

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.3391/2013

New Delhi this the 13th day of July, 2016

**HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MR. V.N. GAUR, MEMBER (A)**

Shri R.C. Meena
S/o Shri Ram Jivan
R/o E-3, MCD Flats, Bhamasha Market,
Kamla Nagar,
Delhi-110007. ...Applicant

(Argued by: Applicant in person)

Versus

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. ..Respondents

(By Advocate : Shri R.K. Jain)

ORDER (ORAL)

Justice M. S. Sullar, Member (J)

The matrix of the facts and material, culminating in
the commencement, relevant for disposal of instant Original

Application (OA), and emanating from the record, as claimed by the applicant, R.C. Meena, is that, he was working, as Assistant Engineer (Civil), at the relevant time in the area of Shakti Nagar, Civil Lines Zone, Delhi. He along with some other Engineers was stated to have committed certain irregularities during the course of performing their official duties as Assistant Engineers (Building).

2. As a consequence thereof, applicant and other delinquent Engineers, were jointly charge sheeted under the provisions of the Regulation 8 of the DMC Services (Control & Appeal) Regulations, 1959 (hereafter to be referred as "Service Regulation"). At the same time, the following Article of Charges were served to the applicant on 1.5.2006:-

"Sh. R.C. Meena, was working as AE (B), Building Department in C.L. Zone remained incharge of Shakti Nagar area w.e.f. 1.1.2005 to 31.1.2005, 1.6.2005 to 28.7.2005, 14.9.2005 to 20.10.2005 and 8.11.2005 onwards. He committed lapses on the following counts:

1. The deviations at SF and u/c of 8 rooms, 2 kitchens, toilet, bathroom at TF and fixing of shutters at GF and mumty at 4th Floor in P. No.6/2, Singh Sabha Road, Shakti Nagar deviation at SF and mumty at 4th Floor in P.No.7/1 Singh Sabha Road, Shakti Nagar and deviations at GF to SF and u/c of 7 rooms, 2 toilets, 2 kitchens, 4 bathrooms at TF with projection on each floor and fixing of 6 shutters at GF in P.No.5/4, Singh Sabha Road, Shakti Nagar was carried out and completed during the working tenure of Sh. R.C. Meena, AE but he failed to get the same stopped/demolished at its initial/ongoing stage.
2. He also failed to timely get booked the u/c in P. No.5/4, Singh Sabha Road, Shakti Nagar for taking action u/s 343/344 of DMC Act.
3. He also failed to get initiated action for sealing the u/c u/s 345-A and for prosecution of the o/b u/s 332/461 or 466-A of DMC Act.
4. He also failed to get initiated action for revocation of sanctioned building plan in respect of all the aforesaid 3 properties for their conversion into commercial purpose at GF and excess coverage at each floor against Sanctioned building plan.
5. He also failed to get maintained construction watch register for the area as per instructions laid down in Circular No.D/476/Addl.Comm (E)/2001 dated 20.8.2001.
6. He also failed to get initiated action for disconnection of water & Elect. Supply of he properties on account of huge u/c.

7. He also failed to exercise proper supervision and control over the functioning of Sh. Gajenfer Ali, JE who did not take proper and timely action against the unauthorized construction.

He, thereby contravened Rule 3 (1) (i) (ii) (iii) and 3 (2) of CCS (Conduct) Rules 1964 as made applicable to the employees of MCD.”

3. Although applicant completely denied the charges, however, the regular Departmental Enquiry (DE) was initiated against him as per the Service Regulations. Thereafter, an Enquiry Officer (EO) was appointed, who recorded and evaluated the evidence, completed the enquiry and concluded that charges No.1 to 5 & 7 are proved against the applicant whereas charge No.6 was held to be not proved by impugned joint enquiry report dated 20.04.2011 (Annexure-3).

4. Agreeing with the findings of the EO, the Disciplinary Authority (DA) proposed the penalty and issued Show Cause Notice (SCN). Having considered the findings of the EO, material and evidence available on record, a penalty of reduction in the pay, in the time scale of pay, by two stages, for a period of 2 years with cumulative effect, was imposed by the DA. It was conveyed to the applicant vide order dated 23.03.2012 (Annexure-4).

5. The applicant did not feel satisfy and preferred the appeal, which was partly accepted and the indicated penalty was reduced to that of “Censure” by way of order dated 10.05.2013. The penalty order was conveyed to the applicant (Annexure-1 Colly.) by the Appellate Authority (AA) (Lt. Governor, Delhi) vide impugned order dated 07.06.2013 (Annexure-1 Colly).

6. Aggrieved thereby, the applicant has preferred the instant OA, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985 (hereafter to be referred as “Act”), on the following grounds:-

“(A) Because applicant has been falsely implicated in the case which is clear from the order of the Appellate Authority.

(B) Because Appellate Authority has not acted in accordance with law and has taken up issue that was not part of case at any stage.

(C) Because Appellate Authority has gone beyond the limits of the case and has issued punishment order based on outside issue of the case.

(D) Because deviation is mentioned in the sanctioned plan and same was mentioned in the present case also therefore there was no question of sketch in the mind of department and accordingly it was not an issue in the present case.

(E) Because Gajanfar Ali JE himself is not charged for not making ‘sketch’.”

7. The applicant has termed the impugned appellate order as arbitrary and illegal. On the basis of aforesaid grounds, the applicant sought to quash the impugned orders in the manner indicated hereinabove.

8. The contesting respondents refuted the claim of the applicant and filed the counter affidavit, wherein it was pleaded that applicant and other engineers failed to take action against the unauthorized construction carried out in property Nos. 5/4, 6/2 and 7/1 Singh Sabha Road, Shakti Nagar, Delhi. Applicant failed to exercise proper supervision and control over the functioning of Shri Gajanfar Ali, JE (B) who did not take proper and timely action against the unauthorized construction carried out in the above mentioned building. A joint departmental enquiry was conducted, in which all charges, except charge No.6 were held to be proved

against the applicant by the EO, in his report dated 20.04.2011.

10. According to the contesting respondents, that after going through the matter, the DA proposed the penalty and issued SCN dated 02.12.2011 to the applicant, to which he submitted reply. After taking into consideration the enquiry report and material on record, the DA awarded the indicated penalty to the applicant. However, it was admitted that Hon'ble Lt. Governor of Delhi, being the AA, partly accepted the appeal of the applicant and reduced the pointed penalty to that of "Censure" vide order dated 7.6.2013.

11. Virtually acknowledging the factual matrix and reiterating the validity of the departmental proceedings & impugned orders, it is pleaded by the respondents that the Disciplinary and Appellate Authorities have passed speaking orders, after following the due procedure of law. It will not be out of place to mention here that the respondents have stoutly denied all the allegations contained in the OA and prayed for its dismissal.

12. Controverting the allegations contained in the reply of the respondents and reiterating the grounds taken in the OA, the applicant filed his rejoinder. That is how we are seized of the matter.

13. Having heard the applicant in person, learned counsel for the respondents and having gone through the records with their valuable help, we are of the firm view that the instant

OA deserves to be accepted for the reasons mentioned hereinbelow.

14. What cannot possibly be disputed here is that, in the wake of departmental enquiry, the DA imposed the penalty of reduction in pay by 2 stages for a period of 2 years with cumulative effect on the applicant. The appeal filed by the applicant was partly accepted by Lt. Governor (AA) and the indicated penalty was reduced to that of "Censure" vide impugned order dated 10.05.2013 conveyed to the applicant vide order dated 07.06.2013 (Annexure-1). The operative part of the main order reads as under:-

"5. I have gone through contentions of the applicant 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. The appellant has averred that he had taken all possible measures for effective action against the unauthorized constructions brought before him by the Junior Engineer. Also, the appellant further emphasized that even during the period when he was holding the charge of Building Department in Civil Lines Zone, he had been assigned additional charge of Executive Engineer, besides looking after the work of another Assistant Engineer. He was specifically tasked to handle tow PIL cases of Civil Line Zone. He also cited the appreciation recorded by Hon'ble High Court of Delhi Engineer-in-Chief for taking action against unauthorized construction. In the circumstances, I find merit in the averment of the appellant that he could not actively associate himself with field checking of unauthorized constructions in the area and was dependant on the Junior Engineer to detect such violations. Whenever the cases were place before him he had taken prompt action as mandated under the Act. However, on the perusal of two bookings approved by the appellant on 03.06.2005, it is noted that the violation by the Owner/Builder in the property is merely mentioned as 'deviation from sanctioned building plan'. This is a generalized statement, whereas, the provision provides for recording specific violations at each level, as well as for preparing rough sketch thereof. The appellant should not have accepted the Proforma prepared by the Junior Engineer and should have directed him to submit the same with the recorded specific details. Hence, Article to Charge for the lack of effective supervision upon his subordinate Junior Engineer is maintainable.

6) Keeping in view all facts & circumstances of the case, I am of the view that the penalty imposed is disproportionate to the proven misconduct and the ends of justice would be met if the penalty is so modified that it will not have any adverse financial impact upon the appellant. I accordingly order that the penalty imposed by the Disciplinary Authority be reduced to that of "Censure".

15. Thus, it would be seen that the facts of the case are neither intricate nor much disputed and fall within a very narrow compass. All other allegations/charges levelled and material/evidence against the applicant were negated by the Lt. Governor (AA). That means the applicant was exonerated from all the charges except lack of effective supervision by Lt. Governor. The AA has awarded the penalty of "Censure" only on the ground that "However, on the perusal of two bookings approved by the appellant on 03.06.2005, it is noted that the violation by the Owner/Builder in the property is merely mentioned as 'deviation from sanctioned building plan'. This is a generalized statement, whereas, the provision provides for recording specific violations at each level, as well as for preparing rough sketch thereof. The appellant should not have accepted the Proforma prepared by the Junior Engineer and should have directed him to submit the same with the recorded specific details. Hence, Article to Charge for the lack of effective supervision upon his subordinate Junior Engineer is maintainable".

16. As is evident from the record and impugned enquiry report dated 20.04.2011 (Annexure-3), would reveal that the deviation in question at second floor of property bearing No.7/1 Singh Sabha Road, Shakti Nagar, was booked on 03.06.2005 by Gajanfar Ali, JE (Building) (not by the applicant). Further, perusal of the First Information Report (Annexure A-3 Colly.) would reveal that Gajanfar Ali, JE

(Building), reported the unauthorized construction on second floor of property bearing No.7/1 Singh Sabha Road, Shakti Nagar, Civil Lines, to the applicant only on 03.06.2005 and he (applicant) on the same day, ordered to issue show cause notice to the defaulter under Sections 343 and 344 of DMC Act. After following the due procedure, he passed the Demolition Order (DO) on 20.06.2005 under DMC Act (as acknowledged in the enquiry report). It is not a matter of dispute that the same very procedure was adopted by other Assistant Engineers (Building), which is clear from some First Information Reports/Orders dated 25.10.2005, 21.04.2005 and 06.05.2005 (Annexure A-3 Colly.).

17. Meaning thereby, neither it is the case nor any evidence, much less cogent, was produced by the department during the course of enquiry, even to suggest remotely that the unauthorized construction in the building *ibid* was made by the owner while the applicant was incharge of the area. He cannot possibly be penalized for the inaction of lack of supervision and unauthorised construction made during the tenure of other Engineers.

18. As mentioned hereinabove, as soon as the fact of unauthorized construction was brought to the notice of the applicant, he issued show cause notice on the same day and took prompt action of demolitions of the unauthorized constructions in the manner indicated hereinabove.

19. Therefore, indeed applicant cannot be and should not be held liable for any alleged misconduct of lack of supervision in this relevant connection. Hence, it is held that the department has miserably failed to substantiate the charges framed against the applicant by producing any reliable and cogent evidence. Thus departmental proceedings are vitiated and impugned order cannot legally be sustained.

20. No other point, worth consideration, has been urged or pressed by the parties.

21. In the light of the aforesaid reasons, the instant OA is accepted. The impugned order dated 10.05.2013 of the Appellate Authority and order dated 07.06.2013 (Annexure A-1 Colly.), are hereby set aside. The applicant is exonerated from all the charges levelled against him.

Needless to mention, naturally applicant would be entitled to all the consequential benefits including promotion. However, the parties are left to bear their own costs.

(V.N. GAUR)
MEMBER (A)

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

Rakesh