

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.2526 OF 2014

New Delhi, this the 31st day of August, 2017

CORAM:

**HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER
AND**

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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Shri R.C.Meena, aged 49 years,
Assistant Engineer,
R/o E-3, MCD Flats, Bhamasha Market,
Kamla Nagar,
Delhi 110007

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Applicant

(In Person)

Vs.

1. Lt.Governor of Delhi,
Raj Niwas, Court Road,
Civil Lines,
Delhi.
2. South Delhi Municipal Corporation,
Through its Commissioner,
9th Floor, Dr.S.P.Mukherjee Civic Centre,
J.L.Marg, New Delhi.
3. The Commissioner,
South Delhi Municipal Corporation,
9th Floor, Dr.S.P.Mukherjee Civic Centre,
J.L.Marg, New Delhi.
4. Director (Vigilance),
South Delhi Municipal Corporation,
26th Floor, Dr.S.P.Mukherjee Civic Centre,
J.L.Marg, New Delhi

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Respondents

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

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ORDER**Per RAJ VIR SHARMA, MEMBER(J):**

Brief Facts: The applicant is an Assistant Engineer (Civil) working under the South Delhi Municipal Corporation. Disciplinary proceedings under Regulation 8 of the DMC Services (Control & Appeal) Regulations, 1959, were initiated against him by the Commissioner of the erstwhile Municipal Corporation of Delhi, as Disciplinary Authority (DA), as a result of an investigation carried out by the Vigilance Department of MCD, after receipt of a complaint regarding unauthorized constructions being carried out in Kamla Nagar area. The investigation conducted by the Vigilance Department of MCD on 14.2.2005 had revealed unauthorized constructions having been carried out in Properties No.A-87, A-83, A-44 and 5251-55, Kamla Nagar, Delhi. The applicant was one of the six engineers (three Assistant Engineers and three Junior Engineers) of Building Department held responsible in the matter. The imputation against the applicant, as per Annexure I of the charge Memo dated 9.11.2006, was as follows:

Shri R.C.Meena, while functioning as Assistant Engineer in Building Department, C.L.Zone, remained in charge of Kamla Nagar area w.e.f. 10.8.2004 to 31.1.2005. He failed to maintain absolute integrity and devotion to duty on the following counts:

1. The unauthorized construction at Basement, Ground, First & Second Floors in Property No.A-87, Kamla Nagar; at Ground, First & Second Floors in Property No.A-83, Kamla Nagar; at Second & Third Floors in Property No.A-44, Kamla Nagar; and at Third Floor at Property No.5251-55,

Kamla Nagar was carried out and completed during his working tenure. But he failed to get the same stopped/demolished at its initial/ongoing stage.

2. He also failed to exercise proper supervision and control over the functioning of S/Shri Prem Chand, JE (Bldg.) & Rajesh Kumar, JE (Bldg.) who did not take proper and timely action against the aforesaid unauthorized construction.

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

After conclusion of the enquiry, the Inquiry Officer (IO) submitted his report finding the charges as proved against the applicant. Copy of the enquiry report was served upon the applicant for submission of representation, if any. The applicant filed his representation against the findings of the IO on 16.5.2012. The DA also afforded personal hearing to the applicant on 10.1.2013. After considering the applicant's oral and written submissions, the DA proposed to exonerate the applicant. The matter was sent to the Central Vigilance Commission for obtaining second stage advice. The Central Vigilance Commission, vide its letter dated 8.4.2013, advised imposition of major penalty on the applicant. Thereafter, the DA reconsidered and re-examined the matter in its entirety and imposed upon applicant the penalty of stoppage of two increments for two years with cumulative effect, vide order dated 10.9.2013. The applicant's appeal was rejected by the Appellate Authority (AA), vide order dated 13.3.2014. Hence, the applicant has filed the present O.A. under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:

- (a) to quash the impugned orders dated 13.3.2014 and 10.9.2013 as illegal and unconstitutional;

- (b) the Honøble Tribunal may pass any other order/direction as deemed fit and proper in the circumstances of the present case and in the interest of justice.ö

2. Resisting the OA, the respondents have filed a counter reply. It has been asserted by the respondents that there is sufficient evidence to prove the charge against the applicant. The IO, DA and AA have all recorded the findings in fair manner. The procedure established by law has been duly followed. There is no infirmity in the orders passed by the authorities.

3. We have carefully perused the records, and have heard the applicant in person, and Mr.R.K.Jain, the learned counsel appearing for the respondents.

4. It has been submitted by the applicant that the DA has been pressurized by the Central Vigilance Commission to pass the impugned penalty order, although in the first instance the DA, after considering the findings of the IO and all other relevant materials available on record, had proposed to exonerate him of the charges. The penalty order has been passed by the DA solely on the basis of advice of the Central Vigilance Commission and without considering the materials available on record. Therefore, the impugned penalty order and appellate order passed by the DA and AA respectively are unsustainable and liable to be quashed. In support of his contention, the applicant has also drawn our attention to the office order No.26/4/04 dated 16.4.2004 and circular No.02/01/09 dated 15.1.2009 issued by the Central Vigilance Commission on the subjects of jurisdiction

of the Commission in relation to the officers of the level of Group-B (Gazetted), and need for self-contained speaking and reasoned order to be issued by the authorities exercising disciplinary powers.

5. *Per contra*, it has been submitted by Mr.R.K.Jain, the learned counsel appearing for the respondents that the advice of the Central Vigilance Commission has been taken by the DA as per the relevant rules and instructions, and, therefore, there is no question of DA being pressurized by the Central Vigilance Commission to pass the impugned penalty order. After considering the evidence available on record and the contentions raised by the applicant in his representation, the DA has passed the penalty order. The contentions raised by the applicant in his appeal and all other relevant materials available on record have also been considered by the AA while deciding and rejecting the applicant's appeal. Therefore, there is no infirmity in the orders impugned by the applicant in the present O.A.

6. It is no more *res integra* that the power of judicial review does not empower the Tribunal to sit as a court of appeal either to reappraise the evidence/materials and the basis for imposition of penalty, nor is the Tribunal entitled to substitute its own opinion even if a different view is possible. Judicial intervention in conduct of disciplinary proceedings and the consequential orders is permissible only (i) where the disciplinary proceedings are initiated and held by an incompetent authority; (ii) such proceedings are in violation of the statutory rule or law; (iii) there has been

gross violation of the principles of natural justice; and (iv) on account of proven bias and mala fide.

7. The Honøble Supreme Court in **B.C.Chaturvedi Vs. Union of India & others**, [(1995) 6 SCC 749], while examining the scope of judicial review, has held as under.

õ12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice be complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry of where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

8. In **Government of Andhra Pradesh v. Mohd. Nasrullah Khan**, (2006) 2 SCC 373, the Honøble Apex Court has reiterated the scope

of judicial review as confined to correct the errors of law or procedural error if it results in manifest miscarriage of justice or violation of principles of natural justice. In paragraph 7, the Hon'ble Court has held:

“By now it is a well established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an Appellate Authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error if any resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by appreciating the evidence as an Appellate Authority” ..ö

9. In the present case, the IO, in his report, has recorded the following findings:

“FINDINGS IN RESPECT OF SHRI R.C.MEENA S/O SHRI RAMJIWAN, A.E.(BLDG.)

“Having gone through the statement of allegations, written arguments and other relevant documents placed in the file and cross-examination of PW-1 and the version of Defence and Prosecution, I do not find any merit in the contention of the C.O., who has mainly relied upon that he was assigned additional responsibilities during the material time and also he was on leave due to his brother's death from 31.12.04 to 31.1.2005, whereas Prosecution has contended that OI(Bldg.) did not communicate his leave from 31.12.04 to 31.1.05. As such, as per the record available, he remained in the area from 10.8.2004 to 31.12.04 for the purpose of arriving at a conclusion. Keeping this in view, the findings are derived in the following properties:

P.No.A-87, Kamla Nagar, Delhi

As per the record, in this property five demolitions were carried out by the C.O., Shri Prem Chand, JE and this was also booked for u/c on 5.1.2005, 20.1.2005 and 31.1.2005 for deviations and u/c. However, neither demolition action was taken by the C.O. and nor did he get the property booked for u/c for taking action under 343/344 of the DMC Act and no action was initiated by him u/s 345-A and 332/461 or 466-A of the DMC Act. Hence, he is guilty of the charge leveled against him for not taking the requisite action in the property to remove u/c during his tenure. Hence, he is guilty of the charge leveled against him for not taking the requisite action in the property to remove u/s during his tenure. Thus, the charge is **PROVED** against him.

As regards, **P.No.A-83, Kamla Nagar, Delhi**, here the building plan was sanctioned on 2.8.2004 vide File No.80/B/CLZ/04 and part demolitions were carried out under the tenure of the present C.O. as AE(B) on 27.12.04 and 30.12.04. Whereas, the CO, i.e., JE(B), carried out demolitions on 15.1.05, 17.1.05, 18.1.05 and 24.1.05. Whereas, u/c in this building was also booked on 5.1.05, 20.1.05, 31.1.05 and 5.4.05. However, neither demolition action was taken by the C.O. and nor did he get the property booked for u/c for taking action under 343/344 of the DMC Act and no action was initiated by him u/s 345-A and 332/461 or 466-A of the DMC Act. Hence, he is guilty of the charge leveled against him for not taking the requisite action in the property to remove u/c during his tenure. Thus, the charge is **PROVED** against him.

In respect of **P.No.A-44, Kamla Nagar, Delhi**, at the time of inspection, the property was found consisting of basement to Third Floor with mummy and opened terrace with staircase at each floor. At Ground Floor, 12 shutter were found fixed and no bldg. material was found lying at site. The bldg. was found in finished condition and unoccupied. The investigation further revealed that the unauthorized construction in the shape of deviation against sanctioned bldg. plan at Basement floor was booked vide file No.227/B/UC/CLZ/04 dated 15.7.2004, at second Floor vide file No.234/B/UC/CLZ dated 10.8.2004, at second Floor vide file No.264/B/UC/CLZ/04 dated 15.9.2004 and unauthorized construction in the shape of iron shutters at Ground Floor vide file No.144/B/UC/CLZ/05 dated 5.4.2005. From the charge levelled against him, it is **PROVED** beyond doubt that the property was booked during his tenure and construction was carried out upto second floor during his tenure. But no demolition action was carried out during his tenure in the said property. Hence, he is guilty of the charge leveled against him and as such, the charge is **PROVED** against him.

Property No.5251-55, Kamla Nagar.

At the time of inspection, the property was found consisting of Ground to Third Floor. At Ground Floor, 14 shutters were found fixed and occupied. First & Second Floors were found locked and at Third Floor, finishing work was found in progress and bldg. material was also found lying at site. At First Floor, in addition, three rooms set with kitchen, bathroom, latrine was in finishing stage and walls up to 9ø x 10ø height in semi demolition stage. The investigation further revealed that unauthorized construction of 5 shops and staircase at Ground Floor in the rear portion of the property and chajja on mpl. Land vide file No.169/B/UC/CLZ/04 dated 4.6.2004, unauthorized construction in the shape of 05 rooms, two kitchens, staircase, lobby, two toilets in the rear portion of the property at First Floor vide File No.216/B/UC/CLZ/04 dated 20.6.2004, unauthorized construction in the shape of 04 rooms, two kitchens, two toilets, big lobby and

staircase at First Floor and projection on mpl. Land in front side at First Floor and same in Second Floor, unauthorized construction in the shape of four rooms, two kitchens, two toilets, two lobbies, open space on the other side at Second Floor and projection on mpl. Land at Ground, First & Second Floor vide file No.238/UC/CLZ/04 dated 27.9.2004 and unauthorized construction in the shape of two rooms, one kitchen, latrine, bathroom, lobby, chajja on mpl. Land and erection of walls up to 8øat Fourth Floor vide file No.80/B/UL/CLZ/05 dated 23.2.2005. No efforts were made to demolish u/c carried out in the said property.

However, neither demolition action was taken by the C.O. and nor did he get the property booked for u/c for taking action under 343/344 of the DMC Act and no action was initiated by him u/s 345-A and 332/461 or 466-A of the DMC Act. Hence, he is guilty of the charge levelled against him for not taking the requisite action in the property to remove u/c during his tenure. Thus, the charge is **PROVED** against him.ö

After considering the materials available on record, we have found that the above findings are based upon evidence/materials, and it cannot be said that there was no evidence before the IO to substantiate the charge.

10. However, after considering the applicant's oral and written submissions, the DA, vide its order dated 4.2.2013, proposed to exonerate the applicant, with the following conclusions:

öThe report seems to be based on misunderstanding of the DMC Act, functioning of building department in MCD and powers, roles and duties of JE, AE, EE, SE, DC etc. As far as Section 332 of DMC Act is concerned, it prohibits erection of any building without proper permit. The said section does not give power to JE/AE/EE to take demotion action themselves. There is no law/rule/instruction which says that the JE/AE/EE shall all immediately run and rush to the spot themselves and that after compliance of necessary formalities like booking of property, issuance of SCN; hearing the party; passing necessary orders for stopping work/sealing/demolition by the competent authority, the concerned officer in Building Department take up the programme of demolition. The programs are to be fixed depending upon availability of police force resources & priority. This process is mandatory else the Corporation gets reprimand from courts. It was the duty of the IO to examine

whether the Cos have followed the prescribed process or not. If a UC take place and the concerned officer takes all prescribed actions against it, he cannot be held liable for the factum of UC. In this, the IO has miserably failed. The IO apparently has carried out inquiry based upon conjectures, without going into the provisions of the Act and has not applied any logical reasoning in preparing his report. The IO has taken a simplistic stand that because an unauthorized construction has taken place, the concerned JE/AE in Building Department is guilty of it. He has chosen to completely overlook any evidence of actions taken by the CO and has not even discussed them in his report.ö

After having reached the above conclusions, the DA suggested for referring the matter to the Central Vigilance Commission to give its second stage advice.

11. So far as the requirement of second stage advice is concerned, in its office order No.26/4/04, dated 16.4.2004, the Central Vigilance Commission has instructed that in respect of cases involving Gazetted officers below Group 'A' of the Central Government, in which the Commission has tendered its first stage advice, the matter need not be referred to the Commission for second stage advice, if the disciplinary authority, on conclusion of the disciplinary proceedings, proposes to impose a penalty which coincides with the Commission's first stage advice. The case, however, may be referred to the Commission for its advice if the disciplinary authority proposes to take action, which does not coincide with the Commission's first stage advice. In its circular No.02/01/09 dated 15.1.2009, the Central Vigilance Commission has reiterated that their advice/view in disciplinary cases is advisory in nature, and it is for the disciplinary authority concerned to take a reasoned decision by applying its

own mind. The disciplinary authority, while passing the final order, has to state that the Commission has been consulted and after due application of mind, the final orders have been passed. In the speaking order of the disciplinary authority, the Commission's advice should not be quoted in verbatim. In view of these instructions, we do not find any infirmity in the suggestion given by the DA to refer the matter to the Central Vigilance Commission for giving its second stage advice.

12. Now it has to be seen as to whether, or not, the DA has passed the impugned order of penalty solely on the basis of the second stage advice given by the Central Vigilance Commission. The speaking order of penalty passed by the DA has, in fact, been communicated by the Dy. Law Officer (Vig.), SDMC, vide Office Order dated 10.9.1993. The relevant portion of the speaking order passed by the DA is reproduced below:

After the advice of CVC, the matter was reconsidered and re-examined in its entirety and I find that as per procedure in vogue, the building is required to be inspected by the concerned officials when the construction is complete upto plinth level and thereafter monitor it continuously for any deviation till completion. It is evident from the records that Shri R.C.Meena, AE failed to inspect the ongoing construction at property Nos.A-87 & A-83 at the plinth level. Booking against these properties for u/c was done after the complaint was made and the construction had come up beyond the plinth level. Since Shri R.C.Meena was charged with the responsibility of detection of u/c in the area in question during the period when it came up, he cannot be absolved of the charges merely on the ground of impracticality. He had the sufficient staff to carry out the function of detection and follow up action against the u/c. Since u/c did come up and remained undetected till the complaint was made, the charge against him has been rightly held as proved, in the inquiry, in this regard.

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Keeping in view facts and circumstances of the case, the penalty of stoppage of two increments with cumulative effect was proposed to be inflicted upon Shri R.C.Meena, AE and Shri Pramod Kumar, AE, was proposed to be exonerated.

Accordingly show cause notice dated 19.6.2013 were issued and served upon both the Cos to which, they have submitted their replies wherein Shri R.C.Meena, AE had sought an opportunity of personal hearing. However, Shri Pramod Kumar, AE has submitted that he is agreed with the findings of the Disciplinary Authority.

I have gone through the replies submitted by S/Shri R.C.Meena & Pramod Kumar, AEs, allied report of the case and also heard Shri R.C.Meena, AE in person. In his reply and during the course of personal hearing, Shri R.C.Meena, the CO just reiterated the contentions that have already been considered. No additional facts have been put forth by him which may warrant any fresh consideration in the matter.ö

From the above, it is evident that after receipt of the second stage advice from the Central Vigilance Commission, the DA has reconsidered and re-examined the records in its entirety and has arrived at the conclusion that the charges levelled against the applicant have been proved. Accordingly, the DA has passed the impugned order of penalty. Therefore, it cannot be said that the DA has been pressurized by the Central Vigilance Commission to pass the impugned penalty order or that the DA has passed the penalty order solely on the basis of the second stage advice of the Central Vigilance Commission and without applying his mind to the materials available on record including the representation made by the applicant against the findings of the IO. We have also found that the instructions issued by the Central Vigilance Commission in the office order dated 16.4.2004 and circular dated 15.1.2009 (cited supra) have been scrupulously followed by the DA. The applicant has not produced before this Tribunal any other

cogent and convincing material to substantiate his plea that the DA has been pressurized by the Central Vigilance Commission to pass the impugned penalty order.

13 After going through the AA's order dated 13.3.2014, we have found that the AA has considered all the relevant materials available on record and the contentions raised by the applicant in his appeal. The relevant portion of the AA's order dated 13.3.2014 is reproduced below:

7. I have gone through contentions of the appellant in the appeal petition and averments during the personal hearing, his representation to the Disciplinary Authority, the impugned penalty order and relevant records of the case. In this case, the appellant has been penalized for his failure to inspect the ongoing construction at Property nos.A-87 and A-83. It is evident from the records that the appellant had booked these properties for unauthorized construction after the complaint was made. It is also not disputed that the appellant was charged with the responsibility of detection of unauthorized construction in the area in question. During the period when the unauthorized construction came up, the preponderance of probability of it being carried out during the tenure of the appellant cannot be ruled out. The appellant as the Assistant Engineer (Building) cannot shirk away his responsibilities of ensuring that his subordinates enforce the provisions of Building Bye Laws under DMC Act from very inception of the construction activity, as any demolition at a later stage not only financially affect the individual but it is also avoidable wastage of meagre resources of the Nation. Hence, Article of Charge for the lack of effective supervision upon his subordinate Junior Engineer is also maintainable.

8. In view of the totality of facts and circumstances of the case, I am of the considered opinion that the averments made by the appellant in his appeal are devoid of merit. The appellant had failed to maintain due diligence and devotion while discharging his duties and responsibilities as a Municipal employee. I, therefore, see no reason to interfere with the impugned penalty order passed by Commissioner, MCD as the Disciplinary Authority. The appeal is hereby rejected.

The above findings arrived at by the AA, when read with the findings recorded by the IO in his report and the findings arrived at by the DA, clearly go to show that the rejection of the applicant's appeal against the penalty order does not suffer from any infirmity. Thus, the AA's order remains unassailable.

14. No other point worth consideration has been urged or pressed by the applicant.

15. In the light of our above discussions, we find no scope to interfere with the orders impugned by the applicant in the O.A. Accordingly, the O.A., being devoid of merit, is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SHEKHAR AGARWAL)
ADMINISTRATIVE MEMBER

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