh,
Exe. Engineer (Civil) C-III Division,
New Delhi Municipal Council,
Room No.21, Vidyut Bhawan,
Auranjeb Lane, NewDelhi,
Aged about years.

...Applicant

(By Advocate: Shri Malaya Chand)

VERSUS

1. N.D.M.C.
Through its Chairman
Palika Kendra, Connaught Place,
New Delhi.

2. LG of Delhi,
Raj Niwas, Delhi (Being the Appellate and
Revisionary Authority)
(Performa Respondent)

...Respondents

(By Advocate: Shri Rajeev Sharma)

:ORDER:

HON'BLE SHRI JUSTICE B.P. KATAKEY, MEMBER (J):

The applicant, who is an Assistant Engineer of New Delhi Municipal Corporation (NDMC), has filed this OA challenging the order dated 11.07.2007 passed by the Disciplinary Authority imposing the penalty of reduction of pay by three stages for a period of three years, with cumulative effect; order dated 15.10.2008 passed by the Departmental Appellate Authority

dismissing the appeal but reducing the penalty to withholding of increments for three years without cumulative effect, which has been communicated to the applicant vide order dated 02.03.2009 issued by the Director (Vigilance) and also the order dated 20.06.2013 passed by the Lt. Governor rejecting the revision petition filed by the applicant seeking revision of the aforesaid order passed on 15.10.2008 on his appeal by the Departmental Appellate Authority.

2. The facts relevant for the purpose of disposal of the OA may be noticed as under:-

a) The applicant was issued the charge memo dated 29.10.2003 on the basis of the following allegations:-

"While working as Assistant Engineer, in Unauthorised Construction Cell, Architect Department, NDMC, during the period 2002-2003, Sh. Sher Singh, A.E. (C) failed to maintain absolute devotion to duty in as much as that :

The premises at E-42-43, Connaught Place was inspected by him on 15.7.03 alongwith Sh. Bal Kishan and other officers of Vigilance Department and it was noticed that work relating to additions/alterations was in progress. But he failed to examine and to take timely and constructive action against the unauthorized construction carried out in the premises E-42-43, Connaught Place, New Delhi with the result, unauthorized construction continued to be carried out in the said premises till 14.10.2003 when the premises was sealed by NDMC."

b) The applicant on receipt of the charge memo filed his written statement in defence, denying the allegation leveled against him. The Disciplinary Authority being not satisfied with the explanation given by the applicant decided to proceed with the enquiry and accordingly Inquiry Officer was appointed. The Inquiry Officer after considering the evidence adduced before him submitted his report dated 12.02.2007 by holding that the charge framed against the applicant has been proved. The applicant was, thereafter, given an opportunity to make representation against the finding recorded by the Inquiry Officer in his report, pursuant to which the applicant has submitted his representation against such finding. The Disciplinary Authority on 22.05.2007 granted the applicant a personal hearing, during which the applicant had pointed out to the said authority that he may be given 24 hours for proving that he has taken timely action in the matter before the Joint Inspection conducted to 15.07.2003. The applicant, thereafter, submitted a photo copy of a page of the register in support of his contention that on 09.07.2003, proceeding was initiated by him against the unauthorized construction in the aforesaid premises number E-42-43 in Connaught Place. The Disciplinary Authority, thereafter, vide order dated 11.07.2007, rejecting the contention of the applicant that he took the timely action even prior to conduct of Joint Inspection on 15.07.2003, passed the order imposing the penalty as aforesaid. The

Disciplinary Authority has rejected such contention of the applicant on the ground that photo copy of a page of the register being neither authenticated nor the entries in the register signed by any officer/official, cannot be considered.

c) The applicant, thereafter, preferred an appeal before the Departmental Appellate Authority, during pendency of which, the applicant filed an application on 22.07.2008, under the provisions of Right Information Act, 2005, for supply of photo copies of the register of unauthorized construction Booked during the period 2002-2004. The applicant was supplied with the photo copy of the said register, totaling 81 pages on 22.07.2008 by the APIO, NDMC (UACC). The Departmental Appellate Authority, thereafter, vide order dated 15.10.2008 partly allowed the appeal preferred by the applicant by reducing the quantum of punishment, as aforesaid. The Departmental Appellate Authority has also rejected the contention of the applicant that he had taken timely action even before conduct of Joint Inspection on 15.07.2003 by observing that the same was an afterthought. The applicant then preferred a revision petition before the Departmental Appellate Authority under Rule 29 of the CCS (CCA) Rules, 1965. During pendency of the said revision petition, the applicant preferred OA No.963/2012 challenging the disciplinary action taken against him. The said OA was disposed of vide order dated 19.07.2012 by a Coordinate Bench of this Tribunal directing the Competent

Authority to dispose of the 'revision appeal' by passing a speaking and reasoned order taking into account the documents already relied upon and filed, if any, by the applicant, within a period of six weeks from the date of the said order. The said order, however, was reviewed vide order dated 17.10.2012 passed in RA No.292/2012, filed by the NDMC, recalling the aforesaid direction issued vide aforesaid order dated 19.07.2012 in OA No.963/2012 on the ground that the OA itself was barred by time.

d) The applicant, being aggrieved, filed Writ Petition (Civil) No.334/2013 before the Hon'ble High Court of Delhi, which was disposed of vide order dated 22.01.2013 by holding that OA No.963/2012 was not barred by time as the revision was pending before the Competent Authority, which was not decided. The Hon'ble High Court by the aforesaid order has restored the order of this Tribunal dated 19.07.2012 passed in the said OA, meaning thereby that the direction issued to the Revisional Authority to consider the revision filed by the applicant has been restored. The Revisionary Authority, thereafter, passed the order dated 15.10.2008 dismissing the revision petition, which has been communicated to the applicant vide Office Order dated 02.03.2009.

3. We have heard the learned counsel, Mr. Malaya Chand, appearing for the applicant and the learned counsel, Mr. Rajeev Kumar, appearing for the respondents.

4. The learned counsel for the applicant referring to order passed by the Disciplinary Authority as well as by the Departmental Appellate Authority and also the information supplied to the applicant on 22.07.2008 by the APIO (UACC Department), supplying the photocopies of the register of unauthorized construction Booked/Detected during the period 2002-2004, has submitted that the said authority ought not to have refused to look into the said register on the ground that the same is neither authenticated nor signed by any authority, the same being in existence, wherefrom it appears that the applicant has initiated the action in respect of the unauthorized construction in premises at E-42-43, Connaught Place, New Delhi on 09.07.2003 before the Joint Inspection was conducted. The learned counsel submitted that the said register, having been supplied to the applicant pursuant to the application filed by him under the provisions of Right to Information Act, 2005, proves its authenticity as well as admissibility, which cannot be questioned by the Department, as has been done in the instant case. Hence, according to the learned counsel, the matter is required to be remanded to the Disciplinary Authority for fresh consideration and for passing a fresh order upon taking into consideration the

aforesaid documents, which have been produced before the Disciplinary Authority.

5. Per contra, learned counsel appearing for the respondents has submitted that it is an admitted position of fact that the applicant never produced the said documents i.e. part of the register during the enquiry proceeding, photo copy of which, however, was produced before the Disciplinary Authority. It has also been submitted that those have rightly been rejected by the Disciplinary Authority, the same being unauthenticated document. The learned counsel also submitted that Departmental Appellate Authority taking into account the said aspect of the matter has rightly rejected his appeal by holding that the contention of the applicant that he had initiated the proceeding for unauthorized construction is nothing but an after-thought.

6. We have considered the submissions advanced by the learned counsel for the parties and also perused the pleadings including the documents annexed thereto.

7. It is evident from the order passed by the Disciplinary Authority on 11.07.2007 that the applicant has produced a photo copy of the register wherefrom, according to the applicant, it is evident that he has initiated proceeding against unauthorized construction in the aforesaid premises on 09.07.2003. It is also

evident from the pleadings in the OA that the applicant on 28.05.2008 had filed an application before the authority of NDMC, under the provisions of Right to Information Act, 2005, for supply of the photocopies of the register of unauthorized constructions Booked/Detected during the period 2002-04 as well as the photo copy of the fortnightly report of the said authority, pursuant to which those documents consisting of 202 pages were supplied to the applicant by the APIO (UACC Department) on 22.07.2008. The relevant portion of the aforesaid register has also been enclosed to the OA file wherein there is endorsement to the following effect:-

S.No.	Date	Particular
104	09.07.2003	U/A Construction at E-42-43, Connaught Place, New Delhi.

Photocopy of the said document was produced before the Disciplinary Authority during the course of personal hearing. The aforesaid document produced before the Disciplinary Authority by the applicant, however, has been rejected by the Disciplinary Authority on the ground that the same was unauthenticated document. The NDMC, being a modal employer, is expected to place reliance on the relevant materials available on its own records in respect to the charge framed against the delinquent. It is evident from the information supplied to the applicant by the

APIO, NDMC (UACC Deptt.) that the register in respect of the unauthorized construction Booked/Detected during the period 2002-04 was maintained and that apart, the fortnightly reports were also submitted by the concerned official. The photocopies of those documents were supplied to the applicant on 22.07.2008 under the provisions of Right to Information Act, 2005 and hence, authenticity of the same cannot be questioned by the NDMC. Register being in existence and also the fortnightly report pertaining to the period 2002-04, having been submitted, photocopies whereof were supplied to the applicant, it was the duty of the Disciplinary Authority, in all fairness, to place those documents before the Inquiry Officer, which was not done. On the other hand, the document produced by the applicant has been rejected by the Disciplinary Authority on the ground that the said documents are unauthenticated.

8. The fact remains that the said documents have not been considered by the Disciplinary Authority as well as by the Departmental Appellate Authority while passing the impugned orders under challenge in the present OA.

9. In view of the aforesaid discussion, we remit the matter to the Disciplinary Authority for reconsideration of the entire material available on record of the enquiry proceeding and also the aforesaid register and fortnightly reports in respect of the

unauthorized construction Booked/Detected during the period 2002-04 and to pass a speaking order. Needless to say that the Disciplinary Authority shall also take into consideration relevancy or otherwise of the aforesaid register and fortnightly reports, copies of which were supplied to the applicant on 22.07.2008 pursuant to the application filed by him under the provisions of Right to Information Act, 2005, while passing the order as directed above. The said exercise is directed to be completed within a period of two months from the date of receipt of a copy of this order. The impugned orders dated 11.07.2007 and 15.10.2008, communicated vide the Office Order dated 02.03.2009, as well as the order dated 20.06.2013 are set aside.

10. The OA is accordingly allowed to the extent indicated above.
No costs.

(K.N. Shrivastava)
Member (A)

(B.P. Katakey)
Member (J)

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