

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 1394/2013
MA 3193/2013
MA 3202/2014
with
OA 1396/2013
MA 1074/2013
OA 1397/2013
MA 1073/2013

Reserved on: 09.05.2018
Pronounced on: 23.05.2018

Hon'ble Mrs. Jasmine Ahmed, Member (J)
Hon'ble Mr. K.N. Shrivastava Member (A)

OA 1394/2013

Nathi Singh,
S/o Shri Bedaria Ram,
R/o 14-A, Vipin Garden Extn.,
Dwarka Mor, Uttam Nagar,
New Delhi-110059

... Applicant

(Through Shri M.K. Bhardwaj, Advocate)

Versus

1. North Delhi Municipal Corporation
Through its Commissioner
Civic Centre,
New Delhi
2. South Delhi Municipal Corporation
Through its Commissioner
Civic Centre,
New Delhi
3. The Additional Commissioner (Engg)
South Delhi Municipal Corporation
Civic Centre,
New Delhi
4. Chief Vigilance Officer
North Delhi Municipal Corporation
Civic Centre,
New Delhi

... Respondents

(Through Shri Vijay Pandita and Ms. Geetanjali Sharma,

Advocates)

OA 1396/2017

1. Rohit Goel,
S/o Shri S.N. Goel,
R/o F-26/3, Sector-7,
Rohini, Delhi-110085
2. Jugveer,
S/o Sh. Hari Kishan,
R/o D-84, Patel Nagar-II,
Ghaziabad-201001 (UP).

... Applicants

(Through Shri M.K. Bhardwaj, Advocate)

Versus

1. North Delhi Municipal Corporation
Through its Commissioner
Civic Centre,
New Delhi
2. East Delhi Municipal Corporation
Through its Commissioner
Civic Centre,
New Delhi
3. The Additional Commissioner (Engg)
MCD, Civic Centre,
New Delhi
4. Chief Vigilance Officer
North Delhi Municipal Corporation
Civic Centre,
New Delhi

... Respondents

(Through Shri Vijay Pandita and Ms. Geetanjali Sharma,
Advocates)

OA 1397/2013

1. Mahesh Chandra,
S/o Shri Babu Ram,
R/o B-6/49, 2nd Floor,
Sector-3, Rohini, Delhi-110085
2. Shyam Lal Bairwa,
S/o Sh. M.R. Bairwa,

R/o B-1, MCD Flats, Soami Nagar,
New Delhi-11017.

... Applicants

(Through Shri M.K. Bhardwaj, Advocate)

Versus

1. North Delhi Municipal Corporation
Through its Commissioner
Civic Centre,
New Delhi
2. The Additional Commissioner (Engg),
North Delhi Municipal Corporation,
Civic Centre,
New Delhi
3. Chief Vigilance Officer
North Delhi Municipal Corporation
Civic Centre,
New Delhi

... Respondents

(Through Shri Vijay Pandita and Ms. Geetanjali Sharma,
Advocates)

ORDER

Mrs. Jasmine Ahmed, Member (J)

OA 1394/2013, OA 1396/2013 and OA 1397/2013 are based on same facts and, therefore, they are disposed of by this common order. Facts have, however, been extracted from OA 1394/2013.

2. The short issue to be decided is as to whether the areas mentioned in the alleged charge memo fall under special area or not and if these fall under special areas, whether the applicant is entitled to get similar benefit as given in OA 4631/2011, **Shri Ashok Kumar Vs MCD and Ors.**, decided by this Tribunal on

23.12.2012. The charges against the said Shri Ashok Kumar were as follows:

"STATEMENT OF CHARGES FRAMED AGAINST SHRI ASHOK KUMAR S/O SHRI KHAZAN SINGH, ASSTT. ENGINEER (BLDG.), KAROL BAGH ZONE, MED.

Shri Ashok Umar (Sic.Kumar) was working as AE in Bldg. Deptt., K.M. Zone during the period w.e.f. 4.1.2008 to 28.7.2008. He failed to maintain absolute integrity, devotion to duty and committed gross misconduct on the following counts:

1. He failed to get stopped/demolished the unauthorized construction at its initial/ongoing stage carried out in properties bearing No. 16-B/21, Dev Nagar, Karol Bagh, 27/3276, 31/3167, Beadonpura, Karol Bagh, 3-4/5028, Sant Nagar, Regarpura, Karol Bagh & 61-4240, Regarpura, Karol Bagh.
2. He also failed to get booked the unauthorized construction carried out in property no. 16-B/21, Dev Nagar, Karol Bagh, 3-4/5028 & Sant Nagar, Regarpura for taking action u/s 343/344 of DMC Act.
3. He also failed to get booked the unauthorized construction timely in properties bearing no. 27/3276, 31/3167, Beadonpura, Karol Bagh & 61-4240, Regarpura, Karol Bagh as the same were booked only after filing of complaint in Hon'ble Court.
4. He also failed to initiated action for sealing the unauthorized construction u/s 345-A and for prosecution of the owner/builder 332/461 or u/s 466-A of DMC Act.
5. He also failed to exercise proper supervision and control over the functioning of his subordinate staff who did not take proper and timely action against the unauthorized construction.

He, thereby, contravened Rule 3 (I)(i)(ii)(iii) & 3 (2) of CCS (Conduct) Rules, 1964 as made

applicable to the employees of MCD.

Sd/-
Commissioner
Disciplinary Authority"

3. It would be relevant to quote here charges leveled against the applicants in OA 1394/2013, OA 1396/2013 and OA 1397/2013 to show that charges leveled against the applicants in all the three OAs were almost similar and related to same place and area as in the case of Shri Ashok Kumar (supra):

OA 1394/2013

"Shri Nathi Singh was working as JE in Bldg. Deptt., K.B. Zone during the period w.e.f. 30.4.2008 to 3.7.2008. He failed to maintain absolute integrity, devotion to duty and committed gross misconduct on the following counts:

1. He failed to stop/demolish the unauthorized construction at its initial/ongoing stage carried out in property No. 16-B/21, Dev Nagar, Karol Bagh Zone at its initial/ongoing stage.
2. He failed to book the aforesaid unauthorized construction for taking action u/s 343/344 of DMC Act.
3. He also failed to initiate action for sealing the unauthorized construction u/s 345-A and for prosecution of the owner/builder 332/461 or u/s 466-A of DMC Act.

He, thereby, contravened Rule 3 (I)(i)(ii)(iii) & 3 (2) of CCS (Conduct) Rules, 1964 as made applicable to the employees of MCD.

Sd/-
Commissioner
Disciplinary Authority"

OA 1396/2013

"Shri Rohit Goel was working as JE in Bldg. Deptt., K.B. Zone during the period w.e.f. 19.3.2008 to 2.6.2008 again from 19.9.2008 onwards. He failed to maintain absolute integrity, devotion to duty and committed gross misconduct on the following counts:

1. He failed to stop/demolish the unauthorized construction at its initial/ongoing stage carried out in properties bearing No. 16-B/21, Dev Nagar, Karol Bagh, 27/3276, 31/3167, Beadonpura, Karol Bagh, 3-4/5028, Sant Nagar, Regarpura, Karol Bagh & 61-4240, Regarpura, Karol Bagh.

2. He also failed to book the unauthorized construction carried out in property no. 16-B/21, Dev Nagar, Karol Bagh, 3-4/5028 & Sant Nagar, Regarpura for taking action u/s 343/344 of DMC Act.

3. He also failed to book the unauthorized construction timely in properties bearing no. 27/3276, 31/3167, Beadonpura, Karol Bagh & 61-4240, Regarpura, Karol Bagh as the same were booked only after filing of complaint in Hon'ble Court.

4. He also failed to initiate action for sealing the unauthorized construction u/s 345-A and for prosecution of the owner/builder 332/461 or u/s 466-A of DMC Act.

He, thereby, contravened Rule 3 (I)(i)(ii)(iii) & 3 (2) of CCS (Conduct) Rules, 1964 as made applicable to the employees of MCD.

Sd/-
Commissioner
Disciplinary Authority"

OA 1397/2013

"Shri Mahesh Chander was working as AE in Bldg. Deptt., K.B. Zone during the period w.e.f. 28.7.2008 to 6.10.2008. He failed to maintain absolute integrity, devotion to duty and committed gross misconduct on the following counts:

1. He failed to get stopped/demolished the unauthorized construction at its initial/ongoing stage carried out in properties bearing No. 16-B/21, Dev Nagar, Karol Bagh, 27/3276, 31/3167, Beadonpura, Karol Bagh, 3-4/5028, Sant Nagar, Regarpura, Karol Bagh & 61-4240, Regarpura, Karol Bagh.

2. He also failed to get booked the unauthorized construction carried out in property no. 16-B/21, Dev Nagar, Karol Bagh, 3-4/5028 & Sant Nagar, Regarpura for taking action u/s 343/344 of DMC Act.

3. He also failed to get booked the unauthorized construction timely in properties bearing no. 27/3276, 31/3167, Beadonpura, Karol Bagh & 61-4240, Regarpura, Karol Bagh as the same were booked only after filing of complaint in Hon'ble Court.

4. He also failed to initiate action for sealing the unauthorized construction u/s 345-A and for prosecution of the owner/builder 332/461 or u/s 466-A of DMC Act.

5. He also failed to exercise proper supervision and control over the functioning of his subordinate staff who did not take proper and timely action against the unauthorized construction.

He, thereby, contravened Rule 3 (I)(i)(ii)(iii) & 3 (2) of CCS (Conduct) Rules, 1964 as made applicable to the employees of MCD.

Sd/-
Commissioner
Disciplinary Authority"

4. After hearing the case of said Shri Ashok Kumar (supra), the Tribunal referred the entire case to the respondents to take a conscious decision as to whether they would like to continue with the proceedings already initiated against Shri Ashok Kumar. Para 4 of the order of the Tribunal in the case of Shri Ashok

Kumar (supra) passed on 23.12.2011 is quoted below:

"4. In view of the above position, we direct the respondent-MCD to re-consider the entire case against the applicant and take a conscious decision as to whether they would like to continue with the proceedings already initiated against the applicant under intimation to him within a period of one month from the date of receipt of a copy of this order. Till such time, the further proceeding in the case is stayed. In case the respondent-MCD decides to continue with the proceedings, the applicant should fully cooperate in the matter and they shall, as far as possible, finalise the proceedings within a period of six months from the date of decision in the matter. If the respondents pass any adverse orders, he is at liberty to challenge them before this Tribunal through appropriate proceedings. There shall be no order as to costs."

5. Learned counsel for the applicant drew our attention to page no.41-A of the paper book which is Office Order dated 30.10.2012 by which the respondents discontinued RDA proceedings against the aforesaid Shri Ashok Kumar. The office order is quoted below in full:

"Whereas a charge sheet No. 1/173 /2008/ CPC/Vig./DA-III/09/379 dated 10.12.2009 was issued and served upon Shri Ashok Kumar S/o Shri Khazan Singh, Asstt. Engineer under Regulation 8 of the DMC Services (Control & Appeal) Regulations, 1959.

Whereas the case against Shri Ashok Kumar, AE and other COs was instituted before Director of Inquiries, MCD which was later on transferred to Shri D.P. Ture, the then Dy. Commissioner, N.G. Zone the Spl. Inquiry Officer for conducting a regular departmental inquiry in the case.

Whereas in the meanwhile, a copy of the orders dated 23.12.2011 passed by Hon'ble CAT in OA No.4631/2011 was received which transpired that Shri Rajesh Kumar, the then Chief Vigilance Officer had recommended that the charges levelled against Shri Ashok Kumar, AE may be dropped keeping in view the contention of Shri Ashok Kumar since it is

established that no action was required to be taken during his tenure on such properties being situated in special area. The Hon'ble CAT while summing up its order had directed the MCD to re-consider the case against the applicant and to take conscious decision as to whether they would like to continue with the proceedings. The requisite decision was to be taken within one month from the date of receipt of the copy of the order and till such time the proceedings were stayed.

Whereas the file was placed before Commissioner, SDMC the Disciplinary Authority for considering the orders passed by Hon'ble CAT dated 23.12.2011 and to pass appropriate orders in the matter.

AND

Now, therefore, Commissioner, SDMC the Competent Authority after having gone through the case in its entirety has passed orders that no further RDA proceedings can be continued against the CO, vide his orders dated 25.10.2012.

This is issued and notified in compliance of orders dated 23.12.2011 passed Hon'ble CAT in OA No.4631/2011 (which were to be complied within one month) for information and necessary action by all concerned.

Sd/-
(R.S. Yadav)
Dy. Law Officer (Vig.)"

6. The applicant herein was a Junior Engineer (JE) whereas the aforementioned Shri Ashok Kumar was an Assistant Engineer (AE). Undoubtedly, the responsibility of AE is much more than a JE and the JE works under the AE. The main contention of the learned counsel for the applicant is that when on the basis of identical charges, the respondents have, on their own, dropped the proceedings against the aforementioned Shri Ashok Kumar, they cannot take a different stand in the case of the applicant herein. It is vehemently argued that the respondents, after going

through the reply filed by the applicant, should have dropped the charges against the applicant on their own.

7. Per contra, the learned counsel for the respondents states that the applicant lacked in his duty and did not take proper care for demolition of constructions which were illegal. The respondents have also taken the ground of limitation and stated that the applicant was charge sheeted vide charge memo dated 10.12.2009 to which he submitted his reply in the year 2010. Thus, the OA is barred by limitation and on this count only it deserves dismissal. The respondents in their reply have given description of various properties where unauthorized construction was carried out but we find that they have not stated anything in regard to the ground raised by the applicant that the CVO himself has noted in his report that the properties in question fell under the special area. In this view of the matter, one has to ponder whether any punitive action against the applicant is called for at the end of the respondents or not.

8. We have heard the learned counsel for the parties and perused the documents on record.

9. After perusing the documents on record, it is undoubtedly clear that the charges leveled against the applicant as well as in the case of Shri Ashok Kumar (supra) are identical in nature and places related in both the cases are also in the same area/zone. It is also clear that after the judgment passed in the case of Shri Ashok Kumar (supra) on 23.12.2011, remanding the matter back to the respondents to consider the case of the applicant

therein and to take a decision whether to continue with the proceedings initiated against the applicant, the respondents have taken a conscious decision to drop the proceedings against the said Shri Ashok Kumar.

10. From the documents placed on record, it is absolutely clear that the properties in question were situated in special area and hence no punitive action could have been taken by the applicant against them.

11. Another argument raised on behalf of the applicant was that while Shri S.L. Bairwa, Executive Engineer and aforementioned Shri Ashok Kumar, AE, who were also deputed in Karol Bagh Zone and both have been exonerated, the applicant being a JE, has unnecessarily been served with a charge memo.

12. As regards the ground of limitation raised by the respondents, the learned counsel for the applicant stated that the judgment in the case of Shri Ashok Kumar (supra) was pronounced on 23.12.2011 and on the basis of that judgment an order was passed by the respondents on 30.10.2012 dropping the charges against the said Shri Ashok Kumar. It is stated that after coming to know of the fate of the case of Shri Ashok Kumar, the instant OA has been filed in the year 2013.

13. Reliance has been placed by the applicant on the judgment of this Tribunal in the case of **Farooq Anjum Vs. South Delhi Municipal Corporation**, OA 831/2013 along with OA 1037/2013 and 1038/2013, stating that in those cases similarly

placed employees of undivided Municipal Corporation of Delhi were proceeded departmentally and served with identical charges. Subsequently on trifurcation of MCD, those who remained in North Delhi Municipal Corporation, charges against them were dropped by the Commissioner after issuing an advisory memo. The other employees in other zones approached this Tribunal and the Tribunal allowed the Learned counsel for the applicant argued that the applicant herein is similarly situated with the aforementioned Shri Ashok Kumar and, therefore, he is also entitled to the same relief that has been granted to Shri Ashok Kumar.

14. We feel that the documents on record clearly show that the properties' area falls under the special area where no punitive action could have been taken by the applicant. The respondents are, therefore, directed to decide the case of the applicant herein in the light of the judgment passed in the case of Shri Ashok Kumar (supra) and similar benefits be extended to him.

15. With the above directions, the OAs are disposed of.

(K.N. Shrivastava)
Member (A)

(Jasmine Ahmed)
Member (J)

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