

Central Administrative Tribunal
Principal Bench, New Delhi

OA No. 100/2014

New Delhi this the 26th April, 2019

Hon'ble Sh. Pradeep Kumar, Member (A)
Hon'ble Sh. Ashish Kalia, Member (J)

V.D. Sharma,
S/o Sh. Jagdish Prasad Bhardwaj,
R/o G-123 LIC Colony,
Paschim Vihar, New Delhi

... Applicant

(By Advocate: Sh. M.K.Bhardwaj)

VERSUS

South Delhi Municipal Corporation & Anr. through:-

1. The Commissioner,
South Delhi Municipal Corporation
Civic Centre, New Delhi
2. The Addl. Commissioner (Engineering)
South Delhi Municipal Corporation,
Civic Centre,
New Delhi

...Respondents

(By Advocate: Sh. R.K.Jain)

ORDER (ORAL)

Hon'ble Sh. Ashish Kalia, Member (J):

The applicant has filed this OA seeking following
reliefs:-

- (i) To quash and set aside impugned order dated 20.10.2011 and Order No. 1/24/2007/Vig/P/M/2012/1102 dated 24.08.2012.
- (ii) To initiate the disciplinary proceedings initiated vide Charge Memo No. 1/24/2007/CPC/Vig/D-3/07/236 dated 16.08.2007 as illegal and unjustified and direct the respondents

to restore the increment of the applicant with all consequential benefits including promotion/ACP Scheme benefits and arrears of pay.

(iii) To award exemplary costs in favour of the applicant.

(iv) To pass such order and further orders which their lordships of this Hon'ble Tribunal deem fit and proper in the existing facts and circumstances of the case.

2. The applicant was appointed as Junior Engineer (Civil) and was having outstanding service record. The Disciplinary proceedings have been initiated vide charge memo dated 16.08.2007, which reads as under:

"STATEMENT OF ALLEGATIONS ON THE BASIS OF WHICH CHARGE HAS BEEN FRAMED AGAINST SHRI V.D. SHARMA S/O SHRI JAGDISH PRASAD BHARDWAJ, JR. ENGINEER (WORKS), DIVN. I, ENGG. DEPTT., MCD.

Shri V.D. Sharma was working as Jr. Engineer (Works) in Divn. I, Engg. Deptt. since June 1999 onwards. He was duty bound to ensure that the work awarded to any contractor for execution shall be executed as per specifications and in compliance of the codal formalities.

On receipt of a complaint from Shri Puran Chand Yogi, MLA against Shri A.K. Gupta, the then Executive Engineer/Division-I, Karol Bagh through CVC regarding use of poor quality of material for construction/imp. of lane No. 4 and 4-B Block of Old Rajinder Nagar, Karol Bagh Zone, the investigation was conducted by the Vig. Deptt. During investigation, the site was inspected by Shri S.U. Khan, AE (Vig.), Shri A.K. Mittal, JE (Vig.) along with Shri V.D. Sharma, JE on 21.3.2005. The site was identified from 4B/1 and ended at main road in Old Rajinder Nagar. The CC work was found completed from 4B/1 to Main Road on entire width of the gali. The surface of the gali was found repaired by cement mortar. The slope and surface of the gali was found satisfactory. The site was again inspected on 12.4.2005. The gali was measured and it was found

that the length of the gali is 123.9 m and width was found average 6.30 m. The thickness of the cement concrete pavement was also checked at three places. During investigation, samples were lifted by the JE/AE (Vig.) on 3.5.2005 with the assistance of JE/AE (Works), Divn. I and Quality Control Deptt. And sent to Sri Ram Institute for Industrial Research for testing. The test report received from Sri Ram Institute for Industrial Research dated 21.6.2005 were found far from satisfaction and were not in conformity to the specifications/standards. The test results were not as per specification and the ratio of the mix by wt. or by volume was not in conformity limits from which it is evident that the work executed at the site was of substandard nature. It further revealed that samples of cement concrete were not got tested at the time of execution of work. As per CPWD specifications for concrete works the frequency of the testing of CC Cube is one sample per 20 cum of the quantity of cement concrete executed. The total quantity of cement concrete laid in this case is 78.20 cum. Accordingly, four samples of CC cubes were required to be got tested from mpl. Lab. But no sample of CC cube was got tested for the said work.

From the foregoing, it is evident that Shri V.D. Sharma, JE failed to maintain absolute integrity devotion to duty and committed gross misconduct in as much as he failed to get tested the samples of cement concrete from mpl. lab at the time of execution of work against work order No. 485/EE-I/TC/KBZ/2003-04 dated 7.1.2004. He also failed to ensure that the work executed against the aforesaid work order shall be carried out as per specifications and substandard material shall not be used for execution of work by the contractor.

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

3. Thereafter, an Inquiry Officer was appointed who has held a detailed enquiry into the matter and submitted the inquiry report wherein the Inquiry Officer is of the view

that both the charges have not been proved against the applicant.

4. Thereafter, the Disciplinary Authority vide its order dated 13.05.2010 has given a show cause notice on disagreement note to the applicant. The disagreement note reads as under:

“On perusal of the Inquiry Report it is seen that the enquiry officer has not carried out fair evaluation of evidence adduced on record. As regards, the requirement of testing of samples of CC for the given work, it has been brought on record through deposition of PWs and as well as DW-II that as per revised CPWD specification 2002 for cement mortar, cement concrete and RCC works in pursuance to IS-456: 2000 the frequency of testing of CC cubes is one sample per 20 cubic meter of the quantity of cement concrete executed. However, the Dy. DOI-II failed to appreciate the relevant provisions but simple relied upon the version of CO that CC cube test is not mandatory if the quantity of cement concrete placed on any day is less than 15 cubic meter. There is no merit on the version of CO as the relevant provision laid down mandatory test check as already pointed one above. The record further indicates that the test result of sample lifted from the site contained the specifications which were not in conformity limits as per specification of the work. Having duly considered all the material facts on record, the CO is therefore held to be guilty of the charges levelled against him in the light of the aforesaid discussion. I therefore, propose to impose the penalty of – **“reduction in the pay in the present time scale of pay by two stages for one year with cumulative effect” upon him. It is ordered accordingly.**”

5. Thereafter, he passed the penalty order by imposing penalty of reduction in pay, in the present time scale of pay by two stages, for one year with cumulative effect.

6. The applicant has preferred an appeal against this order. The Appellate Authority has also upheld the

punishment awarded by the Disciplinary Authority on 24.08.2012.

7. Feeling aggrieved by this, the applicant has approached this Tribunal for redressal of his grievances on the basis that he has not been given fair opportunity to defend himself and as this is a case of no evidence.

8. The applicant has also relied upon the judgment of Hon'ble Apex Court in the case of **UOI vs. Gyan Chand** 2009(5) SCC 86 that "departmental enquiry cannot be based on vague charges". He has also relied upon the judgement of Hon'ble Apex Court in the matter of **Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota vs. Shukla and Brothers**, (2010) 4 SCC 785 wherein it is held that:

"12. At the cost of repetition, we may notice, that this Court has consistently taken the view that recording of reasons is an essential feature of dispensation of justice. A litigant who approaches the Court with any grievance in accordance with law is entitled to know the reasons for grant or rejection of his prayer. Reasons are the soul of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. These principles are not only applicable to administrative or executive actions, but they apply with equal force and, in fact, with a greater degree of precision to judicial pronouncements. A judgment without reasons causes prejudice to the person against whom it is pronounced, as that litigant is unable to know the ground which weighed with the Court in rejecting his claim and also causes impediments in his taking adequate and appropriate grounds before the higher Court in the event of challenge to that judgment. Now, we may refer to certain judgments of this Court as well as of the High Courts which have taken this view.

13. The principle of natural justice has twin ingredients; firstly, the person who is likely to be adversely affected by

the action of the authorities should be given notice to show cause thereof and granted an opportunity of hearing and secondly, the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself. Such rule being applicable to the administrative authorities certainly requires that the judgment of the Court should meet with this requirement with higher degree of satisfaction. The order of an administrative authority may not provide reasons like a judgment but the order must be supported by the reasons of rationality. The distinction between passing of an order by an administrative or quasi-judicial authority has practically extinguished and both are required to pass reasoned orders. In the case of Siemens Engineering and Manufacturing Co. of India Ltd. v. Union of India and Anr. [AIR 1976 SC 1785], the Supreme Court held as under:-

"6.If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative Law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. ..."

9. Notices were issued. Respondents have put their appearance and filed the reply wherein they have negated the claim of the applicant. They have submitted that fair opportunity has been given by the department to the applicant for defending himself. Short affidavit is filed by the respondents wherein it is submitted that a

memorandum along with the charge sheet was issued to the applicant vide memo dated 16.08.2007, to which no reply was received from the applicant. Thereafter, it was held by Enquiry Officer that vide its report dated 11.12.2008 charges were not proved against the applicant.

However, the Disciplinary Authority has issued the disagreement note, by tentatively disagreeing with the findings of the Enquiry Officer on the ground that "The enquiry officer had not carried out fair evaluation of evidence adduced on record. As regards, the requirement of testing of samples of CC for the given work, it has been brought on record through deposition of PWs and as well as DE-II that as per revised CPWD specification 2002 for cement mortar, cement concrete and RCC works in pursuance to IS-456:2000 the frequency of testing of CC cubes is one sample per 20 cubic meter of the quantity of cement concrete executed. However, the enquiry officer failed to appreciate the relevant provisions but simply relied upon the version of applicant that CC cube test is not mandatory if the quantity of cement concrete placed on any day is less than 15 cubic meter". The applicant did not submit any reply to the disagreement note. Hence, the Disciplinary Authority had passed the penalty of 'reduction in pay in the present time scale of pay by two

stages for one year with cumulative effect' vide orders dated 24.09.2011, which was notified on 20.10.2011. The applicant preferred an appeal against the abovesaid order and after duly considering the same, the Appellate Authority reduced the penalty to 'stoppage of one increment without cumulative effect', vide its orders dated 13.08.2012, notified on 24.08.2012. Lastly, as the applicant was afforded an opportunity and enquiry was conducted in fair and just manner, it is submitted that the OA is not maintainable and is liable to be dismissed.

10. Heard learned counsel for the parties. We have also perused the pleadings and appreciated the legal position.

11. The applicant has raised an issue before this Tribunal that order passed by the Disciplinary Authority while issuing the disagreement note, is a non-speaking one. We have perused the impugned order. In the show cause notice a detailed technical discussion has been made by the Disciplinary Authority [Additional Commissioner (Health)], which was also considered by the appellate authority in accordance with law. We are not convinced with the submission made by the applicant herein in this regard that this is a non-speaking order. The speaking order has already been defined by the Apex Court in various judgements wherein it has been stated

that every ground or reason raised has to be dealt with. In the case of **Workmen of Cochin Port Trust vs. Board of Trustees of the Cochin Port Trust and another**, 1978 (3)

SCC 119 wherein it is held that:

“The effect of non-speaking order of dismissal without anything more indicating the grounds or reasons of its dismissal must, by necessary implication, be taken to have decided that it was not a fit case where special leave should be granted.”

12. The Appellate Authority has passed the order and given reason in support in the present case. The Appellate Authority had reduced the penalty inflicted by the Disciplinary Authority. Thus, we are convinced that the order passed by the Disciplinary Authority and Appellate Authority are well reasoned orders passed after due application of mind and are in accordance with law and does not require any interference by this Tribunal.

13. Learned counsel has also raised a point during the course of arguments that Assistant Engineer has given different penalty. He should also give similar penalty. Hon'ble Supreme Court has held in many judgments that it is the prerogative of the disciplinary authority to give punishment and the Tribunal lack jurisdiction to interfere in this regard unless order is so disproportionate which

shocks the conscience of the Tribunal which is not the case here.

14. We find at every stage that applicant has been afforded due opportunity to defend himself and he has availed the same. We do not find any merit in the OA and the same is dismissed. No order as to costs.

(Ashish Kalia)
Member (J)

(Pradeep Kumar)
Member (A)

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