

**Central Administrative Tribunal
Principal Bench**

OA No.3068/2010

New Delhi, this the 7th day of September, 2016

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

Shri H.S. Dharamsattu,
Aged 55 years,
S/o Shri Kedar Singh Dharamsattu,
R/o B-4/3071, Vasant Kunj,
New Delhi-110070.

...applicant

(By Advocate : Shri Sidharth Joshi)

Versus

1. Delhi Development Authority,
Through its Vice Chairman,
Vikas Sadan, INA Market,
New Delhi.
2. Chairman,
Lt. Governor,
Delhi Development Authority,
Raj Niwas,
Delhi-110006.
3. Shri Ashok Kumar,
Vice Chairman,
Delhi Development Authority,
Vikas Sadan, INA Market,
New Delhi.

...respondents

(By Advocate : Shri S.M. Zulfiqar Alam)

ORDER (ORAL)

Mr. Justice Permod Kohli, Chairman :-

Through the medium of this OA, the applicant has challenged entire disciplinary proceedings including the charge memo, order of punishment, appellate order as also the order passed by the

reviewing authority. The challenge is directed on following three grounds :-

- (i) The applicant has been treated differently and the orders are discriminatory in nature.
- (ii) Orders are non-speaking;
- (iii) The allegations against the applicant do not constitute any misconduct.

2. On the first ground, the applicant has referred to the punishment imposed upon one S.P. Ahluwalia, the then SE(P), who was also charge-sheeted allegedly on similar facts but penalty of displeasure alone was imposed upon him. Another reference given is of one Shri P.S. Mathur, the then SE(P), who was also awarded the penalty of displeasure. Similarly, the appellate authority, while considering the appeal of one Shri P.K. Nanda, the then Executive Engineer, exonerated him. Based on these averments in paras 4.17 and 4.18, it is sought to be argued that the similarly situated officers against whom disciplinary proceedings were initiated on similar charges have been awarded lesser punishment and in one case Shri P.K. Nanda was exonerated, whereas the applicant has been awarded a penalty of reduction of pay by two stages in the pay scale for a period of two years.

3. We do not find that this ground is available to the applicant for two reasons. Firstly, the facts, allegations and charges against

those officers are not before us. The Tribunal cannot compare the charges qua the applicant and those officers whose reference has been given in the OA. Assuming the charges are similar, the doctrine of equality under Article 14 of the Constitution of India cannot be applied in a negative manner. Even if the wrong order has been passed, that cannot become precedent for others. This argument is misconceived and rejected. Secondly, the ground urged by the applicant that the charge against him does not constitute the misconduct is also without any substance. The two articles of charge against the applicant are as under :-

“Article-I:

That the said Sh. H.S. Dharam Sattu, SE while working as EE/WD-5 during the above mentioned period was in-charge of the said works failed to obtain the performance bank guarantee bonds in the format provided with finance & accounts Circular No.28 dt. 1.10.94.

Article-II:

That the said Sh. H.S. Dharam Sattu, SE while working as EE/WD-5 during the above mentioned period was EE in-charge of the said works, failed to get the bank guarantee bonds verified/confirmed from the said bank in violation of the directions contained in Finance & Accounts Circular No.28 dt. 1.10.94.

That the said Sh. H.S. Dharam Sattu, SE by above act failed to maintain absolute devotion to duty and behaved in a manner unbecoming of an employee of the authority, thereby violating sub-rule 1(i) and 1(ii) of Regulation 4 of DDA Conduct, Disciplinary and Appeal Regulations, 1999.”

4. The applicant has been charged for non compliance of the circulars and also held responsible for not getting the bank

guarantee bonds verified/confirmed from the issuing Bank, which was found to be fake. The charge is serious in nature. The applicant being EE in-charge of the works was under obligation to ensure that the bank guarantee bonds is in the prescribed format and confirmed by the concerned bank. Non performance of this onerous duty has resulted in a huge loss to the State Exchequer. Thus, the contention is totally without any merit and deserves rejection.

5. Coming to the third ground that the orders of the disciplinary authority and that of the appellate authority are non speaking, we have perused the impugned order passed by the disciplinary authority on 27.06.2008. Preface of the order refers to the issuance of memo of charge, appointment of enquiry officer, the enquiry officer's report and reply of the applicant. No details have been indicated and finally the disciplinary authority observed as under:-

“And whereas, the undersigned being the Disciplinary Authority, after careful consideration of the reply of the charged officer and facts and circumstances on record, has come to the conclusion that charged officer had not taken the performance bank guarantee in the prescribed format and had also not get the same verified and hence ends of justice will be met if the penalty of reduction of pay by two stages in the pay scale for a period of two years is imposed immediately on Sh. H.S. Dharam Sattu, SE and on expiry of the penalty period, this will have the effect of postponing of his future increments.

Now therefore, the undersigned being the Disciplinary Authority, in exercise of powers conferred under the said Regulation, hereby imposes the penalty of reduction of pay by two stages in the pay scale for a period of two years on Sh. H.S. Dharam Sattu, SE. On expiry of the penalty period, this will have the effect of postponing of his future increments.”

6. The disciplinary authority has not referred to the evidence, the analysis and the findings of the inquiring authority and just making a reference to the report of inquiry officer passed the impugned order imposing penalty. The order suffers from total non application of mind and do not contain reasons much less valid reasons, hence not sustainable in law. On the similar lines, we find that the appellate authority has also dealt with the appeal in a slipshod manner without even referring much less discussing the grounds of the appeal while passing the impugned order dated 16.04.2009.

7. As a matter of fact, the disciplinary authority was required to at least deal with the representation of the applicant against the enquiry report and arrive at his conclusion by discussing findings of the inquiring authority as also the representation of the applicant. That having not been done, the order definitely suffers from non application of mind. The appellate authority has also not dealt with the grounds of the appeal.

8. In this view of the matter, the OA is allowed. The impugned order dated 27.06.2008 passed by the disciplinary authority and that of the appellate authority dated 16.04.2009, are hereby set aside. The matter is remitted back to the disciplinary authority to pass a fresh order by taking into consideration all the relevant material including the report of the inquiry officer and the

representation of the applicant, within a period of two months and communicate the same to the applicant to enable him to file appeal. On receipt of the order of disciplinary authority, the applicant shall have the liberty to prefer an appeal within the prescribed period from the date of receipt of a copy of the order passed by the disciplinary authority. If the applicant chooses to file an appeal, the same shall be decided by the appellate authority within three months thereafter. No costs.

(V.N. Gaur)
Member (A)

(Justice Permod Kohli)
Chairman

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