

**Central Administrative Tribunal
Principal Bench**

OA No.1101/2014

With

OA No.1117/2014

OA No.1121/2014

New Delhi, this the 10th day of October, 2019

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

I. OA No.1101/2014

Ajay Kumar,
S/o Shri Harish Chandra,
R/o AG-1/101A, Vikas Puri,
New Delhi 110018

...Applicant

(By Advocate : Shri M.K. Bhardwaj)

VERSUS

South Delhi Municipal Corporation,
Through its Commissioner,
Dr. SPM, Civic Centre,
Near Minto Road,
New Delhi 110002.

...Respondent

(By Advocates : Shri R.K. Jain and Ms. Neetu Mishra for
Shri K.M. Singh)

II. OA No.1117/2014

Mahavir Prasad, UDC,
S/o Shri Dina Nath,
R/o RZF-10A, Gali No. 42, Sadh Nagar Part-II,
Palam, New Delhi 110045.

...Applicant

(By Advocate : Shri M.K. Bhardwaj)

VERSUS

1. South Delhi Municipal Corporation,
 Through its Commissioner,
 Dr. SPM, Civic Centre,
 Near Minto Road,
 New Delhi 110002.

2. North Delhi Municipal Corporation,
 Through its Commissioner,
 Dr. SPM, Civic Centre,
 Near Minto Road,
 New Delhi 110002.

3. S.K. Dhawan, UDC
 Through SDMC,
 Dr. SPM, Civic Centre, Near Minto Road,
 New Delhi 110002.

...Respondents

(By Advocates : Shri R.K. Jain and Ms. Neetu Mishra for
 Shri K.M. Singh)

III. OA No. 1121/2014

Raj Singh Dahiya,
 S/o Shri Suraj Bhan,
 R/o Main Katlupur Road, Village & PO Nahri,
 District Sonapat, Haryana 131103.

...Applicant

(By Advocate : Shri M.K. Bhardwaj)

VERSUS

1. South Delhi Municipal Corporation,
 Through its Commissioner,

Dr. SPM, Civic Centre,
 Near Minto Road,
 New Delhi 110002.

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 Dr. SPM, Civic Centre,
 Near Minto Road,
 New Delhi 110002.
3. S.K. Dhawan, UDC
 Through SDMC,
 Dr. SPM, Civic Centre, Near Minto Road,
 New Delhi 11002

...Respondents

(By Advocates : Shri R.K. Jain and Ms. Neetu Mishra for
 Shri K.M. Singh)

ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman :-

In these three OAs, common questions of facts and law arise for consideration. Hence, they are disposed of through a common judgment.

2. The applicants were working as Licensing Inspectors in the cadre of UDC, in the then Municipal Corporation of Delhi. A fire accident occurred in a market area of Corporation called Lakkar Market, Kirti Nagar. Lt. Governor of Delhi ordered inquiry. One of the reasons attributed for the accident was that several

business installations have been operating without a license and the material stored by them gave rise to the fire accident.

3. The applicants worked as Licensing Inspectors for the area, at different spells of time. Disciplinary proceedings were initiated against them, by issuing the charge memo, pointing out their alleged lapses. The applicants submitted their explanations to the charge memos. Not satisfied with the same, the Disciplinary Authority appointed the Inquiry Officer. In the report submitted by the Inquiry Officer, it was held that the articles of charges framed against the applicants are proved. A copy of the report of the Inquiry Officer was made available to the applicants.

4. Taking the explanations submitted by them into account, the Disciplinary Authority passed a common order dated 03.11.2011, imposing the punishment of reduction in pay in the present time scale of pay by two stages, for a period of two years, with cumulative effect. The applicants filed the appeals before the Lt. Governor, feeling aggrieved by the order of punishment. The Lt.

Governor, however, proposed to enhance the punishment and accordingly directed the concerned, to issue show cause notices to the applicants, mentioning as to why the punishment be not enhanced. Accordingly, show cause notices were issued to the applicants and they in turn submitted the representations/explanations.

5. Through individual orders dated 28.02.2014, the Corporation conveyed to the applicants, the decision of the Lt. Governor, wherein, punishment imposed against the applicants by the Disciplinary Authority was enhanced to the one, of reduction in pay in the time scale of pay by two stages for a period of six years with cumulative effect. These OAs are filed challenging the initial order of punishment, as well as the one through which the punishment was enhanced.

6. The applicants contend that the allegations made against them in the Memorandum of Charge are too vague and general and that no specific act of violation was attributed to them. It is also stated that the Inquiry Officer has also recorded findings just on the basis of surmises and imagination, and there is absolutely no

basis for imposing the punishment by the Disciplinary Authority. The applicants further contend that the Appellate Authority did not furnish any specific reason, as to why he proposed to enhance the punishment and the mere fact that they availed the remedy of appeal ought not to have been taken as an opportunity by the Appellate Authority, to enhance the punishment. It is also stated that hardly any reasons were mentioned in support of the decision to enhance the punishment.

7. Respondents filed counter affidavits in respective OAs. It is stated that the lapses on the part of the applicants were serious in nature and they were found proved in the disciplinary proceedings. It is also stated that the Appellate Authority is conferred with the power to enhance punishment under Regulation 15 of the Municipal Corporation of Delhi Control and Appeal Regulations, 1959.

8. We heard Shri M.K. Bhardwaj, learned counsel for applicant and Ms. Neetu Mishra for Shri K.M. Singh and Shri R.K. Jain, learned counsel for respondents.

9. A typical imputation made against the applicants reads as under :-

“OA 1101/2014

STATEMENT OF ALLEGATIONS ON THE BASIS OF WHICH CHARGES HAVE BEEN FRAMED AGAINST SHRI. AJAY KUMAR, S/O SHRI. HARISH CHANDRA, UDC/LI, LICENSING DEPARTMENT WEST ZONE.

Shri. Ajay Kumar, UDC while functioning as Licensing Inspector in West Zone remained in-charge of the area of Kirti Nagar w.e.f 01.10.2002 to 18.12.2002.

The Hon'ble Lt. Governor of Delhi had visited the site i.e., A-117, WHS, Kirti Nagar, where fire broke out on 31.12.2004. The Hon'ble Lt. Governor of Delhi showed displeasure over the encroachments made by most of the shopkeepers by way of stacking wooden logs, furniture etc. on the public land. The Lt. Governor of Delhi had desired to know whether municipal license was issued for the trade running in the property in which fire was broke out. The Commissioner directed the Dy. Commissioner/West Zone to enquire into the lapses in performance of duties by the Zonal Staff. Accordingly, the investigation was conducted by the Dy. Commissioner/West Zone which revealed that the owner of property No. A-117, WHS, Kirti Nagar, had applied for obtaining license for storage as required under provisions of Section 417 of DMC Act, but no license was issued for running the trade in the above said property. It further revealed that neither the trade license nor license for storage was issued by the area Licensing Inspector. Shri. Ajay Kumar, LI neither inspected the site nor checked the trade license of the said property. The investigation further revealed that the wooden logs furniture etc was stacked on public land which aggravated the fire on 31.12.2004 in which many persons lost their lives. Had, Shri. Ajay Kumar, LI remained vigilant towards his duty, the encroachment could have been averted

on public land and, therefore, the damage of such magnitude would not occur.

From the foregoing, it is evident that Shri. Ajay Kumar, UDC/LI failed to maintain absolute integrity, devotion to duty and committed gross misconduct, in as much as, as he failed to inspect the lakkar market of Kirti Nagar to check that no store/shop shall run in the area without trade license and no wooden log shall be stacked on public land.

He, thereby, contravened Rule 3(1)(ii) of CCS (Conduct) Rules, 1964 as made applicable to the employees of MCD.”

10. The applicants submitted their respective explanation and denied the allegations. The Inquiry Officer submitted his report holding the charges as proved. The Disciplinary Authority passed a common order dated 03.11.2011, imposing the punishment of reduction in pay in the present time scale of pay by two stages for a period of two years with cumulative effect. Before imposing the punishment, he has undertaken extensive discussion about the alleged lapses on the part of the applicants. It was stated that though there is a clear prohibition against the storage or stacking of any material on the public road by the shopkeepers, no inspection was conducted by the Licensing Inspectors, nor any verification was done as to whether any unlicensed shops are being run.

11. It may be true that the allegations were a bit general and not specific. However, in the course of the inquiry, the witnesses were examined and the lapses on the part of the applicants were held proved. In view of the fact that a fire accident has taken place on account of stacking of material in the unauthorised shops, the dereliction of duties by the applicants stand proved. The punishment imposed by the Disciplinary Authority through a common order dated 03.11.2011, cannot be said to be disproportionate or without any basis. We do not propose to interfere with the order of punishment.

12. Now, comes the question of the enhancement of punishment by the Appellate Authority. Regulation 15 deals with the procedure to be followed by the Appellate Authority while dealing with the appeals filed against the order of punishment passed by the Disciplinary Authority. Proviso to Regulation 15 reads as under :-

“Provided that:

- (i) the appellate authority shall not impose any enhanced penalty which neither such authority nor the authority which made the order appealed against is competent in the case to impose;

(ii) no order imposing an enhanced penalty shall be passed unless the appellant is given an opportunity of making any representation which he may wish to make against such enhanced penalty.”

13. From a perusal of Proviso (ii), it becomes clear that the Appellate Authority is conferred with the power to enhance the punishment. However, he has to give an opportunity of being heard to an employee before the penalty is enhanced.

14. The applicants preferred the appeals before the Lt. Governor. While dealing with the same, the Lt. Governor made a note in the file in October, 2013, after referring to the allegations made against the applicants in the proceedings. It reads as under :-

“As Licensing Inspectors the appellants were duty bound to ensure no encroachments occurred in public land. The inquiry has proved the Article of Charge. Therefore, the appellants were remiss in discharging their duties and responsibilities diligently. For the proven misconduct the penalty imposed by the Disciplinary Authority is grossly disproportionate and to meet the ends of justice merits to be enhanced so that the appellants are inflicted a perpetual loss of six increments.

I find the penalty imposed as grossly disproportionate and less than what should have been imposed for the level of offence committed. I, therefore, propose to enhance the penalty imposed by Disciplinary Authority to reduction in pay in the time scale of pay by two stages for a period of six years, with the further direction that the appellants

will not be allowed to draw their annual increments during the period of reduction and this will have the effect of postponing their future increments.

CVO is directed to take appropriate action as prescribed under the Delhi Municipal Corporation Services (Control & Appeal) Regulations 1959 and resubmit the case file within six months along with the representation of the appellants, if any, on the proposed penalty and the comments of the department thereon, for passing final orders after due consideration.”

15. Accordingly, a Show Cause Notice was issued. The applicants made representations. Thereafter the impugned order dated 28.02.2014 was passed, enhancing the punishment to the one, of reduction in pay in the time scale of pay by two stages for a period of six years with cumulative effect.

16. It needs to be mentioned that the order does not reflect the view expressed by the Appellate Authority and it only conveys the gist thereof. The actual endorsement of the Appellate Authority is filed alongwith the counter affidavit. After referring to the reply submitted by the applicants and the arguments advanced on their behalf, the Lt. Governor made the following remarks vis-a-vis the applicants :-

“I have gone through the replies to the show cause memos furnished by the COs. Keeping in view the

tenure of the Cos in the area under reference, their contentions made during personal hearing and the allied record of the case, I order to modify the proposed penalty of 'reduction in pay in the present time scale of pay by two staged for a period of two years with cumulative effect' to that of **"reduction in pay in the present time scale of pay by two stages for a period of one year with cumulative effect"** upon S/Shri P.K. Chauhan, Ajay Kumar, Mahavir Prasad, R.S. Dhiya, UDCs/LIs and confirm the same accordingly."

17. It is also necessary to mention that through the same order dated 05.06.2012, the Lt. Governor has retained the punishment, which was imposed by the Disciplinary Authority against one Shri A.K. Bhardwaj, Zonal Secretary.

18. The power conferred upon the Appellate Authority to enhance the punishment is an extra ordinary one. A distinction needs to be maintained between two circumstances in this behalf. If a Superior Authority is conferred with general power of superintendence, it may also include the power to enhance or reduce the punishment on its own accord. The second is where the Appellate Authority is not conferred with *suo moto* power or power of superintendence, but is activated through an appeal preferred by the aggrieved person. In the first category of cases, the discretion and scope for exercise is

somewhat wider. In the second category of cases, the authority can enhance the punishment only in rare and exceptional cases. The reason is that if the aggrieved party does not approach the Appellate Authority, the matter would end at that. The occasion to avail the remedy cannot be treated as an opportunity to enhance the punishment, unless something has seriously gone wrong in the proceedings, at the level of the Disciplinary Authority.

19. Before a tentative decision is taken for enhancement of punishment, the Appellate Authority is required to satisfy himself about the serious lapses in the proceedings or the reasons on account of which it can be said that the punishment which was imposed by the Disciplinary Authority is totally disproportionate. If one views the matter from this perspective, the only reason mentioned in the note of the Appellate Authority, leading to issuance of Show Cause Notice proposing enhancement in the punishment, is contained in one sentence which reads as under :-

“For the proven misconduct the penalty imposed by the Disciplinary Authority is grossly disproportionate and to meet the ends of justice

merits to be enhanced so that the appellants are inflicted a perpetual loss of six increments.”

20. In our view, this does not satisfy the requirement under the law. The appeal preferred by an employee, by itself, cannot be treated as an independent avenue for imposition of higher penalty. The Appellate Authority was under obligation to point out the serious lapses in the disciplinary proceedings or gravity of the charges, which was held proved.

21. We have already pointed out that the only basis for initiation of the proceedings against the applicants was that a fire accident occurred in a market and that in turn was remotely connected to alleged lapses on the part of the applicants, and Licensing Inspectors. The discussion undertaken for enhancement of the punishment is also not adequate for exercise thereof. We are of the view that the enhancement of the punishment imposed against the applicants was not justified.

22. We, therefore, partly allow the OA, setting aside the enhancement of punishment, ordered by the Appellate

Authority. However, we confirm the punishment that was imposed by the Disciplinary Authority.

There shall be no orders as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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