

**Central Administrative Tribunal
Principal Bench**

OA No. 4029/2015

This the 5th day of October, 2018

Hon'ble Shri K.N. Shrivastava, Member (A)
Hon'ble Shri S.N. Terdal, Member (J)

Sh. N.K. Aggarwal
S/o Shri K.L. Aggarwal
Aged 57 years
R/o 265, Ground Floor,
Greater Kailash Part-1,
New Delhi
(Junior Engineer (Civil)).

... Applicant

(By Advocate: Shri Sourabh Ahuja)

Versus

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 Anmol Pandita)

ORDER (ORAL)**Hon'ble Shri K.N.Shrivastava, M(A):**

The applicant at the relevant point of time was working as Junior Engineer (Civil) in DDA. He was deputed from DDA to MCD in two spells vis-a-vis from 11.08.2003 to 11.12.2003 and from 19.01.2004 to 04.2.2004. He was posted in Ward No.96. A charge memo dated 24.05.2006 (Annexure A-2) come to be issued to him in which the following charges were levelled against him:-

“1. The undersigned propose to hold an enquiry against Shri N.K.Aggarwal, Junior Engineer (Civil) DDA under regulation 25 of the DDA conduct disciplinary and appeal regulation 1999. The substance of imputation of misconduct in respect of which the enquiry is proposed to be held, is set out in the enclosed statement of articles of charges (Annexure-I). A statement of imputation of misconduct in support of article of charges is enclosed (Annexure-II). A list of the documents which and a list of witnesses by whom the articles of charges proposed to be sustained and enclosed (Annexure-3 and Annexure-4)

2. Shri N.K.Aggarwal JE (Civil) DDA is directed to submit within 10 days of the receipt of this memorandum a written statement of his defense and also to state whether he desires to be heard in person.

3. He further informed that an enquiry will be held only in respect of those articles of charges as are not admitted. He should therefore specifically admit or deny each article of charges.

4. Shri N.K. Aggarwal JE(Civil) DDA is further informed that if he does not submit his written

statement of defense on or before the dated specified in para 2 above, or does not appear in person before the enquiring authority or otherwise fails to refuse to comply with the provisions of regulation 25 of the DDA conduct disciplinary and appeal regulations 1999 or the order/directions issued in pursuance of the said regulations, the enquiring authority may hold the enquiry against him ex-parte.

5. Attention of Shri N.K. Aggarwal JE (Civil) DDA is invite to the regulation 17 DDA, conduct disciplinary and appeal regulation 1999 under which no employee shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his services under the authority. If any representation is received on his behalf from another person in respect of any matter dealt within these proceedings it will be presumed that Shri N.K. Aggarwal JE(Civil) DDA is aware of such representation and that it has been made at his instance and action may be taken against his for violation of reputation of regulation 17, conduct of disciplinary and appeal regulations 1999.

The receipt of the memorandum may be acknowledged.”

2. Pursuant to the charge memo, enquiry was conducted. The Inquiry Officer filed his report dated 27.11.2008 concluding therein as under:-

“Conclusion:

On the basis of documentary and oral evidence adduced before me during the inquiry as well as on the basis of DDA Conduct, Disciplinary and Appeal Regulations, 1999 and after careful assessment of the above as deliberated in foregoing paras, I hereby hold the charges framed against Sh.N.K. Aggarwal, JE, DDA are proved/Not proved/partly proved as under:

CHARGE 1 CHARGE 2	PARTLY PROVED to the extent that these charges against CO are proved for properly
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	at Sl.No.1,iii & iv i.e. for 3 properties in stead of 5 properties mentioned in the charge sheet.
CHARGE 3 CHARGE 4	PARTLY PROVED to the extent that these charges against the CO are proved for properties at SlNo.1,iii,iv and v i.e. for 4 properties instead of 5 properties mentioned in the charge sheet.

3. The Disciplinary Authority namely, Commissioner (Personnel), DDA vide his order Annexure A-9 dated 08.4.2009 imposed the penalty of reduction of 3% of basic pay + Grade Pay (one increment for one year) in the time scale of pay on the applicant. The penalty order further directed that the applicant will not earn the increment of his pay during the period of reduction and after expiry of the penalty period, the reduction will have the effect of postponing his future increment of pay.

4. The applicant preferred an appeal to the Appellate Authority against the order dated 08.4.2009 issued by the Disciplinary Authority who vide Annexure A-1 order dated 16.09.2009 dismissed the appeal.

5. The applicant thereafter, came before this Tribunal in OA-3066/2010 challenging the orders of the Disciplinary and Appellate

Authorities. The Tribunal vide Annexure A-8 order dated 05.12.2012 disposed of the said OA with the following directions:

“Since the order of appellate authority cannot be sustained being non speaking order, we have not examined the other grounds raised by the applicant in his Original Application. The order No.424/Vig/7783 dated 16.09.2009 passed by the appellate authority is quashed. It should be open to the appellate authority to pass speaking order as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order. While doing so, the said authority would adhere to the provision of Regulation 32 (e) (ibid).”

6. In compliance of the aforesaid direction of the Tribunal, the appellate authority has passed a speaking order dated 03.4.2013 (Annexure A-2) dismissing the appeal again.

7. The applicant preferred revision before the revisionary authority, Vice Chairman, DDA who vide impugned Annexure A-9 order dated 01.04.2015 modified the penalty to the extent “reduction of pay by 3 stages in the time scale of pay for 5 years with further directions that he will earn increments of the pay during the period of reduction and after expiry of the period, it will not have the effect of postponing the future increments of his pay.”

Aggrieved by Annexure A-1 and Annexure A-2 orders, the applicant has filed the instant OA praying for the following relief:-

“(i) Quash/set aside order dated 01.04.2015 having order no.50/Vig./2397 passed by the respondent no.1/Revisionary Authority;

(ii) Quash/set aside the order dated 03.04.2013 having order No.105/Vig./4286 passed by the respondent No .2, Appellate Authority;

(iii) Quash/set aside the impugned memorandum F-27 (33) 06/Vig./AVO (B) 4525 dated 24.05.2006 and Order dated 08/04/2009 issued by the respondent no.3, Disciplinary Authority.”

8. Pursuant to the notice issued, the respondents entered appearance and filed reply to which rejoinder has been filed on behalf of the applicant.

9. Heard Shri Sourabh Ahuja, learned counsel for the applicant and Shri Anmol Pandita, learned counsel for the respondents.

10. Shri Sourabh Ahuja, learned counsel for the applicant primarily raised the following points during the course of arguments:

(a) as per the standing orders of Commissioner, MCD dated 24.10.2003, the JE who remained in charge of the area from 3 to 6 months, action of minor penalty proceedings may be initiated against him in respect of his failure to prevent unauthorised constructions. The applicant was posted for 4months and 18 days in MCD in Ward No.96 and as such in terms of the aforementioned instructions, he should have been imposed minor penalty for alleged failure in preventing the unauthorised constructions.

(b) The applicant had preferred revision before Revisionary Authority against the penalty order passed by the Disciplinary and Appellate Authorities. Instead of reducing the penalty, the

revisionary Authority has enhanced the penalty. In this regard the table at page 154 of the paper book would indicate that the order of the Revisionary Authority has entailed in the recovery of Rs.4,18,643/- from the applicant besides he suffering 3 stages scale of pay for 5 years. However, Shri Pyarey Lal, JE (Civil), identically placed, has been imposed a minor penalty. Hence for reasons of parity, the applicant could have also been imposed a minor penalty.

11. Per contra, learned counsel for the respondents Shri Anmol Pandita submitted that the standing instructions dated 24.10.2003 referred to by Shri Sourabh Ahuja, may not be valid as of now. His further contention was that in such matters one cannot raise the issue of parity of penalty.

12. We have considered the arguments and also perused the pleadings. We notice from the Annexure A-1 order dated 01.4.2015 of the Revisionary Authority that this order is prompted by an advice of Commissioner, MCD letter dated 12.05.2015 recommending initiation of major penalty proceedings against applicant. Such an advice is absolutely illegal. The authorities concerned are required to apply their own mind in regard to nature of penalty to be inflicted and accordingly initiate the DE proceedings. They are not to be guided by extraneous factors.

13. We also note that in terms of the standing order of Commissioner, MCD dated 24.10.2003, for failure to prevent unauthorised constructions in his jurisdiction, the JE (Civil)

concerned is to be inflicted with minor penalty. We find that the penalty imposed by the Disciplinary Authority and subsequently modified by the Revisionary Authority falls under the category of major penalty. It is also not disputed that in a similar case of Shri Pyarey Lal, for identical charge, minor penalty of 'censure' was imposed on him.

14. An important fact to be considered is that though the Revisionary Authority order talks of reducing penalty imposed by the Disciplinary Authority but in fact vide his Annexure A-1 order the Revisionary Authority has enhanced the penalty which has resulted in recovery of Rs.4,18,643/- from the applicant. Needless to say that enhancement of penalty cannot be done in a revision petition filed by the charged official. The enhancement could be done by issuance of a show cause notice to the official concerned by the Revisionary Authority, therefore, we find that the order of Revisionary Authority suffers from a major legal lacuna.

15. In view of the discussions in the pre-paras, taking cognizance of the standing order dated 24.10.2003 of Commissioner, MCD and also keeping in mind that in an identical case of Shri Pyarey Lal, AE(Civil), only minor penalty of 'censure' was imposed for similar charge, for the reasons of parity, we are of the view that imposition of penalty of 'censure' on the applicant shall meet ends of justice. Accordingly, we dispose of the OA with the direction to the respondent No.1 i.e. Vice Chairman, DDA to consider imposition of

penalty of 'censure' on the applicant and also taking into account the fact that the applicant is due to superannuate on 31.10.2018 of this month. We dispose of the OA with direction to respondent No.1 to pass an order imposing the penalty of censure on the applicant, This shall be done within a period of two weeks from the date of receipt of a copy of this order. No costs.

(S.N.Terdal)
Member(J)

(K.N.Shrivastava)
Member(A)

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