

**Central Administrative Tribunal
Principal Bench
New Delhi**

**OA No.3446/2015
MA No.203/2017**

This the 10th day of April, 2019

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

Umesh Kumar Sharma S/o late Rama Kant Sharma,
R/o C-5-D/3-B, Janakpuri,
New Delhi-110058. ... Applicant

(By Ms. Srija Choudhury for Ms. Madhumita Bhattacharjee,
Advocate)

Versus

Delhi Development Authority
through its Vice Chairman,
Vikas Sadan, New Delhi. ... Respondent

(By Mr. Arun Birbal, Mr. Manish Garg, and Mr. Vijay Saini
Advocates)

ORDER

Justice L. Narasimha Reddy, Chairman :

The applicant, who is working as Assistant Director (Ministerial) in the Delhi Development Authority, the first respondent herein, was entrusted with the duty of Invigilator in the departmental examination conducted for selection of candidates to the post of Lower Division Clerks on 27.01.2013 at Kendriya Vidyalaya, INA Colony, New Delhi. Stating that

disciplinary proceedings are contemplated against the applicant, the appointing authority passed an order dated 15.02.2013, placing him under suspension. He was served with a memorandum dated 04.04.2013 alleging his involvement in the change of coding slips in the departmental examination held on 27.01.2013. The applicant submitted his explanation on 08.04.2013 stating that he has no role to play in handling the coding slips. Taking the same into account, the appointing authority revoked the order of suspension on 19.06.2013.

2. Nearly six months thereafter, the applicant was issued a charge memorandum dated 30.01.2014 alleging that he was responsible for changing the coding slips in respect of five candidates. The applicant submitted his reply denying the allegation. Not satisfied with that, the Disciplinary Authority appointed an inquiry officer. In his report dated 01.07.2014, the inquiry officer held the charge as proved. Accepting the same, the disciplinary authority passed order dated 08.01.2015 imposing the punishment of reduction of pay by two stages, till the date of his retirement, with cumulative effect. Aggrieved by that, the applicant filed an appeal before the Vice Chairman, DDA. Through order dated 11.06.2015, the Appellate

Authority modified the punishment to the one of reduction of pay by one stage till the date of retirement, with cumulative effect. This OA is filed challenging the order of punishment.

3. The applicant contends that the very fact that the charge memorandum was not issued even after suspension, not to speak of reinstatement, discloses the lack of clarity on the part of the respondents. He submits that in the inquiry, several important witnesses categorically admitted that the applicant has no role in handling the coding slips, and despite that the inquiry officer submitted his report holding the charge as proved. He contends that the report of the inquiry officer, is not only perverse in nature, but is also based upon no evidence. Other grounds are also urged.

4. The respondents filed counter-affidavit opposing the OA. It is stated that the applicant was initially placed under suspension on noticing certain irregularities on his part as Invigilator. It is also stated that the charge memorandum was issued after verification of the relevant facts, and that the inquiry officer has submitted his report based upon the evidence adduced before him. It is stated that the punishment was imposed in proportion to the gravity of the charge proved.

5. We heard Ms. Srija Choudhury for Ms. Madhumita Bhattacharjee, learned counsel for the applicant, and Shri Arun Birbal, Shri Manish Garg and Shri Vijay Saini, learned counsel for the respondents.

6. The DDA wanted to select candidates for appointment to the post of LDCs. For that purpose a written test was held on 27.01.2013. The applicant was entrusted with the duties of Invigilator. After the examination was held, he was placed under suspension in contemplation of disciplinary proceedings. In a subsequent memorandum, the applicant was required to present his version on the allegation pertaining to the handling of coding slips. The applicant flatly denied the allegation, and taking the same into account, the order of suspension was revoked on 19.06.2013. It is long thereafter, that a charge memorandum dated 30.01.2014 was issued to the applicant. The article of charge reads as under:

“Shri Umesh Kumar Sharma, Assistant Director while working as Assistant Director in Personnel Branch-1 was deputed for duty of Invigilator in Room No.132 in Departmental Examination for the post of LDC held on 27.01.2013 at Kendriya Vidyalaya, INA Colony (Opp. DDA Office, Vikas Sadan), New Delhi vide Office order dated 18.1.2013. He is found responsible for changing the coding slips of five candidates, on account of which result of one of the candidate was wrongly declared which

was subsequently modified. It is also established that due to change of coding slips the department was forced to change the result declared earlier which has brought the department in an embarrassing position.

By his above act of misconduct, Shri Umesh Kumar Sharma, Assistant Director has exhibited his failure to maintain absolute devotion to duty, lack of absolute integrity and acted in a manner unbecoming an employee of the Authority, thereby contravened Rule 4.1(i) (ii) & (iii) of DDA Conduct, Disciplinary and Appeal Regulation, 1999 as made applicable to employees of the Authority."

7. The allegation itself is a bit abstract, not referable to any specific act or omission. The applicant denied the charge, and the inquiry officer was appointed.

8. In the course of inquiry, the statement of a superior officer, i.e., Deputy Director, was recorded. Nowhere, he mentioned the name of the applicant. The said witness was cross-examined by the applicant also. A specific question was put to that witness, examined as SW-2, by the PO, which, along with its answer, reads as under:

"Q3 Are you agreed that irregularity regarding change of code-slips (S.3) can take place either by coding officer/official level or at invigilator/CO level?

Ans As explained above the coding is done with the coding slips are attached with the answer sheets. During the commencement of such procedure the answer sheets received are counted and tallied with the number of answer

sheets received from each room assigned for examination and thereafter all the answer sheets are shuffled. During this process officers deployed from the vigilance deptt. as well as examination branch are present, therefore, no tampering with the coding slips/answer sheets is possible during the coding. In this instant case the shuffling was assisted by Sh. Harish Kumar, Dy. Director (Vig.) and after coding was completed, tallying of the numbers assigned during coding on the coding slips and answer sheets was done by Shri V. K. Mongia who also removed the coding slips thereafter.”

It may be noticed that the officer not only explained the procedure on coding and decoding, but also mentioned the names of the employees associated with that. The name of the applicant did not figure therein. The applicant has also put a question to the SW-2 in cross-examination. The question and the reply thereto read as under:

“Q5 Do you understand that coding of answer sheets is a confidential and a secret work and cannot be assigned to any other officer who is not authorized.

Ans As stated hereinabove the entire coding work has been taken by the undersigned single handedly only post coding of stamping/coding was done to ensure that no error crept in the coding process as the same was being done a manual machine having option of putting multiple numbers of similar digits as per the setting. It was possible that there could have been a mechanical failure and to check this error, the assistance of another officer who also assigned the duties as Observer in the examination i.e. Shri V. K. Mongia was taken. Moreover, I have explained the procedure

wherein all the answer sheets were shuffled in the beginning of the exercise, therefore, there was no chance of breach of confidentiality.”

9. Here also, the applicant was not named. A charge of the nature alleged against the applicant can be taken as proved, if only any witness examined by the department makes a statement that the applicant was responsible for changing the coding slips. It has already been mentioned that the SW-2, a Deputy Director, has owned the entire responsibility, and the only other person who assisted him, was Mr. V. K. Mongia. He did not point his finger towards the applicant.

10. The report of the inquiry officer in this case indeed presents a text book example of perversity. In the entire report, nowhere we come across any statement, at least in the chief examination, alleging any role to the applicant in the change of the coding slips. However, the inquiry officer assumed to himself, the role of a detective, and felt it free to enter the area of speculation. He prepared his own plan of the entire examination process, and attributed roles to various employees. The conclusion arrived at by him, reads as under:

“...The change of coding slips CAN NOT TAKE PLACE during stage III when so many officers including three senior officers of Dy. Director rank as well as Dy. Director (Vig.) are present and these

six activities to have been performed. This is apparently improbable and impossible. Now applying the test of preponderance of probabilities the more probable, coherent and consistent evidence is that the change of coding slip had taken place during STAGE II and CO who is the only action during STAGE II leading to the inference that CHANGING OF CODING SLIPS OF FIVE CANDIDATES was committed by CO.

In view of above, I hold that as per standard of proof of Preponderance of Probabilities the CO is GUILTY of the charge of Article I."

It is important to mention that the portion extracted above was put in bold letters in the report. One rarely finds an example of perversity as the one in the instant case.

11. After excluding the possibility of changing codes by other employees, the inquiry officer stopped it at the applicant. In a way, he can be said to have adopted the process of elimination. His acumen on the subject is presented in the concluding paragraph as under:

"I will fail in my duty if I ignore some legally available evidence on record which may reasonably support the conclusion that the delinquent employee is, in fact, guilty of the charge even if such evidence may not be in the sense of technical rules governing regular proceedings but in a fair common sense manner as man of understanding of worldly wisdom will accept. Proof does not mean proof to rigid mathematical demonstration because that is impossible it must mean such evidence as would a reasonable man to come to a particular conclusion."

12. It is just impermissible in a departmental inquiry to arrive at conclusions in this manner. The whole episode smacks of an imperfect exercise by the inquiry officer, and the report is based on no evidence. It is based just on the basis of imaginations. The entire proceedings are vitiated. The report submitted by the inquiry officer cannot be sustained in law. As a result, the order of punishment which is based upon it, is liable to be set aside.

13. The OA is accordingly allowed. The order of punishment dated 08.01.2015, as modified by the Appellate Authority vide order dated 11.06.2015, is set aside. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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