

**Central Administrative Tribunal  
Principal Bench**

OA No.4725/2015

Order reserved on: 24.01.2018  
Order pronounced on: 05.04.2018.

**HON'BLE MRS. JASMINE AHMED, MEMBER (J)**  
**HON'BLE MR. K.N. SHRIVASTAVA, MEMBER (A)**

Ajay Kumar Gupta, aged 60 years,  
S/o late Sh. S.P. Gupta,  
Senior Architect (Retired)  
From Delhi Development Authority,  
R/o 119, Krishna Kunj Colony,  
Delhi-110092.

(By Advocate Shri Yogesh Sharma)

**-Versus-**

1. Govt. of NCT of Delhi  
Through the Chief Secretary,  
New Secretariat, I.P. Estate,  
New Delhi.
2. The Vice-Chairman,  
Delhi Development Authority,  
Vikas Sadan, New Delhi.

-Respondents

(By Advocate Mrs. Sriparna Chatterjee)

**ORDER**

**Shri K.N. Shrivastava:**

Through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following relief:-

“(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned penalty order dated 16.01.2013 (Annex.A/1) Appellate Authority order dated 04.06.2014 (Annex. A/2), Charge Sheet dated 05.04.2010 (Annex.A/3), IO Report dated

24.02.2011 (Annex.A/) and entire disciplinary proceedings, declaring to the effect that the same are illegal, arbitrary and against the principle of natural justice and consequently, pass an order directing the respondents to grant all the consequential benefits to the applicant including the arrears of difference of pay and allowances and difference of retirement benefits with interest.”

2. The factual matrix of this case, as noticed from the record, is as under:-

2.1 The applicant was initially appointed as Assistant Architect in December, 1979 in the Delhi Development Authority (DDA)-respondent organization. He secured his promotion as Senior Architect in the year 2002. He was compulsorily retired from the post of Senior Architect on 02.04.2014. While he was working as Senior Architect, a major penalty Memorandum of Charges dated 05.04.2010 (Annexure A-3) came to be issued to him. The articles of charge read as under:

“Sh. A.K. Gupta, while working as Sr. Architect/EZ submitted the proposal agenda for screening committee meeting on 14.3.07 for auction the Hotel Plot as mentioned above subject in a hurry without actually verifying the site and without taking the feasibility report from concerned Engg. Division. This resulted in DDA to face embarrassment and court case.

That the said Sh. A.K. Gupta, Sr. Architect 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), I(ii) & I(iii) of Regulation 4 of DDA Conduct, Disciplinary and Appeal Regulation, 1999.”

2.2 In the statement of imputation enclosed with the memorandum of charges, it is stated that the applicant, while working as Senior Architect, submitted an agenda item for the

consideration of the Screening Committee in its meeting scheduled to be held on 14.03.2007 regarding auction of Hotel Plot No. 'A', Community Centre, Vivek Vihar without verifying the site and without obtaining the feasibility report from the concerned Engineering Division. It is further stated therein that with the approval of the Screening Committee, the site was put up for auction on 12.05.2007 and was given out to the successful bidder M/s. Perfect Learning Pvt. Ltd. The bidder, however, found that in front of a portion of the hotel plot, there was a taxi stand and behind the taxi stand, there was a big office of Delhi Jal Board and a good portion of the plot area was under the possession of a Gas Agency. The bidder went to High Court, suing the DDA for non-disclosure of the ground realities. This had caused great embarrassment to the DDA.

2.3 The applicant denied the charges levelled against him. The Disciplinary Authority (DA), however, was not satisfied with the explanation of the applicant, and consequently decided to appoint an Inquiry Officer (IO) vide its order dated 03.06.2010/15.07.2010. The applicant participated in the inquiry. The IO submitted his report on 24.02.2011 in which he has concluded that the charge against the applicant **is proved**.

2.4 Acting on the IO's report, the DA, i.e., Vice-Chairman, DDA-respondent no.2 vide his impugned Annexure A-1 order dated

16.01.2013 imposed the penalty of “*reduction of pay by one stage for one year with cumulative effect*” upon the applicant.

2.5 Aggrieved by the Annexure A-1 penalty order passed by the DA, the applicant filed an appeal dated 23.01.2013 (Annexure A-7) before the Appellate Authority (AA), i.e. Lieutenant Governor of Delhi who is also Chairman of DDA. The AA rejected the appeal vide his impugned Annexure A-2 order dated 04.06.2014.

2.6 Aggrieved by Annexures A-1 and A-2 orders, the applicant has filed the instant OA, praying for the relief, as indicated in para-1 supra.

3. In support of the relief claimed, the applicant has pleaded the following important grounds in the OA:

- i) The impugned memorandum of charges and penalty orders have been issued by the Vigilance Department which would go to show that the proceedings have been initiated on the direction of the Vigilance Department and that the DA has not taken any independent decision of his own. It is settled law that charge-sheet or penalty order cannot be issued by the Vigilance Department and on this ground itself the entire proceedings are liable to be quashed.
- ii) The memorandum of charges is absolutely vague and does not indicate as to which rule or instruction of DDA has been violated by the applicant.

iii) As per the duties and responsibilities assigned to the Senior Architect in terms of the CPWD Code, it was not the job of the applicant to verify the site before placing the agenda item before the Screening Committee for consideration/approval. This portion has been duly affirmed by the Dy. Director (Architectural), Shri Surjit Jaradhara (PW-3) before the IO.

iv) The Dy. Director (CL), the Land Owning Agency, had got feasibility report from his AE (CL) and JE (CL). The DD (CL) had given instructions to AE (CL-I & II) to inspect site and contact the concerned Executive Engineer (EZ) and to ensure that the plots were properly demarcated, size of plots and area verified as per press notification and there was no encroachment of any kind of the plot. He had also sought a compliance report. The DD (CL) had further directed the AE (CL) to submit the report within a week. The AE (CL) had reported that there was no unauthorized encroachment and on the basis of this categorical assertion, the entire process of calling for the tenders for auction of the hotel plot, preparation of lay out plan and agenda for approval of the Screening Committee were prepared by the applicant.

v) The site was initially meant for a Community Centre for which approval was given in the year 2001 itself. The field staff, i.e., EE (Eastern Division-3) had confirmed to the then Senior Architect (East Zone) vide letters dated 27.06.2003 and 29.03.2004 that the

vacant land was indeed meant for Community Centre. This position has also been duly affirmed by PWs-1 & 3 by their oral evidence before the IO. Hence, it is not correct to say that the proposal was placed in a hurry before the Screening Committee for approval.

vi) The DDA did not face embarrassment and Court case due to any lapses on the part of the applicant. The fault for such embarrassment lies entirely to the bidder as well as the commercial land branch of the DDA. It was the wrong feasibility report submitted by the then AE (CL) that has created complications and embarrassment. The said official was charge-sheeted under minor penalty proceedings but later on was exonerated of the charges due to wrong reports of the field division.

4. Pursuant to the notices issued, the respondents entered appearance and filed their reply in which the following important averments have been made:

i) The CPWD Code applies to DDA. The Architect Wing of the DDA works in close collaboration with the Engineering and other Wings. The layout plan was approved in the year 2001 but the auction of the plot in question was done in the year 2007.

ii) It was the responsibility of the applicant to get the status of the land verified before putting the agenda item before the Screening Committee. Since the applicant failed in his duty, the

department had to face embarrassment and was dragged to the Court.

iii) The applicant has wrongly stated that he has prepared the site plan on the basis of a wrong report given by the Engineering Department. As per the records no such report was obtained by him before 14.03.2007.

iv) The applicant was issued a charge-sheet for lapses committed by him which has no connection with the lapses for which the Assistant Engineer (OL) was charge-sheeted.

v) The applicant has attempted to persuade this Hon'ble Tribunal to re-appreciate the evidence adduced before the IO, which is not permissible under law. In this regard the Hon'ble Supreme Court in the case of **State Bank of India v. Ram Lal Bhaskar and Another**, [AIR 2011 SCW 6577], has held as under:

“8. Thus, in a proceeding under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the findings of the disciplinary authority and so long as the findings of the disciplinary authority are supported by some evidence the High Court does not re-appreciate the evidence and come to a different and independent finding on the evidence. This position of law has been reiterated in several decisions by this Court which we need not refer to, and yet by the impugned judgment the High Court has re-appreciated the evidence and arrived at the conclusion that the findings recorded by the enquiry officer are not substantiated by any material on record and the allegations leveled against the respondent no.1 do not constitute any misconduct and that the respondent no.1 was not guilty of any misconduct.”

vi) The AA, i.e., Lt. Governor of Delhi has rejected the appeal on the ground that the averments made by the applicant in his appeal

were not sufficient for granting the relief sought and that the DDA was put in an embarrassing situation before the Hon'ble High Court as the said land was not verified by the applicant or his staff or by the field staff before putting the proposal before the Screening Committee. Hence, the AA did not find any merit in the appeal and dismissed the same.

5. The applicant also filed a rejoinder to the reply filed on behalf of the respondents in which he has by and large reiterated the averments made in the OA.

6. On completion of the pleadings, the case was taken up for hearing the arguments of the parties on 24.01.2018. Arguments of Shri Yogesh Sharma, learned counsel for the applicant and that of Mrs. Sriparna Chatterjee, learned counsel for the respondents were heard.

7. We have given due consideration to the rival pleadings of the parties and the arguments put-forth by their learned counsel. It is not in dispute that the duties and responsibilities of the Senior Architect, as laid down in the CPWD Code are also applicable to the Senior Architect working in DDA. These duties and responsibilities are as under:

“Duties and Responsibilities of Senior Architect

The following shall be the duties and responsibilities of a Senior Architect:



- (i) To advise a client Ministry on the selection of site and the preparation of the Building programme.
- (ii) To prepare layout, preliminary working and detailed drawing of building in consultation with the client Ministry, Surveyor of Works Organization, Electrical and Air-conditioning Engineers and the Directorate of Horticulture, to ensure efficient coordination among the various Engineering Services. In preparing Architectural designs and details, he should take into consideration the functional, aesthetic, structural and service requirements of a building with due regard to the economy of costs and availability of materials. He should also prepare detailed architectural specifications for the purpose.
- (iii) To consult residents association in the preparation of designs of various types of quarters, as far as possible, and to provide maximum comforts with reference to their social habits and living standards, with the plinth areas and cost laid down by Government.
- (iv) To obtain approval to the drawings from the local municipal and civic bodies and/or development authorities, wherever necessary.
- (v) To inspect periodically buildings designed by him to ensure that the work is carried out according to the approved architectural details and specifications. He shall be fully responsible for supervision during construction. He should explain his ideas to the officer-in charge of execution so that there are no unauthorized deviations.
- (vi) To certify, on completion of a particular building, that it has been constructed according to the approved designs and specifications. In case of any unauthorized deviation, the certificate of completion shall not be given unless the defect, or deviation has been rectified to the satisfaction of the Senior Architect. However such certificate by the Senior Architect will be required for works costing more than Rs.10 Lakhs. The Chief Architect/ Chief Engineer may, however, decide whether a particular building involving less than Rs.10 Lakhs will require the certificate from Senior Architect or not”

8. It is also not in dispute that the applicant was responsible for preparing agenda notes for the consideration of the Screening Committee. Obviously, such a role assigned to the applicant was

specific to the DDA and could not have been stipulated in the CPWD Code. This does not mean that the applicant could not have been given additional responsibility beyond the CPWD Code by the DDA.

9. It is well understood that the officer responsible for preparing the agenda note is required to verify all the necessary details in regard to the agenda items. In the instant case, a plot of land earlier earmarked for Community Centre was to be given out for construction of a hotel through auction route. Obviously, it was the overall responsibility of the applicant to verify the factual position of the plot as to encroachment/encumbrance on it. There is nothing on the record to show that the applicant had made any sincere effort in regard to such verification. His contention that he has simply acted on the report of the Land Owning Agency, i.e., Deputy Director (OL) who in turn had relied on a report of the AE (OL) is indeed bizarre; to say the least. The respondents in their reply have controverted this contention of the applicant and have asserted that never such a report was called for prior to 14.03.2007; the date when the Screening Committee was to meet. The respondents have further stated in their reply that the status of the plot was intimated by the EE (Eastern Division-3) to the Senior Architect (East Zone) long time back vide his letters dated 27.06.2003 and 29.03.2004. Obviously, the applicant ought not have acted on such old and stale status reports. It was his duty to

get the status of the plot re-affirmed afresh before including the subject in the agenda.

10. We are conscious of the fact that the scope of judicial review in departmental proceedings is highly limited. The Hon'ble Apex Court in **Ashif Hamid v. State of J&K**, [(1989) Supp. 2 SCC 364] & **Ekta Shakti Foundation v. Govt. of NCT of Delhi**, [(2006) 10 SCC 337] on this issue, has held as under:

“i) “While exercising the power of judicial review of administrative action, the Court is not the appellate authority and the Constitution does not permit the Court to direct or advise the executive in matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the Legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. (See *Ashif Hamid v. State of J. & K.* (AIR 1989 SC 1899), *Shri Sitaram Sugar Co. v. Union of India* (AIR 1990 SC 1277)).

ii) The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or is violative of the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court it cannot interfere.

iii) The correctness of the reasons which prompted the Government in decision making, taking one course of action instead of another is not a matter of concern in judicial review and the Court is not the appropriate forum for such investigation.”

11. In **B.C. Chaturvedi v. Union of India & Others**, [(1995) 6 SCC 749] the Hon'ble Apex Court on the scope of judicial review has held as under:

“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 the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of

natural justice are 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 officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re- appreciate the evidence and to arrive at its 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 or 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.”

12. Laying down the scope of judicial review, the Hon’ble Apex Court in **Union of India v. P. Gunasekaran**, [(2015) 2 SCC 610] has observed as under:

“Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re- appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;***
- b. the enquiry is held according to the procedure prescribed in that behalf;***
- c. there is violation of the principles of natural justice in conducting the proceedings;***
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;”***

***(Emphasis supplied)***

13. In the present case, we observe that the respondents have followed the principles of natural justice in the conduct of the DE proceedings against the applicant. The charge against the applicant has been proved in the IO's report. Even the punishment of "*reduction of pay by one stage for one year with cumulative effect*" inflicted on him cannot be called disproportionate to the offence committed so as to shock the conscience.

14. In the conspectus of the discussions in the foregoing paras and taking into consideration the principles laid down by the Hon'ble Apex Court in **Ashif Ahmed, Ekta Shakti Foundation, B.C. Chaturvedi** and **P. Gunasekaran** (supra), we do not find any merit in this OA. The OA is accordingly dismissed.

15. No order as to costs.

***(K.N. Shrivastava)***  
***Member (A)***

***(Jasmine Ahmed)***  
***Member (J)***

‘San.’

