

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 3587/2013

New Delhi this the 27th day of November, 2018

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

Hon'ble Mr. S.N. Terdal, Member (J)

Sh. G.R. Chawla
S/o (Late) Sh. R.B. Chawla
R/o Flat No. 134, Pocket F-25
Sector-3, Rohini, Delhi – 110085.
Presently posted as Junior Engineer (Civil)
DDA, New Delhi.

...Applicants

(By Advocate : Mr. R.A. Sharma)

Versus

1. Delhi Development Authority
Vice-Chairman
Vikas Sadan, (B-Block) Ist Floor
Near INA, New Delhi – 110023.
2. Engineer Member
Delhi Development Authority
Vikas Sadan, (B-Block) Ist Floor
Near INA, New Delhi – 110023.
3. Commissioner (Personnel)
Delhi Development Authority
Vikas Sadan, (B-Block) Ist Floor
Near INA, New Delhi – 110023.

...Respondents

(By Advocate : Ms. Harvinder Oberoi for Ms. Alka Sharma)

ORDER (ORAL)

Mr. K.N. Shrivastava:

This OA has been filed under Section 19 of Administrative Tribunal Act, 1985, praying for the following main reliefs :-

“(b) Quash the revisional order dated 17.06.2013 (Annex. A-1);

(c) Quash the Appeal order dated 29.5.08 (Annex. A-2);

(d) Quash the Penalty Order dt. 4.3.08 (Annex. A-3)

(e) Quash the charge sheet dated 15.12.06 (Annex. A-4)

(f) Allow all consequential benefits of service to the applicant.”

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

2.1 At the relevant point of time, the applicant was working as Junior Engineer in Delhi Development Authority (DDA) - respondent organisation. The DDA had engaged the services of M/s Sethi Engineering Corporation for providing watch and ward services in respect of its MIG/LIG houses at Pocket-II, Sector-II, Dwarka, Papankalan, including water supply and sanitary installations and internal development of land in respect of the said project. The contract with said agency was valid up to 31.10.1999. The agreement with the agency was signed by the Executive Engineer, WD-8/DDA under whom the applicant was then working as Junior Engineer. The applicant worked in that position from 01.07.1996 to 31.10.1999, thereafter, he was transferred. He also secured his regular promotion as Assistant Engineer and is currently working in that capacity.

2.2 Much belatedly, impugned Annexure A-4 charge memo came to be issued to him for alleged irregularities committed by him in allowing the M/s Sethi Engineering Corporation to continue their services beyond the contract period. The statement of articles of charge framed against the applicant would read as under :-

“ARTICLE-I

That the said Sh. G.R. Chawla, while working as Junior Engineer in WD-8 during the year 1999 had prepared & put up the

bills for watch and ward payments amounting to Rs. 3,08,000/- in respect of the following work:

Sr. No.		Code No. 69-D
1	Name of Work	C/o 80 MIG/106 LIG houses at Pkt. II Sector-I (Dwarka) Papan kalan i.e W/S and Sanitary Installations and internal development of land.
2	Main Agreement No.	3/EE/WD-8/92-93
3	Suppl. Agmnt. No.	1/EE/WD-8/99-2000
4	Amount paid	Rs. 3,08,000/-

Following lapses have been noticed on the part of the Sh. G.R. Chawla, Junior Engineer while preparing and forwarding the said bills for watch and ward services by way of clear violations of EM circular no. 509 & 510 dated 2.5.97 & 520 dated 30.3.99.

1. He prepared bills for release of payments for the work already executed before the date of drawing of Supplementary Agreement. He prepared the bills for watch & ward service charges for the period prior to the date of drawl of Supplementary Agreement and even prior to 2-5-97 when EM's Circular No. 474 dated 8-11-95 was in force. As per this circular no payment for watch & ward service charges were to be made even if Supplementary Agreement had been drawn for the residual items and even for period prior to drawl of the Supplementary Agreement.

The date of completion, date of expiry of maintenance period, date of payment of final bill of main agreements and date of payment Watch & Ward charges are as under:

Code No. 69-D:- 29-12-95, 28-6-96, 31-7-98, 15-11-99.

2. The payments for watch & ward services for the full period was prepared on uniform rates without considering the factual position w.r.t number of flats allotted and possession handed over and this not reducing the rate proportionately to the number of un-allotted flats.
3. The payment of watch & ward services as per one of the other conditions for the old contracts were payable w.e.f the date when all liabilities/obligations of the main agreement including defect liability period had been fulfilled and duly certified by the Engineer-in-charge and accepted by the next higher authority. This aspect was not taken care and payment was allowed for the

period when defects pointed out by QC/CTE the time of recording of the completion certificate, still persisted and continued.

4. As per relevant condition of the EM circular No. 520 dated 30.3.99 payment for watch & ward charges can be made only if the contractor had actually provided watch & ward for the period under reference No verification of watch & ward staff deployed was done on the basis of any documents/records.

The said Sh. G.R. Chawla, Junior Engineer (C) by his above acts failed to maintain absolute devotion to duty and behaved in a manner unbecoming of an employee of the Authority, thereby Violating sub-rule I(i) and I (iii) of Regulation 4 of DDA Conduct, Disciplinary and Appeal Regulations, 1999.

2.3 Pursuant to the charge memo, the applicant was subjected to disciplinary enquiry proceedings. The applicant participated in the enquiry. The enquiry officer (EO), vide his report dated 14.09.2007, held that articles of charge – 1 (1) partly proved, articles -1 (2) & (3) proved and article 1 (4) not proved. A copy of the EO's report was served to the applicant. The disciplinary authority, however, did not accept the finding of the EO's, *qua* article of charge A-1 (4) and decided to issue a disagreement note dated 18.10.2017 (p. 95). A copy of the disagreement note together with a copy of the EO's report was served on the applicant. He replied to the disagreement note. However, the disciplinary authority was not satisfied with his explanation and vide its impugned Annexure A-3 penalty order dated 04.03.2008 after obtaining CVC advice, imposed the penalty of "reduction of pay by two stages in the time scale of pay for a period of one year on the applicant". The penalty order also stipulated that the applicant will not earn increment during the period of reduction and after expiry of penalty period, reduction will have the effect of postponing his future increment of pay.

2.4 The applicant filed an appeal before the Appellate Authority, namely, Engineer Member, DDA against the penalty order, who vide his order dated 29.05.2008 (Annexure – A-2), revised the penalty awarded by the disciplinary authority. The operative part of the Appellate Authority order would read as under:-

“The penalty is revised to reduction of pay by one stage in the time scale of pay for a period of one year with cumulative effect. He will not earn increment during the penalty period and after expiry of penalty period, reduction will have the effect of postponing his future increment of pay.”

2.5 The applicant filed a revision petition against the Annexure A-2 order of the Appellate Authority before the revisionary authority, namely, Vice-Chairman, DDA which was rejected, vide Annexure A-1 order dated 17.06.2013.

Aggrieved by Annexures A-1, A-2, A-3 orders and A-4 charge memo, the applicant has approached the Tribunal in the instant OA praying for the reliefs, as indicated in paragraph (1) supra.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply, to which the applicant filed a rejoinder.

4. On completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties. Arguments of Mr. R A Sharma, learned counsel for applicant and Ms. Harvinder Oberoi for Ms. Alka Sharma, learned counsel for respondents were heard.

5. We have considered the arguments of learned counsel for the parties and have also perused the pleadings.

6. As per the original agreement, the contractor was required to rectify the defects in the flats constructed as and when such defects were noticed at the time of handing over possession of the flats to their allottees. The defects rectification period for this purpose was stipulated as 6 months from the date of completion. The contractors were also responsible for the watch & ward services during this period as per original agreement. Obviously, after the expiry of the defect liability period of 6 months, the DDA would become responsible for rectifying the defects as well as to maintain watch & ward. As noticed from the records, the responsibility of rectification of defects and maintenance of watch & ward even after 6 months has been continued with the contractor, *albeit* supplementary agreement for the purpose has been signed with the contractor. This supplementary agreement was signed on 02.11.1999 and remained valid till 31.10.1999. In the interregnum, i.e., after the expiry of the original contract period and before signing the supplementary agreement, the contractor, M/s Sethi Engineering Corporation was directed by the concerned to maintain watch & ward, for which payment was made. This payment, however, was found to be in violation of the circular No.474 dated 08.11.1995 issued by the Engineer Member, DDA. It is noticed that the excess amount paid in violation of the Engineer Member, DDA circular had been recovered from the contractor as per Annexure A-23 letter dated 17.04.2007. As such, no financial loss has been caused to the DDA. We also notice that the points raised by the applicant in reply to the disagreement note have not been properly considered by the disciplinary authority while passing the penalty order. The applicant has relied on the judgment of this Tribunal in **Rajinder Kumar v. Delhi Development Authority & others** (O.A.

No.1294/2010) decided on 06.04.2011 wherein, on similar grounds, the penalty order has been quashed and set aside.

7. We would also like to observe that in the strict terms, after the end of the contract period, the DDA could not have forced the contractor to perform certain duties, including that of watch and ward. The field officers, in such a situation, in anticipation of getting the approval of the higher authorities and with bona fide intention, do take action of asking the contractor to continue with the services with the assurance that the services rendered would be paid for and a proper agreement in that regard could be signed later. Same appears to be the case here. A supplementary agreement has been signed on 02.11.1999 for procuring the aforementioned services from the same contractor and any payment made in violation of the circular of Engineer Member has already been recovered from the contractor, and as such no loss has been caused to the DDA.

8. In the conspectus, we are of the view that the applicant has been punished without any substantive cause of action. Procedural violation, with bona fide intention, committed by him should not be taken amiss. Hence, we allow this O.A. and quash the impugned Annexures A-1, A-2, A-3 orders as also the A-4 charge memo. There shall be no order as to costs.

(S.N. Terdal)
Member (J)

(K.N. Shrivastava)
Member (A)

/anjali/