

**Central Administrative Tribunal
Principal Bench**

OA No.2580/2012

New Delhi, this the 1st day of September, 2016

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

Shri P.K. Arora,
S/o Shri Bhullan Singh Arora,
Aged about 56 years,
R/o FOD-2/DDA, Seed Bed Park,
Shakarpur,
New Delhi-110092.

...applicant

(By Advocate : Shri Sanjiv Joshi)

Versus

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

2. Ashok Khurana,
Engineer Member/DDA,
Disciplinary Authority,
C/o Vice Chairman Vikas Sadan,
INA, New Delhi.

...respondents

(By Advocate : Shri Manjeet Singh Reen)

ORDER (ORAL)

Hon'ble Mr. V.N. Gaur, Member (A)

The applicant, a Junior Engineer in the Delhi Development Authority was served with a Memorandum of Charge on 03.10.2008, containing the following charges :-

“That the said Sh. P.K. Arora, JE(C) while functioning as Junior Engineer, SED-1, during the period from March-2003 to February 2004, when he

was Engineer-in-charge of the work, "C/o 504 HIG Houses Pkt. K&L at Sarita Vihar. SH: C/o 176 HIG Houses (88 Cat.III and 80 Cat.II houses and 132 S/G i/c internal dev. Group-II., Agency :- M/s Choudhary Builders, Agreement No.16/EE/SED1/2001-02/DDA, the works were inspected by Quality Control Cell on 18.1.05 for verification of some complaints.

That the said Sh. P.K. Arora, JE(C) was found to have committed the following lapses :

Article I

That though the ISI marked SCI pipes were used in sanitary installation works but some of the pipes (particularly bearing mark 'SUPER') were found lesser in weight as well as in diameter indicating fake ISI marking.

That the said Sh. P.K. Arora, JE(C), 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) and 1(iii) of Regulation 4 of the DDA Conduct, Disciplinary and Appeal Regulations 1999."

2. An enquiry was conducted in which the charge framed against the applicant was proved by the Enquiry Officer in his report dated 22.07.2009. The Disciplinary Authority after considering the enquiry report and the representation of the applicant, imposed the penalty of *reduction of pay including grade pay in the pay scale of his pay by two stages for a period of two years with cumulative effect with further stipulation that the applicant will not earn the increments during the period of reduction and after expiry of the penalty period, this will have effect of postponing his future increments of pay.* The appeal submitted by the applicant following the order of Disciplinary Authority was rejected by the Appellate Authority vide order dated 15-26.04.2011. The Revision Petition was also rejected vide order dated 23.05.2012.

3. In this OA, the applicant has sought setting aside of the punishment order dated 23.07.2010, the Appellate Authority order dated 26.04.2011 and the rejection of the Revision Petition dated 23.05.2012.

4. The learned counsel for the applicant submitted that the applicant has been singled out for punishment despite the fact that he did his duty diligently by conducting test check of material supplied by the contractor. He had also placed everything on record in the "Material Approval Register" and taken the approval of his superiors. The respondents, therefore, wrongly placed the entire responsibility on the shoulders of applicant when the senior officers had also approved the material that had been received. Further, once the defect in the material had been noticed, the excess payment made was recovered from the supplier and, therefore, there was no loss to exchequer. The charge against the applicant was without any basis. According to the Works Manual (extract annexed to the OA at page 67), the quality assurance plan has to be part of the tender documents and the quality check is a continuous process while the project is going on. The material has to be checked and tested periodically at the required intervals by the contractors and it has to be countersigned by the Junior Engineer, Assistant Engineer and Executive Engineer as well. In this case, the Quality Control Wing checked the material at the site only in

January, 2005 while the work was completed in October, 2004. This was against the provision contained in the Manual and for which the applicant was held accountable. The payments could not have been released by him on his own, as under the Rules, it has to be approved by the Assistant Engineer and Executive Engineer. There was also discrimination as in the case Shri N.C. Gupta, AE the major penalty imposed by the DA on similar charges was converted into a minor penalty by the AA despite the fact that his responsibility was higher than that of the applicant.

5. The learned counsel for the respondents on the other hand relying on ***Sushil Kumar Banerjee Vs. State of West Bengal &Ors*** (1980) 3 SCC 304; ***State Bank of Bikaner & Jaipur Vs. Prabhu Dayal Grover*** (1996) 1 SLJ SC Supreme Court 145, ***Apparel Export Promotion Council Vs. A.K. Chopra*** JT 1999 (1) SC 61; and several other judgments, submitted that the respondents while proceeding against the applicant had meticulously followed all the provisions of the Disciplinary and Appeal Rules and he was given full opportunity to defend himself. It is not the case of the applicant that there was any violation of the rules or the principles of natural justice on the part of the respondents. In such a scenario, this Tribunal may not interfere with the discretion exercised by the Disciplinary Authority or the Appellate Authority, as such imposition of punishment does not suffer from illegality or material procedural irregularity or the

punishment is such that would shock the conscience of the Court/Tribunal. With regard to the merits of the case, learned counsel submitted that the provisions of the Manual which the applicant has quoted, clearly stated that each of the relevant items of work, materials used and the process required have to be checked and tested periodically at the required intervals by the contractor and the departmental field officers and staff, and the reports shall have to be duly signed by the contractor or his authorised representative, as well as the Junior Engineer, Assistant Engineer and Executive Engineer. The Junior Engineer in this case is the field staff who was expected to have checked and conducted test wherever required of the material supplied by the contractor. The approval of the superior officers after the report has been prepared by the Junior Engineer will not dilute his responsibility. He further submitted that though there may not be loss to the exchequer because of the recoveries made from the supplier/contractor, the charge against the applicant was that some of the pipes used in sanitary installation works were lesser in weight as well as in a diameter and with spurious ISI marking. The recovery from the supplier, therefore, was of no significance. He also referred to the order of this Tribunal in **Charat Singh Vs. DDA & Ors.** (OA No.3833/2010), in which one of the co-accused, namely, Shri Charat Singh was the applicant. One of the two articles of charge against Shri Charat Singh was identical to the articles of

charge of the applicant in the present OA. This Tribunal in para 11 had taken note of the supply of sub standard pipes which would have resulted in sub-standard construction, while upholding the reduced punishment awarded by the Appellate Authority on the applicant in that case. the Tribunal observed that the applicant in that case deserved more severe punishment considering the gravity of misconduct.

6. Re-joining the learned counsel for the applicant referred to his additional affidavit dated 08.07.2015 and submitted that the aforementioned order of the Tribunal was not applicable in the present case, as the facts were different inasmuch as duty of the applicant in the present OA could not be compared with the duty of the applicant in that OA. He also referred to **Smt. Ram Rakhi Vs. Union of India &Ors.** [AIR 2002 Delhi 458] and submitted that little difference in the facts or additional facts may make lot of difference in the precedential valuation of a decision.

7. We have heard the learned counsels for the parties and perused the record. The main pleas of the applicant are that:

- (i) He alone was not responsible, if there was supply of defective material with spurious markings because his superiors were also responsible, as per the Rules and their approval was taken.
- (ii) There was no loss to exchequer.

- (iii) The quality check by the concerned department should have been done concurrently and not after the work had been completed and;
- (iv) The order of this Tribunal in ***Charat Singh Vs. DDA & Ors.*** (OA No.3833/2010), was not applicable in the present case.

8. The applicant was working as Junior Engineer at the project from March, 2003 to February, 2004 and the work was completed on 27.10.2004 while the quality check was done on 18.01.2005. The applicant has not denied that the material in question was supplied during the period he was working at the project. From para 53.2 of the extract from Works Manual kept on record by the applicant himself, it can be seen that it is the responsibility of the departmental field officers and staff to check and test periodically the relevant items of work and material used and process employed. Being one of the field officers, the applicant cannot shift the responsibility to other officers simply because they also happened to be associated with the project. The applicant was expected to be more vigilant in checking the material that was received at site. The plea that there was no loss to the exchequer, cannot absolve him of the responsibility of checking the material supplied by the contractor as the recovery from the supplier was done only after the quality check was done by the concerned department. Had there

been no quality check and detection of defective material with spurious markings, the use of sub-standard material could have proved damaging to the structure.

9. We note that one of the charges against the applicant in OA No.3833/2010 i.e. Shri Charat Singh reads as follows:-

“(i) That though the ISI marked SCI pipes were used in sanitary installation works but some of the pipes (particularly bearing mark ‘SUPER’) were found lesser in weight as well as in diameter indicating fake ISI marking;”

Comment [V1]: Check if it is complete charge

10. The observation of the Tribunal with regard to this charge and the order in the OA reads thus:-

“11. The alleged failure on the part of the applicant to properly verify the quality of the pipes must have been for obvious reasons and to cause pecuniary benefits to the contractor which would have resulted in sub-standard construction in case lack of the quality was not detected in time as using such pipes would have caused damage to the constructions.

12. Thus, one course left open for us is to remand the matter to the appellate authority to pass a detailed and reasoned order and another course is to dismiss the O.A. Considering the nature of this case, where there is sufficient material on record with regard to the lapse on the part of the applicant, which, as already observed by us, was done for obvious reasons, we deem it unnecessary to remand the matter. In fact, it is a case that requires more severe punishment than imposed. Thus, we see absolutely no merits in the O.A. and the same is accordingly dismissed. There shall be no order as to costs.”

11. Once the charge of failure on the part of the applicant to verify the received material has been proved, there is no convincing reason cited by the applicant as to why he should get a treatment different from the one given to Shri Charat Singh, who was also a JE. The case of the applicant can not be compared with that of Shri N.C. Gupta as his role as AE was different from the role of the applicant as JE.

12. In **Rajender Yadav vs. State of M.P. & ors.**, 2013 (2) AISLJ 120, it was held that there were other persons involved in the same incident but they had been given any other cosmetic penalty but in the case of applicant one of the severest penalty of compulsory retirement has been imposed. It was also held that the Doctrine of Equality applied to all who are equally placed even among persons who are found guilty. The ratio of this judgment will also not be applicable in the present case as the respondents have pointed out that some of the other accused persons in the matter of fraudulent withdrawal of huge sum from the fictitious accounts have been dismissed from the service by the respondents and one of them has been sentenced to imprisonment and fine in the criminal case as well. The applicants' claim of parity with other accused persons has no basis.

13. Therefore, we do not find any reason or justification for interference with the impugned orders.

14. The OA is dismissed being devoid of merit. No costs.

(V.N. Gaur)
Member (A)

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

1st September, 2016

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