CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.3573 OF 2014
New Delhi, this the 13th day of February, 2018

CORAM:
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER
AND
HON'BLE MS. PRAVEEN MAHAJAN, ADMINISTRATIVE MEMBER

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Shri J.P.Verma,
Aged about 61 years,
s/o late Shri R.L.Verma,
R/o Flat No.6089/5, D-6,
Vasant Kunj, New Delhi 110070 ……. Applicant

(By Advocate: Mr.Y.K.Tyagi, proxy for Mr.Sidharth Joshi)

Vs.

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

2. Lt.Governor,Delhi,
Chairman,
Delhi Development Authority,
Vikas Sadan, INA Market,
New Delhi.

3. Vice Chairman,
Delhi Development Authority,
Vikas Sadan, INA Market,
New Delhi …….. Respondents

(By Advocate: Ms.Anju B.Gupta)

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ORDER

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

In this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing of

the charge memo dated 19.10.2010(Annexure A-3) and the orders dated 13.2.2013(Annexure A-2) and 30.7.2014 (Annexure A-1) passed by the Disciplinary Authority (DA) and Appellate Authority (AA) against him.

2. We have carefully perused the records and have heard Mr.Y.K.Tyagi, proxy for Mr.Sidharth Joshi, learned counsel appearing for the applicant, and Ms. Anju B.Gupta, learned counsel appearing for the respondents.

3. It has been submitted by Mr.Y.K.Tyagi, learned counsel for the applicant, that there was no evidence to sustain the charge levelled against the applicant. It has also been submitted by Mr.Y.K.Tyagi that when the Inquiry Officer (IO) held the charge as partly proved against the applicant, the DA and AA ought not to have imposed any punishment on the applicant. In support of his submissions, Mr.Y.K.Tyagi invited the attention of the Tribunal to the following observation made by the Hon'ble Supreme Court in *Union of India* vs. *H.C.Goel*, AIR 1964 SC 364: 1964 SCR (4) 718:

> "That takes us to the merits of the respondent's contention that the conclusion of the appellant that the third charge framed against the respondent had been proved, is based on no evidence. The learned Attorney-General has stressed before us that in dealing with this question, we ought to bear in mind the fact that the appellant is acting with the determination to root out corruption, and so, if it is shown that the view taken by the appellant is a reasonable possible view, this Court should not sit in appeal over that decision and seek to decide whether this Court would have taken the same view or not. This contention is no doubt absolutely sound. The only test which we can legitimately apply in dealing with this part of the respondent's case is, is there any evidence which a finding can be made against the respondent that charge No.3 was proved against him? In exercising its jurisdiction under Art.226 on such a plea, the High Court cannot consider the question about

> the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which dealt with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not. Applying this test, we are inclined to hold that the respondent's grievance is well founded because, in our opinion, the finding which is implicit in the appellant's order dismissing the respondent that charge number 3 is proved against him is based on no evidence."

4. *Per contra,* it has been submitted by Ms.Anju B.Gupta, learned counsel appearing for the respondents that although the IO held the charge as partly proved against the applicant, the DA, after considering the entire materials available on record including the applicant's representation against the inquiry report as well as the CVC's 2nd stage advice, held the charge as proved and imposed upon applicant the penalty of "*reduction of pay by two stages in the time scale of pay for 2 years; during the penalty period he will not earn increment and on the expiry of the penalty period, the reduction will have the effect of postponing his future increments of pay",* vide order dated 13.2.2013 (Annexure A-2). On appeal, the AA also considered the materials available on record and the contentions raised by the applicant, and modified the DA's order dated 13.2.2013 and imposed on applicant the penalty of "*reduction of pay by two stages in the time scale of pay until his retirement, i.e., upto 30.11.2013; with further direction that during the penalty period he will not draw his annual increment, and the penalty will*

not have any adverse effect on his pension and retirement benefits", vide order dated 30.7.2014 (Annexure A-1). It has also been submitted by Ms.Anju B.Gupa that the conclusions arrived at by the IO, DA and AA were based on sufficient material/evidence, and the applicant's contention that there was no evidence is untenable. The procedure established by law was duly followed. Considering the gravity of the misconduct committed by the applicant, the impugned charge memo and the orders passed by the DA and AA remain unassailable. In support of her contention, Ms. Anju B.Gupta invited the attention of the Tribunal to paragraphs 25, 27 and 28 of the judgment dated 11.9.2017 passed by the Hon'ble Supreme Court in Civil Appeal No.7612 of 2009 (**Mihir Kumar Hazara Choudhury vs. Life Insurane Corpn. & Anr.):**

> "25) We find that the principle of natural justice was fully observed in departmental proceedings wherein the appellant throughout participated. We have not been able to notice any kind of prejudice having been caused to the appellant while participating in the Enquiry proceedings. That apart, despite the appellant virtually admitting the charges, the respondent had also adduced the evidence before the Enquiry officer and then before the Tribunal to prove the charges independently, which found acceptance to the Division Bench and, in our opinion, rightly.
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> 27) An employee, in discharge of his duties, is required to exercise higher standard of honesty and integrity. In a case where he deals with the money of the depositors and customers, it is all the more necessary for him to be more cautious in his duties because he deals with the money transactions for and on behalf of his employer. Every such employee/officer is, therefore, required to take all possible steps to protect the interest of his employer. He must, therefore, discharge his duties with utmost sense of integrity, honesty, devotion and diligence and must ensure that he does nothing, which is unbecoming of an employee/officer. Indeed, good conduct and

> discipline are inseparable from the functioning of every employee/officer of any Institution and more when the institution deals with money of the customers. Any dereliction in discharge of duties whether by way of negligence or with deliberate intention or with casualness constitutes misconduct on the part of such employee/officer. (See some observations in **Damoh Panna Sagar Rural Regional B*ank & Anr. v*. Munna Lal Jain,** (2005) 10 SCC 84).
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> 28) There is no defense available to a delinquent to say that there was no loss or profit resulting in a case when officer/employee is found to have acted without authority. The very discipline of an organization and especially financial institution where money is deposited of several depositors for their benefit is dependent upon each of its employee, who acts/operates within the allotted sphere as custodian of such deposit. Acting beyond one's authority by itself is a breach of discipline and thus constitutes a misconduct rendering the delinquent to suffer the adverse orders (see some observations in **Disciplinary Authority-cum-Regional Manager & Ors. Vs. Nikunja Bihari Patnaik,** 1996(9) SCC 69)."

5. It is no more *res integra* that the power of judicial review does not authorize 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 where (i) 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, (iv) there is proven bias and mala fide, (v) the conclusion or finding reached by the disciplinary authority is based on no evidence and/or perverse, and (vi) the conclusion or finding be such as no reasonable person would have ever reached.

6. In **B.C. Chaturvedi v. Union of India**, AIR 1996 SC 484, reiterating the principles of judicial review in disciplinary proceedings, the Hon'ble Apex Court has held as under:

> "12. 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 office 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.

7. In **R.S. Saini v. State of Punjab and ors**, (1999) 8 SCC 90, the Hon'ble Apex Court has observed as follows:

> "We will have to bear in mind the rule that the court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably

> support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings."

8. In **Government of Andhra Pradesh v. Mohd. Nasrullah Khan,** (2006) 2 SCC 373, the Hon'ble 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 para 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….."

9. In the instant case, while the applicant was working as Superintending Engineer, DDA, during 2005-06, he was Superintendent-in-charge of the work "D/o land for IFC at Gazipur, SH P/L rising main from SPS Pkt.C, Gazipur to Existing SPS at Kondli, Gharoli" which was awarded to M/s Shiv Construction Co., vide Agreement No.06/EE/ED-12/DDA/2005-06. The estimated cost of the said work was Rs.42,02,636/- and the tendered amount was Rs.55,91,660/-. The dates of start and completion of work were 8.7.2005 and 22.10.2005 respectively, and the work was executed and completed by the said M/s Shiv Construction Co. on 21.10.2005. The charge against the applicant was that he sanctioned Extra

Item Statement No.1 for Rs.11,38,397/- which was beyond the scope of the said work and had no technical reason for its execution and allowed the Agency to execute the same, which could have been executed through separate call of tenders, in clear violation of the condition at Sl.No.1 of Note given under Sl.No.27 of Appendix 1 of CPWD Works Manual 2003. The applicant was thus charged to have failed to maintain absolute devotion to duty and behaved in a manner unbecoming of an employee of the Delhi Development Authority, thereby violating sub-rule 1(i) and 1(iii) of Regulation 4 of the DDA Conduct, Disciplinary and Appeal Regulations, 1999. Without disputing the factum of sanction of EIS No.1 by him and execution of the same by the Agency, the applicant, vide his written statement of defence dated 27.1.2011 (Annexure A-4), explained, *inter alia*, that the items involved in the EIS were required to give face-lifting to the site around the plots allotted to the chemicals/paper merchants who were ordered by the Court to be re-located from the walled city to the same site/Pocket of IFC Gazipur. The shifting of the said traders was being monitored at the highest echelon of the administration, i.e., Hon'ble Lt.Governor of Delhi. Calling of separate tenders to get the EIS done would have caused further delay in shifting of those traders. While deciding to permit the EIS, every care was taken by him to ensure that no undue benefit went to the contractor. Thus, owing to the situation prevailing at that time the EIS was allowed. Being dissatisfied with the explanation given by the applicant, the Disciplinary Authority (DA) initiated the enquiry into the

charge and appointed Inquiry Officer (IO) and Presenting Officer (PO), vide order dated 28.1.2011, and 1.4.2011 (Annexure A-5 and Annexure A-6). The applicant duly participated in the enquiry and cross-examined the witnesses examined on behalf of the prosecution. The applicant also submitted his written defence note to the IO. After analyzing the evidence and materials available on record, the IO submitted the inquiry report, vide his letter dated 20.7.2011, finding the charge against the applicant as partly proved. The DA, vide his letter dated 16.10.2012 (Annexure A-8), supplied copies of the inquiry report and 2nd stage advice of the CVC to the applicant to submit his representation against the same. The applicant submitted his representation dated 16.10.2012 (Annexure A-9). After considering the materials available on record including the applicant's representation made against the inquiry report and 2nd stage advice of the CVC, the DA, vide order dated 13.2.2013 (Annexure A-2), imposed upon applicant the penalty of "*reduction of pay by two stages in the time scale of pay for 2 years; during the penalty period he will not earn increment and on the expiry of the penalty period, the reduction will have the effect of postponing his future increments of pay"*. On appeal, the AA, vide his order dated 30.7.2014 (Annexure A-1), modified the penalty order as passed by the DA and imposed on applicant the penalty of "*reduction of pay by two stages in the time scale of pay until his retirement, i.e., upto 30.11.2013; with further direction that during the penalty period he will not draw his annual*

increment, and the penalty will not have any adverse effect on his pension and retirement benefits".

10. After considering the defence plea of the applicant as well as the evidence of P.Ws.1, 2 and 3, the IO, in his report, has recorded the following findings:

(i) "There may be urgency in executing the work but that does not mean that all the rules and procedures are to be violated in executing works under extra items. On the perusal of Ex.P-1 containing extra item statement and Ex.P4 wherein the technical sanction is given, it is seen that there is no similarly at all about the items available in Ex.P-4 vis-à-vis items available in Ex.P-1 i.e. EI statement. I fail to understand that if there was urgency, then these items which were executed by the process of EI statement should have been visualized and included in the original estimate vide Ex.P-4. By allowing such deviation in the work from the original estimate is not at all a healthy practice and should have been avoided. Otherwise it would have been appropriate on the part of the SE to inform his superiors about the urgency of executing the work under the existing agreement in view of the fact that EM and VC, DDA was monitoring the work as stated by the CO in his brief."

(ii) "CO being SE cannot be absolved fully from his responsibility for executing the work under EIS without bringing the same to the notice of the senior officers keeping in view that the work was monitored by the EM and VC,DDA."

(iii) "But at the same time he cannot be absolved from the lapse as indicated in the charge sheet totally also."

10.1 The DA, in his order dated 13.2.2013 (Annexure A-2), has clearly found that the applicant "while working as SE, CC-10 accorded principle approval for execution of extra item which was not related to the main scope of work and was not technically required. This is in violation of CPWD Works Manual. Further it has been clearly established during inquiry

that the charged officer allowed execution of extra items in the work without bringing the same to the notice of senior officers despite the fact that the work was being monitored by the EM and VC, DDA. This attributes gross irregularity on the part of the CO".

10.2 The AA in his order dated 30.7.2014 (Annexure A-1) has recorded the following findings:

> "The claim of the appellant that he had sanctioned EIS No.1 not covered under the scope of work under the same agreement as a separate tender would entail a delay of about six months is not acceptable. As no urgency was established the ideal course of action was to invite a separate tender. Hence as the appellant had sanctioned the execution of Extra Item amounting to Rs.11,38,397.00, which evidently was beyond the scope of original work, he is liable to be held primarily responsible. The appellant has exhibited lack of due diligence, which is not acceptable. Therefore, the Disciplinary Authority holding the appellant guilty of the charge to the extent proven by the Inquiry Authority cannot be faulted."

The above observations/findings recorded by the IO, DA and AA are based upon evidence/materials, and it cannot be said that there was no evidence before the IO, DA and AA to arrive at the above findings/conclusions against the applicant. The applicant, in discharge of his duties, was required to discharge his duties with utmost sense of integrity, honesty, devotion and diligence, and to ensure that he did nothing which was unbecoming of an employee/officer of the DDA. There was no defense available to the applicant to say that there was no loss or profit resulting in the sanction of EIS for Rs.11, 38,397/- when he was found to have acted without authority

and in contravention of the CPWD Works Manual 2003. Acting beyond his authority by itself was a breach of discipline and thus constituted a misconduct rendering the applicant to suffer from the adverse orders.

11. After having given our thoughtful consideration to the materials available on record and the rival submissions, in the light of the decisions referred to above, we have found no substance in the submissions of Mr.Y.K.Tyagi, learned counsel for the applicant.

12. No other point worth consideration has been urged or pressed by the learned counsel appearing for the parties.

13. In the light of our above discussions, we have no hesitation in holding that the O.A. is devoid of merit and liable to be dismissed. Accordingly, the O.A. is dismissed. No costs.

(PRAVEEN MAHAJAN)
ADMINISTRATIVE MEMBER

(RAJ VIR SHARMA)
JUDICIAL MEMBER

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