

**Central Administrative Tribunal
Principal Bench**

**OA No.2810/2016
MA No.4347/2017**

New Delhi, this the 12th day of December, 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)**

Hukam Chand

Aged about 50 years,

S/o Late Naval Kishore

R/o Flat No.46, Pragati Apartments (SFS)

Club Road, Paschim Vihar,

New Delhi 110 063.

.... Applicant.

(By Advocates, Shri S. Rajappa and Shri Anil Singal)

Vs.

1. Govt. of NCT of Delhi
Through the Chief Secretary
5th Floor, Delhi Sachivalaya,
Govt. of NCT of Delhi.

2. Director
Directorate of Education
Old Secretariat, Delhi
Govt. of NCT of Delhi.

3. Additional Director of Education (Vig.)
Directorate of Education
Old Secretariat, Delhi.

4. Lieutenant Governor of Delhi
Raj Niwas, Rajpur Road,
Delhi 110 054.

... Respondents.

(By Advocate, Shri Vijay Pandita)

: O R D E R (ORAL) :

Justice Permod Kohli, Chairman:

This Application has been filed seeking following reliefs:-

- “ i) quash and set aside the impugned charge sheet dated 18.12.2014 placed at Annexure A-1 and consequential proceedings; and
- ii) quash and set aside show cause notice dated 12.03.2013 issued to the Applicant, Annexure A-1;
- iii) pass any order/relief/direction(s) as this Hon'ble Tribunal may deem fit and proper in the interest of justice in favour of the applicant;

2. Brief facts leading to the filing of this Application are that the applicant who is serving as a DANICS Officer was posted as SDM, Punjabi Bagh on 27.06.2012. One matter registered as Case No.270/1960/4671 was heard by him and passed order dated 05.09.2012 in his capacity as a quasi judicial adjudicating authority under the provisions of Delhi Land Reforms Act. The order passed by the applicant was challenged by Gaon Sabha Neelwal in Appeal No.237DCW/20013/142 under Section 85 of the Delhi Land Reforms Act before the Deputy Commissioner (West). The Appellate Authority vide its order dated 01.03.2013 granted stay on the operation of the judgment passed by the applicant. While the appeal was pending, the applicant has been served with a show cause notice dated 12.03.2013 by respondent No.1 through ADM (West)/Vigilance Officer District West. The applicant submitted reply to the said show

cause notice vide his letter dated 28.03.2013 in respect to the order passed by him. He was thereafter served with a charge sheet vide Memorandum dated 18.12.2014 and was also placed under suspension. The suspension of the applicant has been extended from time to time for which the applicant has filed a separate OA No.4385/2015 which is pending before this Tribunal. In the meantime, the parties, i.e., Charan Singh & Ors. filed a Civil Suit being CS (OS) No.522/2013 seeking permanent injunction against the Gaon Sabha Neelwal and Delhi Jal Board amongst others. Hon'ble Delhi High Court in FAO (OS) No.245/2013 restrained Delhi Jal Board and Gaon Sabha Neelwal from interfering with the possession of the plaintiffs therein as an interim measure vide its order dated 02.07.2013.

3. The present Application has been filed challenging the memorandum of charge and show cause notice. Along with the memorandum of charge, the statement of articles of charge framed against the applicant has also been served. The following charges are framed against the applicant:-

"STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST SH. HUKAM CHAND, ADHOC DANICS, GOVT. OF NCT OF DELHI.

Article-I

That the said Sh. Hukam Chand, adhoc DANICS, while functioning as Sub-Divisional Magistrate/Revenue Assistant (Punjabi Bagh) during the year 2012, committed gross

misconduct in as much as he passed an illegal order dated 05/09/2012 with ulterior motives, giving cultivator possession rights in respect of Gaon Sabha Land in village Neelwal, Delhi to some private persons in the guise of " Scheme Kabiz", although the said land had already been allotted to Delhi Jal Board in 2008, with the approval of Hon'ble Lt. Governor, Delhi for setting up of Sewage Pumping Section.

By the above acts of omission & commission, the aforesaid Sh. Hukam Chand, adhoc DANICS, exhibited lack of absolute integrity and devotion to duty, which is unbecoming of a Govt. servant, thereby violating the provisions of Rule 3 of CCS (Conduct) Rules, 1964.

Article-II

That the said Sh. Hukam Chand, while functioning in the aforesaid post during the aforesaid period, committed gross misconduct in as much as he failed to initiate appropriate proceedings under Section 86A of DLR Act for evicting the unauthorized occupants of the aforesaid Gaon Sabha land.

By the above acts of omission & commission, the aforesaid Sh. Hukam Chand, ad hoc DANICS, exhibited lack of absolute integrity and devotion to duty, which is unbecoming of a Govt. servant, thereby violating the provisions of Rule 3 of CCS (Conduct) Rules, 1964.

Article-III

The said Sh. Hukam Chand, while functioning in the aforesaid post during the aforesaid period, committed gross misconduct in as much as he failed to initiate appropriate action for transferring the possession of the aforesaid land to Block Development Officer (West) for handing over the same to Delhi Jal Board.

By the above acts of omission & commission, the aforesaid Sh. Hukam Chand, adhoc DANICS, exhibited lack of absolute integrity and devotion to duty, which is unbecoming of a Govt. servant, thereby violating the provisions of Rule 3 of CCS (Conduct) Rules, 1964."

From the perusal of the charge sheet, we notice that the charge against the applicant is that he has passed an illegal order with

ulterior motives. There is no specific averment regarding the act attributed to the applicant as to in what manner he has committed any kind of misconduct. In any case, the applicant has passed an order in adjudicating capacity which are *quasi judicial* in nature and subject to appeal by the Appellate Authority. The appeal is already preferred, wherein, the order passed by the applicant has been stayed and the appeal is still pending.

4. A similar controversy has been examined by a coordinate bench of this Tribunal in the case of *Rajesh Kumar Bhardwaj (SDM) vs. Govt. of NCT of Delhi & Other* [OA No.1307/2015 decided on 05.04.2016]. The relevant paras of the said judgment are as under:-

“ 23. Moreover, it is not a matter of dispute that the applicant has decided the matter of settlement of boundary dispute in exercise of his power under Section 28 of the DLR Act read with Rule 403 of the Delhi Land Revenue Rules, 1962. Concededly, the appeal No.69/2013 against the disputed order dated 30.07.2013 (Annexure A-8) filed by M/s. Sanjha Properties Pvt. Ltd. under the provisions of DLR Act is still pending adjudication before Collector/District Magistrate, South Delhi. Thus, it would be seen that the facts of the case are neither intricate nor much disputed.

24. Such being the position on record, now the short and significant question, though important, that arises for determination in this OA is as to whether a departmental enquiry can be initiated against the applicant and for his alleged misconduct in passing the order dated 30.07.2013 (Annexure A-8), in exercise of his quasi-judicial & statutory power under the DLR Act and rules framed therein or not?

25. Having regards to the rival contentions of the learned counsel for the parties, we are of the considered opinion that answer must obviously be in the negative in this regard.

28. In case any person is aggrieved by such order of SDM cum-Revenue Assistant, he has a statutory right of appeal, i.e., first appeal and second appeal, as envisaged under Sections 64 to 69 and revision/review under Sections 71 to 73 of the DLR Act, as the case may be. Therefore, this leaves no manner of doubt that Shri K.P. Suhag, the then SDM and the applicant SDM-cum-Revenue Assistant discharged their quasi-judicial functions under statutory provision of the DLR Act and rules framed there under.

34. An identical question came to be decided by Hon'ble Apex Court in case **Zunjarrao Bhikaji Nagarkar VS. U.O.I. & Others** 1999 (7) SCC 409. Having considered the exercise of quasi-judicial functions vis-à-vis departmental enquiry, it was ruled as under:-

“(E) If, every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge-sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi judicial authority. The entire system of administrative adjudication whereunder quasi judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings”

After considering the judgments of the Apex Court in cases of *Inspector Prem Chand Vs. Government of NCT of Delhi and Others* (2007) 4 SCC 566, *Union of India and others vs. J. Ahmed* (1979) 2

SCC 286 and *Zunjarrao Bhikaji Nagarkar's case* (supra), the Coordinate bench of this Tribunal has held as under:-

“36. Hence, we hold that the impugned Memorandum/ Article of Charge and all other subsequent departmental enquiry proceedings cannot legally be sustained and they deserve to be and are quashed and set aside in the obtaining circumstances of the case.”

5. The present case is squarely covered by the aforesaid judgment of coordinate bench of this Tribunal in *Rajesh Kumar Bhardwaj* (supra). This OA is accordingly allowed. The impugned show cause notice and the charge memo are hereby quashed.

6. All ancillary applications stand disposed of.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/pj/