

**Central Administrative Tribunal
Principal Bench**

**OA No.4228/2014
MA No.1689/2016**

Reserved on: 20.05.2016
Pronounced on: 26.07.2016

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

Qaiser Javed S/o Aziz Ullah Siddiqui,
Executive engineer (Planning),
North DMC, Civic Centre,
R/o I-59, Batla House, Jamia Nagar,
New Delhi-110025.

... Applicant

(By Advocate: Shri Rajeev Sharma)

Versus

1. Lt. Governor of Delhi,
Government of NCT of Delhi,
Raj Niwas, New Delhi.
2. North Delhi Municipal Corporation
through its Commissioner,
Dr. S.P. Mukherjee Civic Centre,
J.L. Marg, New Delhi.
3. Commissioner,
North Delhi Municipal Corporation,
Dr. S. P. Mukherjee Civic Centre,
4th Floor, J. L. Marg, New Delhi.

... Respondents

(By Advocate : Shri R. N. Singh)

O R D E R

Justice Permod Kohli, Chairman :

The applicant has called in question validity of the order dated 16.06.2014 imposing penalty of reduction in rank upon him, and

order dated 21.10.2014 rejecting his appeal against the penalty order by the competent appellate authority.

2. Briefly stated, the facts leading to filing of the present Application are that the applicant was serving as Executive Engineer (Civil) in the Municipal Corporation of Delhi. During the period of his tenure, precisely on 03.05.2004, a building property No.5079, Rui Mandi, Sadar Bazar, Delhi, collapsed killing three persons. The applicant was served with a charge-sheet dated 21.07.2005 containing the following statement of articles of charge:

“Sh. M. Q. Javed was functioning as EE(B) in Bldg. Deptt., SPZ during the period from 01.03.04 to 05.05.04. He failed to maintain the devotion to duty & committed gross misconduct on the following counts:

1. He failed to get stopped/demolished the U/C at SF & TF in property No.5079, Rui Mandi, Sadar Bazar at its initial/ongoing stage.
2. He also failed to get the aforesaid U/C Booked for taking action U/S 343/344 of DMC Act.
3. He also failed to get initiated action for sealing the U/C u/s 345 & for prosecution of the owner/builder u/s 332/466A of DMC Act.
4. He also failed to exercise the proper supervision & control over the functioning of S/Sh. K.K. Chopra, JE(B) & Jagdish Chander, AE(B)/SPZ who did not take proper & timely action against the aforesaid U/C.

He, thereby, contravened Rule 3(1)(i)(ii) of CCS (Conduct) Rules 1964 as made applicable to the employees of MCD.”

The memorandum of charges was accompanied with the statement of allegations. On his reply being filed, an inquiry under rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 was conducted by the Director (Inquiries). The inquiry officer on conclusion of inquiry submitted his report holding that the charges were not proved against the applicant, vide his report dated 21.06.2012. The disciplinary authority, however, did not agree with the findings of the inquiry officer and recorded his note of disagreement dated 10.05.2013, copy whereof was served upon the applicant seeking his representation, and on consideration of his representation, passed the impugned order dated 16.6.2014 imposing penalty of reduction in rank upon the applicant, as proposed in the order dated 23.05.2014. Aggrieved of the said order, the applicant preferred an appeal before the Lieutenant Governor, Delhi (competent appellate authority). The appellate authority rejected the appeal vide the impugned order dated 21.10.2014 upholding the order of imposition of penalty.

3. Earlier, the applicant had approached this Tribunal in OA No.2104/2014. The sole ground for filing the said OA was to seek interim directions in respect to the order passed by the disciplinary

authority till the disposal of the appeal, as at the relevant time the appeal filed by the applicant was still pending. The Tribunal vide its order dated 14.07.2014 stayed the impugned order of imposition of penalty till the disposal of the appeal. The appeal having been disposed of vide order dated 21.10.2014, the applicant filed present OA seeking quashment of the orders with further direction for release of all consequential benefits.

4. The validity of the impugned order has been challenged mainly on the following grounds:

- (1) That the order imposing penalty has been passed against the findings of the inquiry report by recording disagreement on extraneous material, which was neither part of the charge memo nor brought on record during the course of inquiry.
- (2) That the entire basis of the alleged findings against the applicant is a police complaint dated 10.04.2004. The said complaint was in respect of different properties and different owners than the property subject matter of inquiry against the applicant.

- (3) That the duty of the applicant was only supervisory which he discharged without any negligence and he is not liable for the act complained of.
- (4) That the Junior Engineer who was also charge-sheeted in respect to the same charges has been exonerated. The applicant was to act only on the report of the Junior Engineer and cannot be independently held responsible for the alleged incident.

5. We have heard the learned counsel for parties at length and considered the material on record.

6. Admittedly, the applicant was charged in respect to four acts of alleged misconduct. From the reading of the charge memo, it appears that the applicant has been accused of non-exercise of proper supervisory control and inaction to stop/demolish the unauthorized construction in property No.5079, Rui Mandi, Sadar Bazar, Delhi, for not taking action u/s 343/344 DMC Act, not sealing the unauthorized construction u/s 345A, and for non-prosecution of the owner/builder u/s 332/466A. The findings of the inquiry officer on the basis of the evidence/material on record are relevant to find out whether the charges against the applicant have been proved, or there was sufficient material to hold the applicant responsible for the

commission of the various acts of misconduct or misdemeanour. The inquiry officer recorded his findings on the basis of the material in the following manner:

“In the instant case the statement of Shri K. K. Arora, the then JE(B)/SP Zone is important. During the course of investigation the statement of Shri K. K. Arora (Ex.S-5) was recorded on 7.6.2004 wherein he has narrated all the facts related to this case. In his statement Shri Arora has stated with regard to P.No.5079-80, Rui Mandi, Sadar Bazar that he had not booked any u/c in the said property for the evident reason that no u/c in the said property had been carried out nor any ongoing construction was noticed by him. He further stated that a complaint bearing No.975-80/SHO/Sadar Bazar/Delhi dated 10.4.04 in r/o property No.5084, 5085 & 5086, Rui Mandi was received in SP Zone on 12.4.04 and marked to him by AE(B) on 15.4.04 for inspection of the said property. In compliance thereof he inspected the said properties on 19.4.04 as 17.4.04 & 18.4.04 were holidays being Saturday & Sunday and during inspection no construction work was found in progress in P.No.5085 & 5086 but in P.No.5084 some renovation work was being carried out at FF which was not actionable and the same was covered under the BBL 6.4.1. In regard to P.No.5079-80 it was found by him that the owner was carrying out some repair work at GF & FF which was not actionable. Shri Arora brought these facts to the notice of AE(B) who directed him to keep a strict watch for taking action if any u/c is carried out. According to Shri Arora, he inspected the area lastly on 26.4.04 and thereafter he was busy on 27, 28, 29 & 30.4.04 in demolition programme, court cases and other important assignments. Further 1.5.04 & 2.5.04 were holidays being Saturday and Sunday and 3.5.04 was a gazetted holiday on account of birthday of Hazrat Saheb and the incident of collapse of the said building took place on 3.5.04. Shri Arora further stated that as he had not seen any u/c in the property in question he did not book the said building for u/c. Shri Arora further stated that the said property is situated in a very narrow

land at the dead end of the street and it is not visible from outside main road.”

“In this case as per the established procedure and instructions on the subject as brought on record the JE(B) concerned viz. Shri K.K. Arora was duty bound to detect any u/c going on in his area, prepare FIR for the u/c and to obtain orders of AE(B) for taking appropriate action as per the provisions of the DMC Act. However, in this case as per the evidence on record the JE(B) concerned did not bring to the notice of AE(B)/EE(B) any u/c in the impugned property or any violation of the provisions of the DMC Act by the owner/builder of the said property and as such the AE(B)/EE(B) were not in a position to give any direction/order on violation of the DMC Act in respect of the impugned property. As discussed above the JE(B) concerned Shri K.K. Arora, JE(B) who was charged for alleged failure on various counts as the other Cos in the instant inquiry, has already been completely exonerated of the charges by the competent Disciplinary Authority. The Disciplinary Authority of DDA in r/o Shri K.K.Arora, JE(B) exonerated him on the ground that u/c as well as its collapse took place during the holidays and as such the CO did not have any opportunity to detect u/c at the ongoing stage and also did not have any opportunity to detect u/c at the ongoing stage and also did not have the opportunity of taking timely action against the u/c. In view of complete exoneration of Shri K.K.Arora, JE(B) who was the main accused in this case and primarily responsible for detecting u/c in the impugned property or any other violation of the provisions of the DMC Act the other Cos in this case viz. AE(B) and EE(B), cannot be held responsible for the alleged failure to get stopped/demolished the u/c or to book/seal the u/c in the impugned property under various provisions of the DMC Act. Hence, the charges No.1, 2 and 3 against both the Cos viz. S/Shri Jagdish Chander, AE and M.Q.Javed, EE are held as not proved. Regarding the charge No.4 relating to lack of supervision it is pointed out that since Shri K.K.Arora, JE(B) has been completely exonerated of all the charges No.1, 2 & 3 by the competent Disciplinary authority, the COs in this case cannot be held responsible for failure to exercise proper

supervision and control over the functioning of their subordinate staff viz Shri K.K.Arora, JE(B)."

The disciplinary authority, however, recorded its disagreement. The disagreement note dated 10.05.2013 of the disciplinary authority reads as under:

"I have carefully gone through the Inquiry Report as also the allied record of the case. It is revealed from the file that a complaint was received in the zonal office on 12/04/2004 from SHO, Sadar Bazar regarding unauthorized construction in the above said property. The property was inspected by Shri Jagdish Chander, AE and Shri K.K. Arora, JE on 19/04/2004 and found no actionable construction at site. The JE was directed by the AE to keep watch over the property. Except this no steps were taken to prevent the construction. The JE also did not bother to check the property in odd hours or on holidays as per the directions. The department should have informed the police with reference to the complaint received from them that no actionable construction was found at site on the day of inspection and the police should have been told to keep watch over the property so that preventive action could have been taken. But the complaint received from the police was not taken seriously and the owner/builder was allowed to carry out the construction which caused death of seven persons at site. The JE, AE and EE all acted in a very careless manner. The Inquiry Report of the Inquiry Officer in DDA was also not acceptable and the department should have filed appeal against the orders of the Disciplinary Authority of the DDA. When there were directions to the JE to keep watch on the property, the said directions are applicable even for holidays and no protection should have been given to the C.O. on this ground. It has been mentioned that when the property was inspected by the AE & JE on 19/04/2004 no actionable u/c was found. Then what actually was happening at site has not been mentioned. The complaint received from the police does not appear to be false because unauthorized construction did take

place at site which took as many as seven lives. The AE & EE totally failed to exercise effective control over the JE and did not take report from him on daily basis. Such major incident took place even though there was alarm from the police. Neither the JE took the directions of the AE seriously to keep watch over the property nor the AE & EE who were in supervisory position ensured that the said directions were acted upon properly. Lastly the property was inspected by the JE on 26/04/2004 and thereafter no inspection was made by him on the ground that he was busy in demolition programme from 27/4/2004 to 30/4/2004. Then what was the impact of issuing such directions.

In view of the above, I disagree with the findings of the Inquiry Officer and find that both the Cos S/Shri M.Q.Zaved, EE and Jagdish Chander, AE are responsible for the unauthorized construction and hold that all the charges levelled against them are proved. A copy of this disagreement note be served upon the Cos as required under the rules for making representation, if any, within the stipulated time. Since there is a CVC reference in this case, appropriate action be also taken as per the guidelines on the subject."

7. From the disagreement note, it appears that the entire case is based upon the complaint received from SHO, Sadar Bazar regarding unauthorized construction. The complaint dated 12.04.2004 has also been placed on record. It is desirable to reproduce the said complaint, which *inter alia* reads:

"Subject: Unauthorized Construction in Property
No.5085, 5084 & 5086, Rui Mandi, Sadar
Bazar.

Sir,

I am to inform you that unauthorized construction is being carried out in the above said premises. You are

requested to take necessary action at your end. Details of Property/Building Owner is given below:

1. Place of Construction: 5084, 5085 & 5086 Rui Mandi Sadar Bazar
2. Name of the Land Lord: S. Bakshish Singh, Hari Ram
3. Name of contractor: Umar
4. Type of construction:
 - (a) Area of construction: 20'x20'
 - (b) Repair or new construction: New construction
 - (c) Residential accommodation converted to commercial purpose: Commercial
 - (d) Construction is small/big/glaring and blatant violation: Big''

8. From the reading of the disagreement note, it appears that the entire emphasis for disagreeing with the findings of the inquiry officer is on – (i) complaint of the SHO dated 10.04.2004 and inaction on the part of the applicant on the said complaint; and (ii) disagreeing with the order of exoneration of the Junior Engineer. From the disagreement note it is, however, evident that it was the duty of the Junior Engineer to inspect the property and report to the Assistant Engineer and the Executive Engineer. It is also noticed by the disciplinary authority that Assistant Engineer and Junior Engineer inspected the site on 19.04.2004, and no actionable

unauthorized construction was found. It is also noticed that what actually was happening at the site had not been mentioned.

9. The main emphasis of the disciplinary authority in its disagreement note is on the police complaint. The police complaint mentioned three properties where alleged unauthorized construction was going on. The properties are No.5084, 5085 and 5086, Rui Mandi, Sadar Bazar. Names of the owners of the said properties are mentioned as S. Bakshish Singh and Hari Ram, and that of the contractor as Umar. These three properties mentioned in the police complaint dated 10.04.2004 are admittedly different than the property for which the applicant has been charge-sheeted. The charge against the applicant is in respect to property No.5079, Rui Mandi, Sadar Bazar, which collapsed killing three persons. How the complaint in respect of different properties and different owners is relevant to prove the charge against the applicant in respect of the property for which he has been charged is not revealed. The disagreement note also does not reveal any connection or linkage with the property subject matter of the charge and the properties/owners mentioned in the police complaint. How and under what circumstances the applicant has been held responsible for alleged inaction on the police complaint is not disclosed. There is no whisper about the same. The applicant has specifically explained that on receipt of the police

complaint by him on 12.04.2004, the same was sent to AE (Building) on 13.04.2004 with direction to take immediate necessary action as per provisions of law. On the same day, i.e., 13.04.2004, the complaint was also forwarded to JE (Building) with direction to take necessary action as per law. Copy of the said complaint was also received by the applicant from the office of DC/SPZ on 15.04.2004, which was again sent to AE (Building) on the same day with direction to take immediate necessary action, and put up report within three days. This specific averment made by the applicant in his representation to the disagreement note has not been taken note of, what to say of considered/discussed in the disagreement note of the disciplinary authority. The charged officer (applicant) made specific averments in his representation against the proposed penalty about his role and his actions in respect to the police complaint. However, none of the defences/pleas has been discussed in the disagreement note, which seems to be a unilateral finding without taking into consideration the applicant's version/defence. In any case, the police report which pertained to different properties and different owners cannot form the basis for disagreeing with the specific and unequivocal findings of the inquiry officer based upon evidence/material. The appellate authority noticed the plea of the applicant in respect of the police complaint. However, the plea has

not been considered in accordance with law, and rejected by observing as under:

“8) I have gone through the contentions of the appellant in his appeal, his representation to the Disciplinary Authority, the impugned penalty order and relevant records of the case. In the instant case, from records it is confirmed that the appellant’s claim that the Disciplinary Authority disagreement was based on the police report dated 10.4.2004 of SHO, PS Sadar Bazar, Delhi, which was received in the Zonal Office on 12.4.2004, and was regarding unauthorized construction of property nos.5084, 5085 & 5086, Rui Mandi, Sadar Bazar, not pertained to the impugned property no.5079, Rui Mandi, Sadar Bazar, Delhi. However, I am of the view that this oversight of the Disciplinary Authority would not amount to be a mitigating factor to grant the relief sought by the appellant, because, evidently unauthorized construction was carried out in the impugned property no.5079, which happened to be in their area of jurisdiction, and the building had collapsed leading to untimely death of seven persons.....”

Thus, the appellate authority also committed the same error of fact and law as the disciplinary authority, and upheld the impugned order of penalty in contravention of law.

10. The second ground on which the disciplinary authority has ignored the exoneration of the JE (Building) is that an appeal should have been filed against the exoneration order. Admittedly, the applicant was/is not the competent authority to file appeal against the exoneration order of the JE, as the applicant was not his disciplinary authority. Again, the lapse, if any, was of the

departmental authorities, and is not attributable to the applicant. We notice that a separate inquiry conducted against Shri K. K. Arora, JE (Building) also returned the finding that the charge against him was not proved. The findings of the inquiry officer have been accepted by the competent disciplinary authority exonerating Shri Arora, vide order dated 11.12.2008. Thus both the grounds for disagreement with the findings of the inquiry officer are not sustainable in law. The disagreement note is also not in consonance with the requirement of law. Rule 15 of the CCS (CCA) Rules, 1965, which empowers the disciplinary authority to record its findings of disagreement, also requires recording his own findings on the basis of the same material as has been produced during the course of inquiry and considered by the inquiry officer. Rule 15 (2) which is relevant for the purpose, reads as under:

“(2) The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the Disciplinary Authority or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant.”

Even though the disciplinary authority has recorded its disagreement, but the same is on the basis of material alien to the inquiry, not forming the material/evidence led during the course of inquiry, nor put to the charged officer for his explanation. Reliance upon such material is impermissible and amounts to gross violation of principles of natural justice. In any case, the material, i.e., police complaint was totally irrelevant as it pertained to different properties and different owners. There is no charge against the applicant in respect to these properties and persons. The disciplinary authority has totally misdirected itself by relying upon extraneous material. It is well settled legal position that the court in its power of judicial review can interfere in the departmental proceedings where the inquiry held by the competent authority is found to be in violation of the established procedure and principles of natural justice, and where irrelevant or extraneous considerations and/or admission of inadmissible evidence may have influenced the decision, rendering such proceedings vulnerable. The Hon'ble Supreme Court in *State of Andhra Pradesh v S. Sree Rama Rao* [1963 (3) SCR 25] held that the court may undoubtedly interfere where the departmental proceedings have been held in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of inquiry or where the authorities have disabled themselves

from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case, or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. Similar view has been expressed by the Apex Court in *State of Andhra Pradesh v Chitra Venkata Rao* [(1975) 2 SCC 557] and in a recent decision in *Union of India & others v P. Gunasekaran* [(2015) 2 SCC 610].

11. The action of the disciplinary authority is also in contravention of rule 15 of the CCS (CCA) Rules, 1965, particularly when the disciplinary authority has not recorded its own findings on the same material/evidence as considered by the inquiry officer. The impugned order is thus not sustainable in law.

12. There is an additional reason for allowing this Application. The applicant is not the person who is entrusted with the site inspection personally. He ought to depend upon subordinate staff, particularly the JE (Building), whose onerous duty was to inspect the unauthorized construction and report to the AE (Building) and/or the applicant, EE (Building). The applicant was never reported about the alleged unauthorized construction in property No.5079, Rui Mandi, Sadar Bazar, nor even in respect of the

three properties mentioned in the police complaint. The misconduct, if any, can only be attributed to the JE (Building) or his immediate senior, i.e., AE (Building), and not to the applicant. No evidence has been led or material placed on record during the inquiry proceedings or even thereafter to indicate that the applicant was responsible for inaction and had the knowledge of such unauthorized construction.

13. For the above reasons, this Application is allowed. The impugned orders dated 16.06.2014 passed by the disciplinary authority and the appellate order dated 21.10.2014 are hereby quashed. The applicant shall be entitled to all consequential benefits available to him under law.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/as/