

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.1972/2013

New Delhi this the 8th March, 2016

HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MS. NITA CHOWDHURY, MEMBER (A)

Gopal Das Verma
Assistant Accounts Officer,
ED-4, DDA, CBD Shadrah,
New Delhi.

...Applicant

By Advocate: Shri Ajesh Luthra.

Versus

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

2. Finance Member
Delhi Development Authority,
Vikas Sadan, INA,
New Delhi-110023.

...Respondents

By Advocate: Shri Arun Birbal.

ORDER (ORAL)

Justice M. S. Sullar, Member (J)

The challenge in this Original Application (OA) by the applicant is to the impugned Memorandum/Article of Charge of minor penalty dated 07.05.2013 (wrongly written as 27.05.2013 in the OA) (Annexure A-1), inter alia, on the ground of its maintainability, being vague, improper, reflecting arbitrariness and mala fide.

2. In the wake of notice, the respondents refuted the claim of the applicant, filed the reply and raised a preliminary objection of maintainability of the OA being premature, as according to them, the applicant has directly filed the OA without filing the reply to the charge sheet. It was pleaded that the applicant with the connivance of the contractor manipulated the record and recommended the preparation of third R/A Bill amounting to Rs.47.33 lacs in violation of budgetary provisions and without any prior approval of competent authority. It will not be out of place to mention that the respondents have stoutly denied all other allegations contained in the main OA and prayed for its dismissal.

3. After hearing the learned counsel for the parties on the preliminary objection and going through the record, we are of the considered opinion that the instant OA is premature and is not maintainable at this stage.

4. As is evident from the record, the applicant was charge sheeted for minor penalty vide impugned Memorandum/Article of Charge dated 07.05.2013 (Annexure A-1), which is in the following manner:-

“Shri G.D. Verma, AAO while working as AAO/ED-3 during the period from April, 2007 to September, 2009 had committed irregularities for the following work as detailed below:-

Name of work : D/o Yamuna River (West Bank) Vijay Ghat (Pusta).
 SH : SH: C/o 9.0 m internal road/footpath & parking.
 Estimated cost : Rs.35,81,939.00
 Tendered cost : Rs.44,06,973.00
 Agreement No. : 17/EE/ED-3/DDA/2007-08
 Agency : Shri Yuv Raj Singh
 DOS : 08.07.2007
 DOC : 07.11.2007

Article-I:

That the said Shri G.D. Verma, AAO has recommended the 3rd R/A Bill for payment without any principle approval and sanction of a fresh Extra Item Statement No.2 initiated by Shri M.C. Singhal, EE in violation of standing instruction/circular dated 27.7.2001 issued by CE(HG)DDA and minutes of meeting circulated vide no.FE 16(11)2006/CAU/155 dated 20.04.2007 by CAO.

Article-II:

That the said Shri G.D. Verma, AAO has recommended the payment beyond the amount available in budget slip in violation of standing instructions contained in F&E Circular No.19 dated 19.06.1995 and reiterated vide minutes of the meeting issued vide no.F.E 16(11)2006/CAU/155 dated 20.04.2007.

That the said Shri G.D. Verma, AAO by his above act failed to maintain absolute devotion to duty and behaved in a manner unbecoming of an employee of the Authority thereby violated sub-rule 1(i), 1(ii) and 1(iii) of Regulation 4 of DDA Conduct, Disciplinary and Appeal Regulation, 1999”.

5. Instead of filing the reply, the applicant straightaway jumped to file the instant OA to quash the impugned charge sheet.

6. Ex-facie, the arguments of the learned counsel that the charges are arbitrary, improper, the powers delegated vide letter No.F5(287)96-97/PC/DDA/183 dated 27.7.20011 were withdrawn and since there is no evidence on record involving the applicant, so the charges are vague and departmental proceedings cannot be initiated against him, are neither tenable nor the observations of the Hon’ble Apex Court in the cases of ***State of Punjab Vs. V.K. Khanna and Others 2001 (2) SCC 330*** and ***Roop Singh Negi Vs. Punjab National Bank and Others 2009 (2) SCC 570*** are at all applicable to the facts of the present case. Possibly no one can dispute with regard to the observations in the above mentioned judgments that in service jurisprudence the concerned authority has to apply its mind upon receipt of reply to the charge sheet or show cause as the case may be, as to whether a further inquiry is called for. In the

event upon deliberations and due consideration it is in the affirmative – the inquiry follows and not otherwise. But the same would not come to the rescue of the applicant at this stage. There are direct allegations that the applicant has recommended 3rd R/A Bill for payment without any requisite approval and in violation of standing instructions/circular dated 27.07.2001. Not only that, he has recommended the payment beyond the amount available in budget slip amounting to Rs.47.33 lakhs as well. Although, prima facie, there appears to be more than sufficient material on record of grave misconduct, warranting a major penalty but strange enough the competent authority has only issued a memorandum to the applicant for minor penalty for the reason best known to it.

5. Be that as it may, the indicated arguments of learned counsel for the applicant cannot be accepted at this premature stage. It may be his defence which can only be considered, after his (applicant) explanation/reply of charge of minor penalty, by the competent authority. If the applicant is able to prove that he was not the person responsible for preparation of bills or illegal payment of Rs.47.33 lakhs only then the Disciplinary Authority would naturally decide the matter accordingly at the appropriate stage of the enquiry.

6. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

7. In the light of the aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side at the time of main enquiry, as there is no merit, therefore, the OA is hereby dismissed as such in the obtaining circumstances of the case.

Needless to mention that nothing observed, here-in-above, would reflect, in any manner, on merits of the case during the course of main enquiry, as the same has been so recorded for a limited purpose of deciding the instant OA. No costs.

(MS. NITA CHOWDHURY)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Rakesh