

**Central Administrative Tribunal
Principal Bench**

OA No.3600/2017

New Delhi, this the 6th day of February, 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)

Surender Pal Singh Rawal
Aged 68 years, Group 'B',
S/o Late Bhag Singh
R/o A-117, Suraj Mal Vihar
Delhi 110 092.
Presently AE (C)/Retd./DDA.

... Applicant.

(By Advocate : Shri R. A. Sharma)

Versus

1. Delhi Development Authority
Through its Vice-Chairman
Vikas Sadan (B-Block), 1st Floor,
Near INA, New Delhi 110 023.

2. Engineer Member
Delhi Development Authority
Vikas Sadan (B-Block), 1st Floor,
Near INA, New Delhi 110 023.

.... Respondents.

(By Advocate : Shri S. M. Julfiqar Alam)

: O R D E R (ORAL) :

Justice L. Narasimha Reddy, Chairman:

The applicant joined the service as Junior Engineer in Delhi Development Authority (for short, DDA). Thereafter, he was promoted as Assistant Engineer. A charge memo was issued to him on 11.09.2006 alleging that he failed to inspect the premises of Bhairaoon Mandir Samiti in the year 1993, and on account of that the premises were put to

commercial use. The applicant submitted his explanation stating that on account of passage of time, he is not able to get any information in relation to the said incident. He also made a request to furnish certain documents, but in vain.

2. The Disciplinary Authority appointed an Inquiry Officer. During the pendency of the proceedings, the applicant retired from service on 31.10.2009. The proceedings were continued and the IO submitted his report. Taking the same into account, the Disciplinary Authority passed an order dated 22.09.2017 imposing the punishment of penalty of 5% cut in pension for a period of five years. The same is challenged in this OA.

3. The applicant contends that the disciplinary proceedings were initiated in respect of a stale matter, and in the course of inquiry, it was not even proved that any complaints vis-a-vis the said premises were received by him. He further contends that the IO has exceeded his jurisdiction and functioned as a Disciplinary Authority, himself. He contends that the order of punishment is vitiated and cannot be sustained in law.

4. The respondents filed counter affidavit opposing the OA. It is stated that the applicant was under duty, to ensure that the premises within his jurisdiction were not

put to an unauthorised use, and on account of the negligence on his part, a property was used in a manner which is not permitted by law. It is stated that the prescribed procedure was followed and no irregularity has taken place.

5. We heard Shri R. A. Sharma, learned counsel for the applicant and Shri S. M. Zulfiqar Alam, learned counsel for the respondents.

6. The respondents issued a charge memo dated 11.09.2006. The allegation against the applicant reads as under:-

“Sh. SPS Rawal while functioning as JE during the year 1993 in Enforcement Branch of DDA, Vikas Sadan, New Delhi failed to inspect the premises of Bhairaoon Mandir Samiti and thereby allowed Sh. Dharamvir Khattar to misuse the premises of Bhairaoon Mandir Samiti as hotel.

By his above act Sh. SPS Rawal, JE (now AE) exhibited lack absolute devotion to duty, lack of absolute integrity and acted in a manner unbecoming of a Government Servant thereby contravened rule 4 1 (i) (ii) (iii) of DDA Conduct, Disciplinary and Appeals Regulations 1999.”

7. The applicant filed OA No.1809/2009 challenging the charge memo mainly on the ground of delay. The OA was allowed on 09.02.2010 and the charge memo was set aside. The respondents filed W.P. (C) No.8519/2010 before Hon'ble Delhi High Court. An order of stay of the operation of the order passed by the Tribunal in OA was passed and

the interim order was made absolute on 02.12.2011. Based upon the order of stay passed by the High Court, the respondents proceeded with the disciplinary proceedings. Ultimately, through order dated 22.09.2017, the Disciplinary Authority imposed the penalty of 5% cut in pension for a period of five years.

8. Though it is argued extensively that the very charge memo was vitiated on account of delay, we do not address that question. The reason is that though the OA was allowed on that ground, the order in the OA was stayed by the High Court. Therefore, the issue in this OA would be as to whether the order of punishment can be sustained in law.

9. We have carefully gone through the evidence of various witnesses, to satisfy ourselves as to whether allegation against the applicant was proved at all. None of the witnesses have stated that the applicant has been handed over the copy of the reference dated 03.11.1993. The statement made by the applicant that in spite of his best efforts, he was not able to get any material pertaining to the premises in the office, remains un rebutted. Not being an Appellate Authority in disciplinary proceedings, the Tribunal does not give much importance to those

discrepancies. What, however, becomes material is that the manner in which the IO conducted himself.

10. Service Rules do permit the IO to put general questions to the delinquent officer for the conclusion of the proceedings. However, the nature of questions put by the IO to the applicant discloses the deep prejudice, which he entertain against the applicant. The questions clearly demonstrate that he was far from neutral. For the sake of convenience, we reproduce the entire of the questions and answers of the IO and the applicant herein.

“Ques 1:- Is it correct that the premises of Bhairon Mandir Samiti was being used as Hotel?

Ans 1 : - I have no knowledge.

Ques 2:- Is it correct that during your stay in enforcement branch Bharon Mandir Samiti Premises was under your jurisdiction?

Ans 2:- Yes.

Ques 3:- At what frequency you were visiting areas under your jurisdiction?

Ans 3:- Since area under me was heavily misused so there were lot of complaints and only complaints were attended in the heavily misused areas.

Ques 4:- The answer of above question means that you were not visiting areas under jurisdiction unless and otherwise complaints were received by your office?

Ans 4:- Yes, because no time was left after attending the complaints and the court cases.

Ques 5:- During your stay in the enforcement branch between Dec 1990 to Dec 1993, did you notice any unauthorized activities like running a hotel in premises at Bhairon Mandir in name of Athithi Guest House?

Ans 5:- No.

Ques 6:- Can you show any communication to prove efforts made by you to avoid unauthorized use of Bhairon Mandir Samiti premises?

Ans 6:- I never noticed any misuse in the said property.”

11. A perusal of question nos.3, 4 & 5 would disclose that the IO entertained a clear view that the applicant herein was guilty of negligence or misconduct. Though such a view he could have take on appreciation of evidence, he was not supposed to exhibit his preconceived notion at that stage. The inquiry is conducted with the objective of having a neutral and unbiased view on the allegations made against an employee. In the instant case that very purpose was defeated on account of IO not being neutral. Added to that, the department was not able to prove the charge as required under law.

12. We, therefore, allow the OA and set aside the impugned order. The amount deducted from the salary of the applicant shall be paid to him within a period of three months from the date of receipt of copy of this order.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/pj/