

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.3072/2014

Order Reserved on: 05.05.2016

Pronounced on:31.05.2016.

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

Jai Narain Gupta,
S/o Sh Nathu Lal Gupta,
Assistant Engineer,
Office of SE (HQ), East Zone,
16th Floor, Vikas Minar,
New Delhi.

-Applicant

(By Advocate Shri G.L.Verma)

-Versus-

1. Delhi Development Authority,
Through Lt. Governor (as Chairman, DDA)
LG House, Delhi-110054.

2. The Vice Chairman,
Delhi Development Authority,
Vikas Sadan, INA,
New Delhi-110023.

3. Engineer Member,
Delhi Development Authority,

Vikas Sadan, INA,
New Delhi-110023.

-Respondents

(By Advocate Ms. Sriparna Chatterjee)

ORDER

Mr. K.N. Shrivastava, Member (A):

This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985. The specific reliefs claimed by the applicant in the OA read as under:

- “a) to pass orders setting aside the penalty order dated 10-2-2011 and the order of the Appellate Authority dated 19-3-2012 and the order dated 10-3-2014 of Revising Authority and/or*
- b) to pass orders directing the respondents to grant all other consequential benefits and release the amount withheld with arrears on account of implementation of the penalty order, and or*
- c) to pass any other order or orders may deem fit in the circumstances of the case.”*

2. The brief facts of this case are as under.

2.1 The applicant is an Assistant Engineer (AE) working in Delhi Development Authority (DDA). He was issued Annexure A-4 charge-sheet dated 17.10.2008 for some alleged irregularities in execution of some sanction of work when he was working as Junior Engineer (JE) in the year 2002. The charge reads as under:

“Sh. J.N. Gupta, AE while working as JE/ED-14 during 2002-03 was JE in charge of the following work, had committed irregularities as detailed below:

- 1. Name of work: D/o Land for CGHS Areas at Chilla/Dallipura.
SH: C/o RCC Retaining wall i/c approach roads for both the approaches connecting 4 lanes bridge near Glaxo Apatment for Distt. Centre, Mayur Vihar, Phase-I.*

<i>Estt. Cost</i>	<i>:</i>	<i>Rs.1,12,05,805.00</i>
<i>Tendered Cost</i>	<i>:</i>	<i>Rs.1,05,41,663.00</i>
<i>Agency</i>	<i>:</i>	<i>M/s N.K. Builders.</i>
<i>Date of start</i>	<i>:</i>	<i>7.9.2002</i>
<i>Date of compln.</i>	<i>:</i>	<i>6.3.2003</i>
<i>Total Value</i>	<i>:</i>	<i>Rs.3.73 crores.</i>

of work done.

Article-I

Sh. J.N. Gupta, JE (now AE) while working as J.E./E.D.14 allowed deviation in the work by initiating various extra items which were beyond the scope of work due to which work has deviated from Rs.1.05 crores to Rs.3.73 crores.

Article-II

Sh. J.N. Gupta, AE while working as J.E./E.D.14 forwarded the final bill for payment without ensuring the availability of revised technical sanction and sanction of EOT.

That the said Sh. J.N. Gupta, AE 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(iii) of Regulation 4 of DDA Conduct, Disciplinary and Appeal Regulation, 1999.”

2.2 The applicant submitted defence statement to the charge-sheet to the Enquiry Officer (EO) on 22.01.2010. The EO submitted his report on 04.05.2010 in which his finding was that article of charge no.1 is proved and article of charge no.2 is not proved. The Disciplinary Authority (DA), i.e., Engineer Member, DDA vide his Annexure A-1 order dated 10.02.2011 imposed the penalty of reduction of two stages in the time scale of pay for a period of two years with cumulative effect upon the applicant. The applicant filed his statutory departmental appeal before the Appellate Authority (AA), i.e., Vice Chairman, DDA, who vide his impugned Annexure A-2 order dated 09.03.2012 reduced the penalty as under:

“reduction of one stage in the time scale of pay for a period of one year with further direction that the officer will not earn increment of pay during the penalty period and on the expiry of one year on restoration of pay, the reduction will have the effect of postponing one future increment of pay”.

2.3 The applicant preferred a revision petition before the Revisional Authority (RA), i.e., Lieutenant Governor of Delhi, who vide Annexure A-3 order dated 10.03.2014 upheld the order of the AA and rejected the revision petition.

2.4 Aggrieved by the impugned orders of Annexure A-2 order of the AA and Annexure A-3 order of the RA, the instant OA has been filed.

3. Pursuant to the notices issued the respondents entered appearance and filed their reply. The applicant thereafter filed his rejoinder. With the completion of the pleadings, the case was taken up for hearing the arguments of the parties on 05.05.2016. Shri G.L. Verma, learned counsel for the applicant and Ms. Sriparna Chatterjee, learned counsel for the respondents argued the case.

4. The learned counsel for the applicant submitted that the charge-sheet has been issued belatedly after a long delay of seven years. It is also submitted that the charge-sheet is discriminatory in the sense that the concerned senior officers who were actually responsible for enhancing the scope of work have retired and intentionally after their retirement the charge-sheet has been issued just to the applicant. The learned counsel for the applicant said that none of the officials who initiated the proposal and approved the same was examined or

cross-examined during the course of the enquiry. He said that the scope of work was changed by the Chief Engineer, East Zone vide office note dated 14.08.2003. It was so done by him at the behest of the Commissioner (Land) and that the changed design of the work in fact was approved by the Chief Engineer himself. The learned counsel drew our attention to pages 89-90 of the OA, which contains the following remarks of Chief Engineer, East Zone, as under:

“Keeping in view the facts and circumstances explained above, it is requested that the principle approval for deviating the work up to the tune of Rs.5.510 crores may please be accorded, so that the work may be taken up at an earliest.

Sd/
(BRJ PAL)
EXECUTIVE ENGINEER
EASTERN DIVISION NO.14

EE-14

The matter has been discussed with CE/EZ on 14/8/03. CE/EZ has suggested to direct the amount of road & retaining wall adjacent to Mayur Palace (service lane of flood deptt). Accordingly the amount of this road & retaining wall has been calculated which comes out 104 lacs and has been deleted, thus the net amount remains 4.47 crore for which necessary permission for deviation may pl. Be accorded.

Sd/-
14.8.03
EE/ED14

CE/EZ
SE-III

Appl for executing the shown in the plan except the deleted portion is granted subject to the max limit of 4.07 crores as stated above.

Sd/-
(CE(EZ))
14.08.03”

He further submitted that the EO himself has noted in his findings that it is difficult to pinpoint the responsibility on the

applicant as this statement does not bear signature of any JE. He further submitted that enhancement of the scope of the work has been duly approved by all the concerned officers, viz. Commissioner (Land), Superintending Engineer and the Chief Engineer, and as such no blame can be heaped on the applicant. Concluding his arguments, the learned counsel submitted that the AA did not grant hearing to the applicant and summarily dismissed his appeal and the RA has simply endorsed the order of the AA, and hence the impugned orders deserve to be interfered with and the applicant is entitled for grant of the prayers made in the OA.

5. Per contra, the learned counsel for the respondents submitted that the applicant while working as JE in the year 2002 has allowed deviation in work by initiating various extra items as a result of which the cost of the work increased from Rs.1.5 crores to Rs.3.73 crores. She submitted that this large scale deviation in the scope of work was detected by a technical audit team. She said that it is wrong to allege that the applicant has been discriminated against in the matter of departmental action. She said that the respondents could not proceed against some of the officers as they had superannuated and no cause of action could arise as four years had already passed since their superannuation. She said that the JE, Incharge of work is primarily responsible for

deviation and various extra items and as such he cannot be absolved of the lapses on his part. She said that the charge against the applicant, for which he has been punished, is duly proved during the course of the enquiry. Concluding her arguments, she said that the applicant has been held guilty as per the EO's report and hence the punishment inflicted on him vide impugned orders of the AA and RA, is fully justified and the OA deserves to be dismissed.

6. We have considered the arguments of the learned counsel for the parties and have also perused the pleadings and the documents annexed thereto. It is well known that JE is the junior-most functionary in the hierarchy of the officers for execution on any major engineering project. From the perusal of the Annexure A-11 dated 04.08.2003, which is the internal file noting, it is quite clear that the enhanced scope of the work was duly approved by the Chief Engineer (EZ) on 14.08.2013. The note also states that the enhancement of the scope of work has been done as per the direction of the Commissioner (Land). Such being the factual position, we are surprised as to how the applicant has been held guilty for the enhancement of the scope of the work. If any departmental actions were to be taken, it should have been taken against Chief Engineer (EZ) and Commissioner (Land). The applicant was the junior-most functionary, duty bound to follow the

instructions of his superiors. By imposition of punishment on him, miscarriage of justice has taken place. Hence, we are convinced that the impugned Annexure A-2 and Annexure A-3 orders deserve to be interfered with.

7. In view of the discussion in the foregoing paras, we quash and set aside the Annexure A-2 order dated 19.03.2012 passed by the AA and Annexure A-3 order dated 10.03.2014 passed by the RA. We also hold that the applicant is not at all guilty of the charge levelled against him and as such his full pension should be restored. Any deduction made from his pension earlier should be repaid back to him without interest. The OA is allowed.

8. No order as to costs.

(K.N. Shrivastava)
Member (A)

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

‘San.’