

**Central Administrative Tribunal
Principal Bench**

OA No.3230/2016

New Delhi, this the 06th day of December, 2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Shri D. K. Dhain
S/o Late R. C. Jain
aged 63 years,
Executive Engineer (Retd.)
CH/KD-5, Old Kavi Nagar,
Ghaziabad, Uttar Pradesh. ... Applicant.

(By Advocate : Ms. Manpreet Kaur)

Vs.

Vice Chairman
Delhi Development Authority
Vikas Sadan, INA,
New Delhi. ... Respondent.

(By Advocates : Shri Arun Birbal)

: O R D E R (ORAL) :

Justice L. Narasimha Reddy, Chairman:

The applicant retired from the service of respondent, i.e., Delhi Development Authority (for short, DDA), as Executive Engineer on 31.08.2012. One year after his retirement, disciplinary proceedings were initiated by issuing a charge memo dated 18.10.2013 after obtaining sanction from the Hon'ble Lt. Governor of Delhi. It was mentioned that between 27.07.2009 and 05.08.2011, the applicant was in-charge of SWD-2, DDA, and in relation to certain works executed during that period, and he permitted

sub standard quality of R.C.C works, use of steel supplied by local/unapproved dealers, execution of R.C.C. work with lesser quantity of cement content, and did not ensure the application of inhibitor solution on steel bars. The applicant submitted his explanation, and not satisfied with that, the Disciplinary Authority ordered inquiry. The Inquiry Officer submitted his report on 29.09.2014 holding that Article-I, part of Article-II & Article-III are 'Proved', charges in relation to Article-IV (ii) and Article-V are 'Partly Proved' and Article-II (ii) and Article-IV (i) are 'Not Proved'. On the basis of such findings, the Disciplinary Authority imposed the penalty of 50% cut in pension for 15 years, through order dated 18.09.2015. The report of the Inquiry Officer dated 29.09.2014 and the order of punishment dated 18.09.2015 are challenged in this OA.

2. The applicant contends that the disciplinary proceedings were initiated long after his retirement, and in relation to works which were executed much earlier, and though similar charges were framed against other officials, namely, Shri S. K. Tyagi, Junior Engineer and Shri A. K. Jha, Executive Engineer, not only different findings, but also different end results, ensued and that it is a clear case of discrimination and arbitrariness.

3. The respondents filed a counter affidavit resisting the OA. It is stated that the charges against the applicant were enquired into in the disciplinary proceedings, and on the basis of evidence adduced therein, the Inquiry Officer submitted his report. It is stated that the nature of duties entrusted to various officers are different, and the applicant cannot compare himself with other employees, against whom the disciplinary proceedings were initiated.

4. We heard Ms. Manpreet Kaur, learned counsel for the applicant and Shri Arun Birbal, learned counsel for the respondents.

5. Normally, interference with the order of punishment as a result of disciplinary proceedings is rare. The Tribunal and Courts would not interfere with the orders passed by the Disciplinary Authority unless it is established that the findings in the inquiry were either perverse or were based on no evidence, or when the Disciplinary Authority failed to follow the prescribed procedure. There again, the effort would be to remove the defect and permit the authorities to take the proceedings, further.

6. The charges framed against the applicant read as under:-

“ARTICLE-1

The said Shri D. K. Dhain, EE (Retd.) (the then EE/SWD-2) had allowed the execution of sub-standard quality of R.C.C. work for slabs and chajjas/balconies as is evident from the failed samples of the cores extracted from the aforesaid work by M/s Sriram Institute for Industrial Research (M/s SRI) engaged as third party for Quality check.

ARTICLE-2

The said Shri D. K. Dhain, EE (Retd.), allowed the use of steel supplied by local/unapproved suppliers instead of main producers in violation of provision of the agreement and Circular No.566 dt. 9.9.2004 issued by CE(HQ)/DDA. The said Shri D. K. Dhain, EE (Retd.) has allowed fabricated purchase vouchers of steel.

ARTICLE-3

Shri D. K. Dhain, EE (Retd.) allowed the use of steel of RATHI make which was not covered for use under the terms & conditions of the Agreement of the said works.

ARTICLE-4

Shri D. K. Dhain, EE (Retd.) failed to ensure the compliance of QAC observation regarding non application of inhibitor solution on steel bars and maintenance of proper record of inhibitor solution at site to have control over its consumption.

ARTICLE-5

The said Shri D. K. Dhain, EE (Retd.) allowed the execution of RCC work with lesser quantity of cement content as is evident from the report of M/s Sriram Institute for Industrial Research (M/s SRI)."

All of them reflect the alleged sub standard of work that was executed during the tenure of the applicant.

7. The Inquiry Officer has divided charges-II & IV into parts, and recorded findings as indicated in the preceding paragraphs. It was a mixed outcome, in the sense, that

some charges were held 'proved', others 'partly proved' and the rest, 'not proved'. Apart from questioning the very findings recorded by the Inquiry Officer, the applicant has drawn comparison with the proceedings, wherein identical charges framed against other officers in the department. For example, one, Shri S. K. Tyagi, Junior Engineer, who too was associated with SWD-2, was issued a charge memo dated 19.09.2013. Articles-1 to 5 thereof read as under:-

"ARTICLE-1

- (i) The said Shri S. K. Tyagi, JE failed to make the entry of original vouchers and test reports for each lot of steel brought by the agency during his tenure in measurement book thus violating the instructions contained in Circular No.553 dt.19.9.2002 issued by CE(HQ)/DDA.
- (ii) The said Shri S. K. Tyagi, JE allowed the use of steel for use in the works procured by the agency from local/unapproved suppliers instead of main producers in violation of Circular No.566 dt. 9.9.2004 issued by CE(HQ)/DDA.

ARTICLE-2

The said Shri s. k. Tyagi, JE allowed the use of RATHI make steel in the work which was not permissible as per the conditions of agreement.

ARTICLE-3

The said Shri S. K. Tyagi, JE, failed to ensure the compliance of QAC observation regarding non application of inhibitor solution on steel bars and maintenance of proper record of inhibitor solution at site to have control over its consumption.

ARTICLE-4

The said Shri S. K. Tyagi, JE allowed the execution of sub-standard quality of R.C.C work for slabs, chajjas/balconies as is evident from the failed samples of the cores extracted from the aforesaid works by M/s Shri Ram Institute engaged as third party for Quality check.

ARTICLE-5

The said Shri S. K. Tyagi, JE allowed the execution of RCC work with lesser quantity of cement content as evident from the report of M/s SRI.

Except that, the name of the officer is different, the charges are identical. In his case also, the Inquiry Officer held the same charges as 'proved' and others 'partly proved'. The punishment of reduction of pay scale by two stages for a period of two years with cumulative effect was imposed upon him, through order dated 29.03.2015 by the Disciplinary Authority. In the appeal preferred by him, the Appellate Authority passed an order dated 07.10.2016 reducing the punishment, to that of 'Censure'.

8. During the same period, an Executive Engineer, by name, Shri A. K. Jha was in charge of SWD-4. The charges leveled against him are also in relation to sub standard quality of R.C.C. work for slabs, chajjas/balconies, use of cement and steel procured from local suppliers, and failure to apply inhibitor solution on steel bars. The Lt. Governor passed an order dated 25.02.2016 exonerating the said officer from all the charges. Hardly any justification is

provided in the counter affidavit for such a differential treatment. It appears that the Disciplinary Authority was not aware of the proceedings that were initiated against the other officers. When similar charges are framed against different officers, they are justified in expecting the same result to ensue. Any differential treatment is prone to be treated as an act of discrimination or arbitrariness.

9. We are of the view that the Disciplinary Authority needs to consider the matter duly taking into account, the orders that were passed in respect of S. K. Tyagi and A. K. Jha.

10. We, therefore, allow the OA and set aside the order of punishment dated 18.09.2015, and remand the matter to the Disciplinary Authority, who, in turn, shall pass fresh orders duly taking into account, the charges that were framed against Shri S. K. Tyagi, Junior Engineer and Shri A. K. Jha, Executive Engineer of DDA, and the nature of punishment imposed upon them. Till such orders are passed, the applicant shall be paid the pension, without any deductions. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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