

**Central Administrative Tribunal
Principal Bench**

OA No. 3729/2014
With
OA No. 4198/2014

Order reserved on: 16.05.2016
Order pronounced on: 31.05.2016

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

OA No. 3729/2014

S.K.Kaushik
Aged 56 years
S/o Sh. Balwant Singh Sharma
R/o Flat No.16, NDMC Flats,
SarojiniVihar, Sarojini Nagar,
New Delhi.
Designation – Sanitary Inspector

OA No. 4198/2014

Ravi Dutt
Aged 58 years
S/o Late Sh. Ram Gopal
R/o 349, Siraspur, Near Babli,
Delhi-110042.

- Applicants

(By Advocate: Sh.K.Venkatraman)

Versus

1. Govt. of NCT of Delhi,
Through Ld. Governor (Appellate Authority),
Raj Niwas Marg,
Delhi-51.
2. New Delhi Municipal Council
Through its Chairperson,
Palika Kendra, Connaught Place,
New Delhi-110001.

- Respondents

(By Advocate: Sh. J.P.Tiwary for Sh. Rajeev Kumar)

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

The applicants in both these OAs are Sanitary Inspectors, who have been penalised for dereliction of duty in not taking action against the squatters and vendors in the lane between the office of the UPSC and Jam Nagar House area. When the matter was taken up for hearing, the learned counsel from both the sides were unanimous that the facts and the issues involved in both the cases were identical and could be decided through a combined hearing and common order. Accordingly, these two OAs were heard and being decided by a common order. OA No.3729/2014 is being taken as the lead case.

2. The applicant in OA No.3729/2014 is a Sanitary Inspector (Health Enforcement) working in New Delhi Municipal Corporation (NDMC), New Delhi. On 21.07.2009, the respondent no.2 issued a memorandum proposing to hold an enquiry against the applicant under Rule 14 of the CCS (CCA) Rules, 1965. The Article of Charge against the applicant reads as follows:

**“STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST
SHERI S.K.KAUSHIK, SANITARY INSPECTOR, HEALTH
DEPARTMENT, NDMC, NEW DELHI.**

While working as Sanitary Inspector in Health Department, NDMC, New Delhi during the year 2009, Sh. S.K.Kaushik has failed to maintain absolute devotion to his duties in as much as that:-

He failed to take action against the vendors and allottees of the kiosks in the lane between the office of the UPSC and Jam Nagar

House for preparing/cooking & selling the eatable items without any health license.

The above act on the part of Sh. S.K.Kaushik, Sanitary Inspector, Health Department, NDMC amounts to gross misconduct and unbecoming of a Municipal employee and he has thus, violated the provision of Rule-3 of the CCS (Conduct) Rule-1964.”

3. The applicant submitted his reply. The respondents, not convinced with the reply, ordered a departmental enquiry in which the report was submitted by the enquiry officer on 24.04.2012 giving his finding as charges ‘not proved’. The respondent no.2, did not agree with the findings of the enquiry officer and issued a disagreement note on 13.08.2012. The applicant sent his reply to the disagreement note on 17.09.2012. The respondent no.2, as disciplinary authority, however, passed an order on 05.12.2010 imposing the penalty of reduction to a lower stage in the pay band by two stages for a period of 3 years with the effect of postponing future increments of pay. The applicant filed an appeal to the respondent no.1 on 08.01.2013 but that was also rejected on 09.07.2014. The applicant has now challenged the orders passed by the appellate authority and the disciplinary authority.

4. Learned counsel for the applicant in his submission challenged the action of the disciplinary authority and appellate authority on the following grounds:

(i) On 15.01.2009, the day Vigilance Department of NDMC inspected the lane between office of UPSC and Jamnagar House and found encroachment by the vendors and allottees of kiosk etc. the applicant was not on duty in that area. By order dated 15.01.2009 issued by Director, Enforcement of NDMC in the wake of Republic Day preparations, a team of Health Enforcement Unit was stationed at Delhi at Udyog Bhawan, Maulana Azad Road from 9 a.m. and Sh. T.R.Sharma, MI (HG) was to supervise the arrangement. The applicant was one of the persons chosen for performing duty at Udyog Bhawan, Maulana Azad Road. When the vigilance team had visited UPSC area the applicant was on second shift duty starting 2 p.m. at Udyog Bhawan. The enquiry officer as well as the Disciplinary Authority and the Appellate Authority have not considered this fact too.

(ii) One Sh. R.K.Gupta, Sanitary Inspector was also in the team with the applicant but he was not chargesheeted for dereliction of duty. There were four other Sanitary Inspectors under the Directorate of Enforcement but none of them have been chargesheeted other than the applicant and Sh. Ravi Dutt, the applicant in OA No.4198/2014, reflecting a policy of pick and choose by the respondents.

(iii) The disciplinary authority violated the procedure by issuing a disagreement note when it found that charges were not proved in the enquiry report without making any reference to the evidence on which such a conclusion was based. In such a situation, the only course open to the Disciplinary Authority was to refer the matter back to the enquiry officer for consideration.

(iv) If there was any violation of the instructions in the UPSC lane area, the responsibility was that of the in-charge Area Sanitary Inspector, namely, Sh. T.R.Sharma under whom the other Sanitary Inspectors were working. But in his (Sh. TR Sharma) case though a memorandum was served for slackness of work, after considering his reply the charge was dropped.

(v) The applicant's duty was to remove the unauthorised vendors squatting on NDMC land, seize their utensils and other implements and destroy perishable items. It was not the duty of the applicant to challan and prosecute the vendors who were selling eatable items without health licence as this duty was cast on the Area Sanitary Inspector. The cancellation of allotment of shops and kiosks was within the jurisdiction of Estate Branch of the NDMC. The applicant could not take any action in this regard.

(vi) The applicant has been taking action against the unauthorised vendors and squatters but these vendors repeatedly come back and continue to choke the area. The menace cannot be checked unless enforcement staff is located there all around the day which was not the case here as the applicant was not asked to station himself at the UPSC lane area. The disagreement note was also without any basis and justification.

5. Learned counsel for the respondents, on the other hand, denied the submissions made by the applicant that on the day the Vigilance team had visited the UPSC area, he could not have been held responsible for the squatting and other violations noticed in that area because on that day he was deployed at Udyog Bhawan, Maulana Azad Road. Learned counsel submitted that the applicant was authorised to not only pick up utensils and destroy the perishable goods, but also to issue notice to the violators for appropriate action as per the rules. It was further submitted that the enquiry officer after taking evidence from all the witnesses did not analyse it properly and gave a cryptic finding that “the charges were not proved.” In such circumstances, the disciplinary authority cannot be faulted for not agreeing with the Inquiry Officer and issuing a disagreement note. The applicant was given full opportunity at every stage to defend himself and a copy of the disagreement note was also supplied to him to which he had

responded. After taking into account the entire evidence and representations, the disciplinary authority came to the conclusion that the charges were proved against him and the applicant needed to be punished. It is trite that the Courts have to examine the manner in which the decisions have been taken and cannot substitute itself for the decision-making authority in the Government. Once laid down procedure in the CCS (CCA) Rules has been followed, it will be in the realm of the executive to satisfy itself about the charges and the penalty to be imposed. Learned counsel also submitted that the squatting and encroachment on the road was not a onetime matter which could be explained by the temporary diversion of the applicant in the wake of preparations for the Republic Day. The vendors and squatters had well established themselves in an unauthorised manner in that area which could not have happened without the negligence and omissions on the part of the applicant over a period of time.

6. In OA No.4198/2014, applicant has taken more or less the same argument except the fact that while posted at Udyog Bhawan on the day of inspection by vigilance team, he was on morning duty while the applicant in the first OA was on afternoon duty. This fact hardly is relevant in the context of the discussion in the preceding paras.

7. We have heard the learned counsels and perused the record. The thrust of the defence of the applicant is that on the day the UPSC area was inspected by the vigilance team he was not on duty in that area. His powers are also limited to seizing the utensils and destroy the perishable goods. He has also argued that the primary responsibility was of the Area Inspector Sh. T.R.Sharma and that several Sanitary Inspectors worked under the Directorate who have been treated differently. Before we proceed further, it is worth noting that the charge against the applicant is that he failed to take action against the vendors and allottees of kiosks in the lane between the office of the UPSC and Jam Nagar House for preparing/cooking and selling the eatable items “without any health license”. Thus, even if the alibi of applicant is accepted that on the day of inspection by vigilance team he was not on duty in that area, it is not the case of the applicant that all food vendors and allottees of kiosks surfaced only that day. In respect of some of the vendors, squatters and unauthorised encroachment, it can be plausibly stated that despite repeated challans and removal these encroachments crop up again after departure of the raiding team. However, the food vendors who are running permanent kiosks cannot wind up and re-establish their business with the same frequency as the squatters and mobile vendors. If these permanent vendors are running their business without health license it cannot be

attributed to temporary diversion of the officer to another area. It shows persistent negligence and deliberate overlooking of such violations of the rules by not insisting on the vendors to obtain health license. Besides this, the enquiry officer's report under the heading "Analysis of evidence in support of article of charge against each charged officer" only reproduced the charges against the applicant and there is no discussion of the evidence while giving a finding that the charges were not proved. The disciplinary authority in such a situation has issued a disagreement note. Conducting the disciplinary enquiry being the prerogative of the disciplinary authority, that authority is not bound to send the matter back to the enquiry officer for consideration. The authority can come to its own conclusions on the basis of the evidence on record. The disciplinary authority and appellate authority have dealt with the contentions raised by the applicant while passing their respective orders.

8. With regard to the contention of parity with other Sanitary Inspectors, there is nothing on record to show that there were other Sanitary Inspectors entrusted with the task of inspecting the UPSC area. On the other hand the applicant has placed on record reports that show he had raided that area on a few earlier occasions. He has not denied that UPSC area was not under his charge. Therefore, action against him cannot be linked to other Sanitary Inspectors. Further the Area Sanitary Inspector is the

supervisory officer of the applicants. For any lapse on his part a subordinate cannot push the responsibility to his supervisory officer simply because ultimate accountability lies with the latter. It is for the employer to delineate the responsibility between them. They may not necessarily be held equally responsible if there is any lapse.

17. It is trite that the scope judicial review is confined to the boundaries as set by Hon'ble Supreme Court in a catena of judgments. Judicial review is said to be addressed to the decision-making process and not the decision *per se*. Following passage from the decision in ***H.B. Gandhi, Excise & Taxation Officer cum-Assessing Authority, Karnal v. Gopinath & Sons***, 1992 Supp. (2) SCC 312 was cited by the Hon'ble Supreme Court in ***Union of India & others v. Upendra Singh***, (1994) 3 SCC 357 to highlight the scope of judicial review:

"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

18. In ***State of Andhra Pradesh v. S. Sree Rama Rao***, AIR 1963 SC 1723 the Hon'ble Supreme Court held that the Courts

and Tribunals are not appellate forums and cannot arrive at their independent finding while reviewing the order of the disciplinary authorities. If there is some evidence to reach conclusion by them, the Court should not interfere. Thus, except where the findings are based on no evidence or beset with surmise and conjectures, court cannot interfere in the findings of fact as arrived at quasi-judicial proceedings [**State of West Bengal v. Atul Krishna Shaw**, AIR 1990 SC 2205]. This has always been an inflexible rule of judicial review over disciplinary proceedings and was reiterated in **B.C. Chaturvedi v. Union of India** [1996 SCC (L&S) 80.]

9. In the present case we do not find any departure from the rules or perversity in the disciplinary proceedings against the applicants, or the quantum of penalty being such that would shock the judicial conscience. The impugned orders in the two OAs therefore, cannot be considered as illegal or wrong. The OAs are dismissed being devoid of merit. No costs.

(V.N. Gaur)
Member (A)

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