

**Central Administrative Tribunal
Principal Bench**

OA No.3945/2010

New Delhi, this the 18th day of October, 2016

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

Sh. Jaipal Singh
S/o Sh. Sipattar Singh
R/o H.No.404, Sector-1
Vaishali, Ghaziabad, UP

...Applicant

(By advocate: Shri M K Bhardwaj)

Versus

DDA & Ors. through

1. The Lt. Governor
Delhi, Chairman DDA
Raj Niwas Delhi.

2. The Vice Chairman
DDA, Vikas Sadan
New Delhi.

3. The Commissioner (Pers)
DDA, Vikas Sadan
New Delhi

..Respondents

(By Advocate: Ms. Sriparna Chatterjee)

ORDER (ORAL)

Justice Permod Kohli, Chairman :-

In the present Original Application, the applicant has challenged the charge memo dated 29.07.2003 and consequential punishment orders dated 16.10.2009 and 20.04.2010 and the Revisional Authority's order dated

06.08.2010. While considering the facts leading to filing of the present OA, it is noticed that while serving as UDC the applicant was served with a memo of charge dated 29.07.2003 along with the statement of imputation of misconduct or misbehavior etc. for holding disciplinary proceedings under Regulation 25 of DDA Conduct, Disciplinary & Appeal Regulations, 1999 for major penalty. He was directed to submit his reply within ten days. The Disciplinary Authority on consideration of the reply was of the view that the inquiry is warranted and appointed the Inquiry Officer and Presenting Officer. Inquiry was held against the applicant. The Inquiry Officer submitted his report dated 18.12.2008 holding that the charge stood proved to a large extent. CVC was also consulted at the second stage and the advice of the CVC was also served upon the applicant providing him an opportunity to make representation. The applicant made a detailed representation dated 03.08.2009 to the Commissioner (Personnel), Delhi Development Authority. The Disciplinary Authority passed the impugned order dated 16.10.2009 imposing penalty of reduction of pay by 6% of his basic pay+grade pay (two increments for two years) in the time scale of his pay with cumulative effect, with the further stipulation that he will not earn the increment of pay during

the period of reduction and after expiry of penalty period, the reduction will have the effect of postponing his future increments of pay. The applicant preferred a review against the aforesaid order which came to be rejected as not maintainable vide order dated 13.01.2010. The applicant thereafter preferred a statutory appeal before the Member(Finance), DDA. The said appeal was dismissed vide order dated 20.04.2010. A further revision thereagainst also resulted in dismissal vide order dated 06.08.2010. It is under these circumstances the present OA has been filed seeking the following reliefs:-

“(i) To quash and set aside the impugned charge memo dated 29.07.2003 and consequential punishment order dated 16.10.2009 and 20.04.2010 with all consequent effects.

(ii) To set aside the order dated 06.08.2010 and 13.01.2010.

(iii) To direct the respondents to restore the pay of the applicant reduced vide punishment order dated 16.10.2009 with all consequential benefits including arrears of pay.”

2. Shri M K Bhardwaj, learned counsel appearing for the applicant has challenged the disciplinary proceedings including the order of penalty on two grounds - (i) That another official i.e., the Superintendent who was his superior officer and had to discharge a supervisory role, has been exonerated from the similar charges leveled against him,

whereas the applicant has been punished; and (ii) that the orders of the Disciplinary Authority and the Appellate Authority are non-speaking and without any reason.

3. Insofar as the first ground is concerned, the material and evidence on which the Superintendent had been exonerated is not before us. In absence of any such material, it is not possible for this Tribunal to examine the evidence and other attending circumstances to appreciate the contention of Shri Bhardwaj. As regards the orders passed by the Disciplinary and the Appellate Authorities, we find that the Disciplinary Authority as also the Appellate Authority have not recorded any reason and finding for passing the impugned orders nor they have considered the representation filed by the applicant to the inquiry report. Rule 15(4) of the CCS (CCA) Rules, imposes an obligation upon the Disciplinary Authority to consider the representation, if any, submitted by the government servant and record its findings before proceeding further in the matter. The expression "consider" is not a mere formality. The consideration *per se* means due application of mind to the pleas raised in the representation in respect to the inquiry report. The order passed by the Disciplinary Authority simply says that the said authority had gone through Inquiry Officer's report and reply to the show cause

notice. He has not in fact accorded any consideration to the contentions of the applicant raised in the representation. Otherwise also, no reasons have been recorded for arriving at the conclusion that the applicant is required to be punished on the basis of facts on record. The impugned order thus suffers from total non-application of mind and is otherwise also bad in law for non-recording of reasons and is in contravention to the mandate of Rule 15(4) of CCS (CCA) Rules. The Appellate Authority has also committed the same mistake. The appellate order also suffers from total non-application of mind. No reasons whatsoever, much less legal and plausible, have been recorded in the order of the Appellate Authority dated 23.10.2010. Similarly, we find that the order of the Revisionary Authority also suffers from the same defects i.e., non-recording of reasons and non-application of mind.

4. For the above reasons, this OA is allowed. The Order dated 16.10.2009 passed by the Disciplinary Authority, order dated 20.04.2010 passed by the Appellate Authority and order dated 06.08.2010 passed by the Revisional Authority are hereby set aside and the matter is remitted back to the Disciplinary Authority to pass a fresh order in accordance with the mandate of Rule 15(4) of CCS (CCA) Rules, 1965 after due consideration of the representation of

the applicant made against the Inquiry Officer's report. In the event the Disciplinary Authority re-imposes the penalty, the applicant shall have the liberty to seek remedial measures before the Appellate/Revisionary Authority and in such an eventuality, they will also adhere to the mandate of law and pass reasoned orders.

(V N Gaur)
Member(A)

(Justice Permod Kohli)
Chairman

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