

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No. 4153/2012

Date of Reserve : 14.03.2016

Date of Pronouncement :23.03.2016

Hon'ble Mr. Justice M. S. Sullar, Member (J)

Hon'ble Mr. K. N. Shrivastava, Member (A)

Shri R B S Rana
Junior Engineer (C)/ED-5
Delhi Development Authority
Dilshad Garden, Delhi.

.. Applicant

(Argued by: Ms. Meenu Mainee)

Versus

Lt. Governor through

1. Vice Chairman
Delhi Development Authority
Vikas Sadan, INA
New Delhi.

2. Engineer Member
Delhi Development Authority
Vikas Sadan, INA
New Delhi.

3. Commissioner (Personnel)
Delhi Development Authority
Vikas Sadan, INA
New Delhi.

..Respondents

(By Advocate: Shri Manish Garg)

ORDER

Justice Mehinder Singh Sullar, Member (J)

The challenge in this Original Application (OA) filed by the applicant is to the impugned order dated 15.07.2009 (Annexure A-1) by virtue of which a penalty of reduction of pay by 3% of the basic pay, including grade pay (one increment for one year) in the pay scale of his pay for one year with cumulative effect, was imposed by the competent authority. He has also assailed the

impugned orders dated 15.01.2010 (Annexure A-2) dismissing his appeal by Appellate Authority and dated 20.06.2012 (Annexure A2A) dismissing his revision by the Revisional Authority.

2. The compectus of the facts and material culminating in the commencement, relevant for deciding the core controversy involved in the instant OA and emanating from the record, is that the applicant was working as Junior Engineer (JE) (Civil) in the Delhi Development Authority (for short "DDA"). He committed certain irregularities when he was incharge of Development of Land for temporary transit accommodation in the area of village Madanpur Khadar. Ultimately, a Memorandum of Article of Charge (Annexure A-4) was served on him under Regulation 25 of the DDA Conduct, Disciplinary and Appeal Regulation, 1999 in the following manner:-

"Statement of Articles of charge framed against Sh. R. B. S. Rana, Junior Engineer (Civil)."

That the said Sh. R. B. S. Rana, JE (C) while functioning as JE/SED-1, during the period 2001-2002 was Junior Engineer-in-charge of the work, "D/o land for Temporary Transit Accommodation at Madanpur Khadar, Ph-III, SH: Supplying and filling of earth", which was executed in deviation against the work of, "D/o land for Temporary Transit Accommodation at Mandapur Khadar. Ph-II, SH: Supplying and filling of earth, Pkt. 'D', under Agreement No. 10/EE/SED-5/DDA/2001-2002, executed by M/s. Choudhary Builders. He has committed the following irregularity.

ARTICLE 1

The said Sh. R.B.S. Rana, JE(C), the then JE/SED-1 did allow the contractor to bring the malba and dump at site instead of earth.

That the said Sh. R.B.S. Rana, JE(C), by his above act exhibited lack of devotion to duty and conduct unbecoming of an employee of the Authority thereby

violation sub-rule 1(i) and 1(iii) of Regulation-4 of the DDA Conduct, Disciplinary and Appeal Regulations, 1999.

Statement of imputation of misconduct or misbehaviour in support of articles of charge, framed against Shir R.B.S. Rana, JE(C)/DDA

That the said Sh. R. B. S. Rana, JE (C) while functioning as JE/SED-1, during the period 2001-2002 was Junior Engineer-in-charge of the work, "D/o land for Temporary Transit Accommodation at Madanpur Khadar, Ph-III, SH: Supplying and filling of earth", which was executed in deviation against the work of, "D/o land for Temporary Transit Accommodation at Mandapur Khadar. Ph-II, SH: Supplying and filling of earth, Pkt. 'D', under Agreement No. 10/EE/SED-5/DDA/2001-2002, executed by M/s. Choudhary Builders. He has committed the following irregularity.

ARTICLE 1

Sh. R.B.S. Rana, JE(C) allowed the contractor to bring the malba and dumb at site instead of earth.

SE/CC-15 has inspected this work on 2.1.2002. As per inspection Register bearing No.1/EE/SED-1/AE-IV/2000-01, SE/CC-15 had observed dumping of malba at site and instructed to remove the same. Further he has ordered that no payment to be made for such work.

It is further seen from the records that the said work was inspected by Q.C. Cell on 21.2.2002 and 21.06.2002 respectively. The report of the inspection dt. 21.2.2002 reveals that the earth filled in the said area was found to be mixed with malba, brick bats and boulders etc. Records do not show any action taken for the removal of such malba or initiation of any Reduction Item.

That the said Sh. R.B.S. Rana, JE(C), by his above act exhibited lack of devotion of duty and conduct unbecoming of an employee of the Authority thereby violating sub-rule 1 (i) and 1 (iii) of Regulation-4 of the DDA Conduct, Disciplinary and Appeal Regulations, 1999."

3. Thus, it would be seen that the applicant was charged that he allowed the contractor to bring and dump the wreckage (malba) instead of fresh earth to level the site. The said work was

inspected by the Quality Control (QC) Cell on 21.2.2002 and 21.6.2002. The inspection team found that earth filled in the area was mixed with wreckage (malba), brick bats and boulders, etc. Although records did not show any action taken by the applicant for removal of any building material such as wreckage (malba) or initiation of any reduction of payment from the contractor.

4. However, applicant denied the charges levelled against him and a regular enquiry was ordered. An Enquiry Officer (EO) was appointed by the competent authority, who in his report dated 27.05.2008 (Annexure A-11) has concluded as under:-

“CO has affected recovery for malba for the quantities observed during site inspection by the SE and AE. However, as per usual practice, transportation of earth is done mostly during night hours because of traffic restrictions. In view of this, it is not always possible that all the malba brought to site will get noticed during inspection in daytime. Thus, the recovery affected by the CO on the basis of visual inspections represents only a small part of malba brought to site during daytime. Accordingly, it is inferred that the CO is partly responsible for not affecting recovery for the entire quantity of malba filled at site”.

Thus the EO held the charge to be partly proved.

5. Disagreeing with the findings of the EO, the Disciplinary Authority recorded the impugned disagreement note dated 07.11.2008 (Annexure A-12). Consequently, a show cause notice was issued along with the disagreement note to which the applicant replied. Considering the material on record, the above noted penalty was imposed by the Disciplinary Authority vide his impugned order dated 15.07.2009 (Annexure A-1). The applicant's appeal was dismissed on 15.01.2010 (Annexure A-2) by the Appellate Authority and his revision petition was dismissed on 20.06.2012 (Annexure A-2A) by the Revisional Authority as well.

6. The applicant did not feel satisfied and initially challenged the impugned orders in OA No.732/2011. During the pendency of the said OA, the applicant also filed MA No.609/2012, thereby enclosing a copy of the charge sheet served upon similarly situated JE Shri Mahender Singh and the order passed by the Lt. Governor, Delhi (Revisional Authority). The Memorandum and Articles of Charge served on Shri Mahender Singh are verbatim same as served on the applicant, which, in substance, is as under:-

“Statement of Articles of charge framed against Sh. Mahender Singh, Assistant Engineer (Civil).”

That the said Sh. Mahender Singh, (C) while functioning as Junior Engineer-in-charge during the period 2001-2002 of the work, “D/o land for Temporary Transit Accommodation at Madanpur Khadar, Ph-III, SH: Supplying and filling of earth”, which was executed in deviation against the work of, “D/o land for Temporary Transit Accommodation at Mandapur Khadar. Ph-II, SH: Supplying and filling of earth, Pkt. ‘D’, under Agreement No. 10/EE/SED-5/DDA/2001-2002, executed by M/s. Choudhary Builders. He has committed the following irregularity.

ARTICLE 1

The said Sh. Mahender Singh, AE (C), allowed he contractor to bring the malba and dump at site instead of earth.

That the said Sh. Mahender Singh, AE (C), by his above act exhibited lack of devotion to duty and conduct unbecoming of an employee of the Authority thereby violation sub-rule 1(i) and 1(iii) of Regulation-4 of the DDA Conduct, Disciplinary and Appeal Regulations, 1999.

Statement of Imputation of misconduct or misbehaviour in support of articles of charge, framed against Shri Mahender Singh, AE©/DDA

That the said Sh. Mahender Singh, (C) while functioning as Junior Engineer-in-charge during the period 2001-2002 of the work, “D/o land for Temporary Transit Accommodation at Madanpur

Khadar, Ph-III, SH: Supplying and filling of earth”, which was executed in deviation against the work of, “D/o land for Temporary Transit Accommodation at Mandapur Khadar. Ph-II, SH: Supplying and filling of earth, Pkt. ‘D’, under Agreement No. 10/EE/SED-5/DDA/2001-2002, executed by M/s. Choudhary Builders. The following irregularity has been noticed.

Article-I

Sh. Mahender Singh, AE(C) allowed the contractor to bring the malba and dumb at site instead of earth.

SE/CC-15 has inspected this work on 2.1.2002. As per inspection Register bearing No.1/EE/SED-1/AE-IV/2000-01, SE/CC-15 had observed dumping of malba at site and instructed to remove the same. Further he has ordered that no payment to be made for such work.

It is further seen from the records that the said work was inspected by Q.C. Cell on 21.2.2002 and 21.06.2002 respectively. The report of the inspection dt. 21.2.2002 reveals that the earth filled in the said area was found to be mixed with malba, brick bats and boulders etc. Records do not show any action taken for the removal of such malba or initiation of any Reduction Item.

That the said Sh. Mahender Singh, AE(C), by his above act exhibited lack of devotion of duty and conduct unbecoming of an employee of the Authority thereby violating sub-rule 1 (i) and 1 (iii) of Regulation-4 of the DDA Conduct, Disciplinary and Appeal Regulations, 1999.”

7. Thus, a bare perusal of the record would reveal that the applicant was issued the charge-sheet for the same very allegations and on the basis of same inspection reports, on which Shri Mahender Singh, JE was issued the charge sheet by the Disciplinary Authority. The applicant and Shri Mahender Singh were awarded similar punishment on the similar charges. Their appeals were dismissed by the Appellate Authorities. Meanwhile, since Shri Mahender Singh was promoted to the post of Assistant

Engineer, so his Revisional Authority became the Lt. Governor of Delhi whereas the Vice Chairman, DDA continued to be the Revisional Authority for the applicant. The revision petition filed by Shri Mahender Singh was allowed by the Revisional Authority (Lt. Governor, Delhi) vide order dated 25.11.2011. At the same time, the Revision Petition filed by the DO was dismissed by Vice-Chairman, DDA (Revisional Authority) vide order dated 25.10.2010.

8. Dissatisfied with the impugned orders, the applicant preferred OA bearing No.732/2011 before this Tribunal. Taking into consideration the facts, materials and the principle of parity relatable to the case of Shri Mahender Singh, this Tribunal disposed of the said OA No.732/2011 vide order dated 16.04.2012, the operative part of which is as under:-

“6. We have given due consideration to the submissions made by the learned counsel for applicant and we are of the view that the applicant has made out a case for our interference. We have also perused the charge memos, which have been issued in the case of Shri Mahender Singh as well as in the case of the applicant herein. Both these charge memos, which are of the same date, are based on the same allegations as well as on the same inspection report. In the case of the applicant, the revisional authority has upheld the orders of the disciplinary as well as appellate authorities, whereas for the same allegations the Lt. Governor, Delhi while exercising the power of revisional authority has exonerated Shri Mahender Singh.

7. Thus, according to us, the present OA is disposed of and the order passed by the revisional authority dated 25.10.2010 (Annexure A-3) is quashed and set aside. Matter is remitted back to the revisional authority, i.e., the Vice Chairman, DDA to reconsider the matter in the light of the order dated 25.11.2011 passed by the Lt. Governor, Delhi in the case of Shri Mahender Singh, the then Junior Engineer and give a specific finding as to how the delinquency and gravity of the charges of the applicant is different to that of Shri Mahender

Singh, so as to warrant imposition of penalty, as granted by the disciplinary authority, in case the revisional authority does not agree with the reasoning given in the order dated 25.11.2011 passed by the Lt. Governor, Delhi. Such a decision shall be taken within a period of two months from the date of receipt of a copy of this order. No costs”.

9. After the remand of the case by this Tribunal, the Revisional Authority again dismissed the revision petition of the applicant vide impugned order dated 20.06.2012 (Annexure 2-A).

10. Aggrieved thereby, the applicant has preferred the instant OA challenging the impugned orders in the manner indicated herein above, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

11. As is evident from the record that the applicant has taken variety of grounds to challenge the impugned orders in the OA. But the case set-up by the applicant in the amended OA and urged by his counsel, in brief, insofar as relevant, is that both applicant and Mahender Singh were issued the same charge sheet on the same day for the same allegations. Meanwhile Shri Mahender Singh was promoted and his Revisional Authority became the Lt. Governor of Delhi, who allowed his revision petition whereas the applicant was not promoted so the Vice-Chairman, DDA continued to be his Revisional Authority, who again dismissed his revision petition. According to the applicant, had he also been promoted during the pendency of the appeal, the Lt. Governor, Delhi would have become his Revisional Authority but as luck would have it, the Vice Chairman, DDA continued to be his Revisional Authority.

12. Levelling a variety of allegations and narrating the sequence of events in detail, in all, the applicant has claimed that he should also be given the same benefit and treatment as that given to Mr.

Mahender Singh as both have been charged with the same charges based on the same inspections reports. On the strength of the aforesaid grounds, he has sought to quash all the impugned orders in the manner indicated hereinabove.

13. The contesting respondents have refuted the allegations raised in the OA, filed their reply wherein it has been pleaded that the applicant was rightly charged with the lapses that he allowed the contractor to bring and dump wreckage (malba) at the site instead of earth. The charges were partly found to be proved against him by the EO during the enquiry proceedings. The Disciplinary Authority, after careful consideration of the reply of the DO, evidence and circumstances on record, imposed the indicated penalty.

14. The appeal and revision filed by the DO were termed to be rightly dismissed by the relevant authorities. However, it was acknowledged that in the case of Shri Mahender Singh, AE, the Revisional Authority, i.e., Lt. Governor, Delhi has quashed the punishment and exonerated him. That means, the factum of similar charges of the same date based on same inspection reports in case of the applicant and Shri Mahender Singh, AE were admitted. It will not be out of place to mention that the contesting respondents have stoutly denied all other allegations contained in the main OA and prayed for its dismissal.

15. Controverting the pleadings in the reply of the respondents and reiterating the grounds contained in the amended OA, the applicant filed the rejoinder. That is how we are seized of the matter.

16. Having heard the learned counsel for the parties, having gone through the record with their valuable assistance and after bestowal of thoughts over the entire matter, we are of the considered opinion that present OA deserve to be allowed for the reasons mentioned herein below.

17. Such this being the position of material and evidence available on record, the short and significant question though important that arises for determination by this Tribunal is as to whether the applicant is entitled to the same relief and treatment as given to similarly situated JE Shri Mahender Singh by the Lt. Governor of Delhi in respect of same charges based on same inspection reports or not?

18. Having regard to the rival contention of the learned counsel of the parties, to our mind, the answer must obviously be in the affirmative.

19. As is evident from the record that the applicant and Shri Mahender Singh were working as JE (Civil) in DDA at the relevant time. They were incharge of the works in question. The crux of the charge sheet issued to the applicant and Shri Mahender Singh were that they allowed the contractors to bring and dump malba to level the site instead of fresh earth. Their work was inspected by Q.C. Cell on 21.2.2002 and 21.06.2002 respectively. As per inspection report, the earth filled in the said area was found to be mixed with malba, brick bats and boulders etc. That means the article of charge served on the applicant and said Shri Mahender Singh, JE were verbatim the same and based on the same very inspection reports. They were punished by the Disciplinary Authority and their appeals were dismissed as well by the Appellate Authority.

20. Meanwhile, as Shri Mahender Singh was promoted as Assistant Engineer so Lt. Governor, Delhi became his Revisional Authority whereas the Revisional Authority of DO, JE (Civil) continued to be the same, i.e., Vice-Chairman, DDA. The Lt. Governor has allowed the revision petition of Shri Mahender Singh, set aside the disciplinary, appellate orders and exonerated Shri Mahender Singh of the same very charges, whereas revision filed by the applicant was dismissed by his Revisional Authority, i.e., Vice-Chairman, DDA.

21. Moreover, it is not a matter of dispute that Lt. Governor, Delhi (Revisional Authority) has categorically held that the charge against Shri Mahender Singh, AE for allowing the contractor to bring malba at the site in excess of the quantity recovered from the contractor has not been proved. The revisional authority was further of the view that admixture of malba (building waste) in the overall earth filling of the low-lying area was evidently marginal for which appropriate deductions had been made from payments made to the contractor. Hence, the assertion that much more building waste than what was recorded in the Site Order Book (Ex. S-2), had been dumped at the site, has not been established from the evidence adduced or the records produced before the Inquiry Officer. Thus, the revisional authority allowed the revision petition filed by Shri Mahender Singh, the then Junior Engineer and the orders passed by the disciplinary as well as appellate authorities in his case were set aside and Shri Mahender Singh was exonerated of all the charges. Admittedly the order of Lt. Governor has already attained the finality.

22. The contention of the learned counsel for the applicant that the reasons mentioned by the Lt. Governor, Delhi to exonerate similarly situated Shri Mahender Singh, AE is fully applicable to the case of present DO as well, has considerable force. Indeed the Revisional Authority in the case of the applicant has simply ignored the ground of exoneration of Shri Mahender Singh with impunity while deciding his revision petition. Hence, the impugned order of Revisional Authority in the present case is not only unreasonable, but arbitrary as well. Therefore, once the Lt. Governor has authoritatively concluded that same charges are not proved against Shri Mahender Singh then there was no occasion to give a different treatment in the similar matter to the applicant. The Revisional Authority in the present case ought to have followed the principle/grounds recapitulated in case of similarly situated Mahender Singh by the Lt. Governor on the basis of parity.

23. In this view of the factual backdrop, we are of the considered view that respondents cannot legally be permitted to resort to selective/differential treatment to the applicant different than those granted to similarly situated Shri Mahender Singh on the basis of principle of parity. This matter is no more res integra and is well settled.

24. An identical point came to be decided by Hon'ble Apex Court in case of ***Man Singh Vs. State of Haryana and others AIR 2008 SC 2481***. Having considered the scope of Article 14 of the Constitution, it was ruled that the concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be

treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of 'fair play' and reasonableness.

25. Not only that, the Hon'ble Supreme Court again considered the principle of parity in awarding the penalty in departmental proceedings in case of **Rajendra Yadav Vs. State of M.P. and Others 2013 (2) AISLJ 120**, wherein it was held as under:-

"11. We have gone through the inquiry report placed before us in respect of the appellant as well as Constable Arjun Pathak. The inquiry clearly reveals the role of Arjun Pathak. It was Arjun Pathak who had demanded and received the money, though the tacit approval of the appellant was proved in the inquiry. The charge levelled against Arjun Pathak was more serious than the one charged against the appellant. Both appellants and other two persons as well as Arjun Pathak were involved in the same incident. After having found that Arjun Pathak had a more serious role and, in fact, it was he who had demanded and received the money, he was inflicted comparatively a lighter punishment. At the same time, appellant who had played a passive role was inflicted with a more serious punishment of dismissal from service which, in our view, cannot be sustained.

12. The Doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate, i.e., lesser punishment for serious offences and stringent punishment for lesser offences.

13. The principle stated above is seen applied in few judgments of this Court. The earliest one is **Director General of Police and Others v. G. Dasayan (1998) 2 SCC 407**, wherein one Dasayan, a Police Constable, along with two other constables and one Head Constable were charged for the same acts of misconduct. The Disciplinary Authority exonerated two other constables, but imposed the punishment of dismissal from service on Dasayan and that of compulsory retirement on Head Constable. This Court, in order to meet the ends of justice, substituted the order of compulsory retirement in place of the order of dismissal from service on Dasayan, applying the principle of parity in punishment among co-delinquents. This Court held that it may, otherwise, violate Article 14 of the Constitution of India. In Shaileshkumar Harshadbhai Shah case (supra), the workman was dismissed from service for proved misconduct. However, few other workmen, against whom there were identical allegations, were allowed to avail of the benefit of voluntary

retirement scheme. **In such circumstances, this Court directed that the workman also be treated on the same footing and be given the benefit of voluntary retirement from service from the month on which the others were given the benefit.**

14. **We are of the view the principle laid down in the above mentioned judgments also would apply to the facts of the present case. We have already indicated that the action of the Disciplinary Authority imposing a comparatively lighter punishment to the co-delinquent Arjun Pathak and at the same time, harsher punishment to the appellant cannot be permitted in law, since they were all involved in the same incident.** Consequently, we are inclined to allow the appeal by setting aside the punishment of dismissal from service imposed on the appellant and order that he be reinstated in service forthwith. Appellant is, therefore, to be re- instated from the date on which Arjun Pathak was re-instated and be given all consequent benefits as was given to Arjun Pathak. Ordered accordingly. However, there will be no order as to costs.

26. Therefore, the indicated epitome of law laid down by the Hon'ble Supreme Court is *mutatis mutandis* applicable to the facts of the present case and is complete answer to the problem in hand.

27. This is not the end of the matter and there is yet another aspect of the matter which can be viewed entirely from a different angle. The order of Lt. Governor to exonerates similarly situated Mahender Singh, AE which has already attained the finality is also relevant for the present case on the basis of doctrine of *stare decisis*. It is well recognized principle of law that a judgment which has decided a similar lis between the parties should not be unsettled. One should stand by the decision and not to disturb what is settled. The underlying logic of this doctrine is to maintain consistency and avoid uncertainty. The earlier judgment which has decided the matter should not be disturbed only because another view is possible.

28. Moreover, the doctrine of *stare decisis* is a well established valuable principle of precedent. It promotes a certainty and consistency in judicial decisions and this helps in the development of the law. Not only that it provides guidelines for individuals as to what would be the consequences if they choose the legal action.

The doctrine promotes confidence of the people in the system of the judicial administration as well. Reliance in this regard can also be placed on the judgments of the Hon'ble Apex Court in the cases of ***Shanker Raju Vs. U.O.I. JT 2011 (1) SC 49*** and ***U.O.I. and Others Vs. Major S.P. Sharma 2014 (6) SCC 351***.

29. Thus, seen from any angle, to our mind, the principles of equality and parity and doctrine of *stare decisis* are fully attracted in the instant case. Therefore, protection under Articles 14 & 16 of Constitution of India indeed is also available to the applicant as well in the manner indicated hereinabove. Hence the impugned orders cannot legally be sustained and deserve to be quashed in the obtaining circumstances of the case.

30. No other point, worth consideration, is either urged or pressed by the learned counsel for the parties.

31. In the light of aforesaid reasons, the instant OA is allowed. The impugned orders dated 15.07.2009 (Annexure A-1) passed by the Disciplinary Authority, dated 15.1.2010 (Annexure A-2) passed by the Appellate Authority and subsequent impugned order dated 20.06.2012 (Annexure A-2A) passed by the Revisional Authority are hereby set aside. The applicant is exonerated of all the charges framed against him. No costs.

(K.N. SHRIVASTAVA)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Rakesh