

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.100/4445/2013

Monday, this the 1st day of August 2016

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

Kuldeep Pakad
s/o Mr. Johri Lal
r/o C-5, Delhi Govt. Residential Complex
D-2 Block, Vasant Kunj
New Delhi – 110 070

..Applicant

(Mr. M.K. Bhardwaj and Mr. M.D. Jangra, Advocates)

Versus

UOI & others through

1. The Secretary
Ministry of Home Affairs
North Block, New Delhi
2. The Joint Secretary (UTS-II)
Govt. of India
Ministry of Home Affairs
North Block, New Delhi
3. The Chief Secretary
Govt. of NCT of Delhi
5th Level, C-502, Delhi Secretariat
IP Estate, New Delhi
4. Mr. Amar Nath
CEO, DUSIB
Govt. of NCT of Delhi
4th Floor, Vikas Bhawan-II
Civil Lines, Delhi

..Respondents

(Mr. R.N. Singh, Advocate for respondent Nos. 1 to 3 –
Mr. Amandeep Joshi, Advocate for respondent No.4)

O R D E R (O R A L)**Justice Permod Kohli:**

The applicant was served with a memo of charge dated 31.07.2013 for initiating inquiry under Rule 14 of Central Civil Services (Classification, Control & Appeal) Rules, 1965. Along with the memo of charge, articles of charge and statement of imputation of misconduct or misbehavior in support of the articles of charge along with list of documents and list of witnesses, were also served. It is at this stage the applicant approached this Tribunal seeking judicial intervention into the disciplinary proceedings, and was able to persuade the Tribunal for an interim direction whereby the inquiry was directed to be stayed vide Tribunal's Order dated 20.12.2013.

2. The intervention of the Tribunal is solicited primarily on two grounds – (i) that the charge against the applicant is of lack of supervisory control whereas he was not the official entrusted with the task of demolition, and thus the charge against him *per se* is contrary to the facts; and (ii) on the ground of bias and malafides against respondent No.4.

3. Mr. M.K. Bhardwaj, learned counsel appearing for applicant submits that the applicant was not entrusted with the demolition of the unauthorized buildings, as it was not part of his job profile. Referring to an office order dated 06.01.2012 (Annexure A-5), he has taken us to item No.4 wherein one K.P. Singh, Chief Engineer (DUSIB) was asked to look after the charge of Director (Demolition/Eviction). Based upon this document, it is vehemently argued that it was only the Chief Engineer named therein who was responsible for demolition and eviction.

4. Keeping in view the aforesaid document, we directed Mr. R.N. Singh, learned counsel for respondent Nos. 1 to 3 to place on record an additional affidavit and also the documents referred to in Annexure A-3, i.e., the memo of charge. In response to the aforesaid directions of the Tribunal dated 11.05.2016, additional affidavit has been filed accompanied with the documents directed vide the aforesaid Order.

5. Rebutting the contention of Mr. Bhardwaj, Mr. Amandeep Joshi, learned counsel appearing for respondent No.4 has brought our attention to the same office order dated 06.01.2012. We find that the applicant (Kuldeep Pakad) was shown as Director (Enforcement, Recovery, Services & Estate). Based upon the job profile, as indicated in the same order, on which Mr. Bhardwaj relies, his contention is that the Director (Enforcement) is the person responsible for removing the unauthorized encroachments and demolition, etc.

6. To support his contention, Mr. Joshi produced a copy of office order dated 29.01.2013. This order was issued to streamline the functioning of various Branches of Delhi Urban Shelter Improvement Board (DUSIB). Paragraph 6 of the aforesaid order reads as under:-

“6. Enforcement section:

This Branch will monitor unauthorized construction, encroachment and other such illegal activities and will also take up demolition wherever needed.”

7. From the above, it is evident that the Director (Enforcement) is also responsible for the demolition and removal of unauthorized construction etc. and the same job profile is mentioned in order dated 06.01.2012 relied

upon by the applicant. Insofar as item No.4 where Chief Engineer's job profile is mentioned, is concerned, it appears that either the Chief Engineer was an implementing agency or maybe also entrusted with the job of demolition. From the charge itself, we find that the applicant has dealt with the demolition files. This is sufficient to indicate that the applicant was also responsible to look after the demolitions. Thus, it is not desirable or even warranted to interfere at the stage of the charge on the grounds urged by Mr. Bhardwaj.

8. Insofar as the question of malafides is concerned, the only averment is made in Paragraph 5 (C) of the O.A., which reads as under:-

“C. Because the impugned charge sheet has been issued malafidly inasmuch as, the R-4 was biased against the applicant. The malafide is evident from the fact that the file was sent for taking disciplinary action without following the due procedure and by mentioning incorrect facts. It has been alleged in the charge sheet that the applicant did not fix and execute the programme for demolition as approved by the Addl. Commissioner (S&JJ) and passed the file bearing No.WJ/6980/10EE (S) DD V/08-09 for seeking unnecessary clarification from SE-III. Whereas, in fact, the applicant never sent the file to SE-III nor he delayed the execution for demolition. In view of the proposal of Dy. Director (Demolition) and considering the fact that there was sufficient time for execution of order, the applicant forwarded the file of Director (Rehabilitation). In fact, the applicant acted bonafidely.”

9. From the averments made hereinabove, we find that the only act complained of against respondent No.4 is that he has supplied wrong information. The nature of information supplied by him cannot be examined by us in the present O.A. No motive whatsoever has been attributed to respondent No.4. Even otherwise also, we find that respondent No.4 is not the disciplinary authority of the applicant and thus such kind of allegations, without any specific averments in the present O.A.,

cannot be looked into by the Tribunal, particularly at this stage. It is interesting to find that in Paragraph 5 (D) of the O.A., the applicant has mentioned that he was required to clear about 200 files per day, therefore, if he would start scrutinizing each and every file with reference to issues raised therein, he would not be able to clear even one file in one month. This averment of the applicant itself shows his callous attitude in dealing with the official files. We are unable to appreciate the contention raised by the applicant. Be that as it may, the applicant has stalled the disciplinary proceedings for almost two and half years.

10. Mr. Bhardwaj has also referred to judgment of Apex Court reported as (2001) 2 SCC 330 - **State of Punjab v. V.K. Khanna & others** to contend that it is the responsibility and obligation of the disciplinary authority to apply its mind on the representation of the employee. There is no dispute with the proposition of law urged by the applicant. In the present case, the disciplinary authority after having considered the representation, decided to proceed with the disciplinary proceedings and appointed the inquiring authority. Mr. Bhardwaj has not been able to show non-application of mind of the disciplinary authority. The facts of aforementioned judgment reveal that the judicial intervention was after the conclusion of the disciplinary proceedings and not at the stage of the charge. Therefore, this judgment cannot come to the rescue of the applicant.

11. Mr. Bhardwaj further submits that the order of demolition was passed in the year 2009 whereas the applicant was posted as Director (Enforcement) only in the year 2011, thus he alone cannot be held

responsible for inaction on the part of the authorities and all those officials, who occupied the post of Director (Enforcement) earlier and after him, are all responsible. In sum and substance, he has invoked doctrine of equality under Article 14 of the Constitution of India. We are afraid Article 14 being a positive concept can be applied in a negative manner. The doctrine of equality cannot be invoked under the present circumstances. In any case, the applicant cannot be absolved of his lapse.

12. For the above reasons, this O.A. is without any merit and the same is dismissed. However, in view of the delay in disciplinary proceedings having been caused by the applicant, we direct the disciplinary authority to expedite the proceedings. We further direct the applicant to cooperate and associate himself with the inquiry, failing which the disciplinary authority will proceed in accordance with law. No costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

August 1, 2016
/sunil/