

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A./100/3296/2015

New Delhi, this the 14th day of August, 2019

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

Dr. M.L. Sharma, Veterinary Officer,
S/o Shri Faqir Chand
R/o E-73, MCD Officers Colony,
Minto Road,
New Delhi-110002

....Applicant

(Through Shri Rajeev Sharma, Advocate)

Versus

1. Lt. Governor of Delhi
Through the Commissioner
East DMC,
Raj Niwas, Delhi
2. The Commissioner
East Delhi Municipal Corporation
419, Udyog Sadan,
Patparganj Industrial Area,
Delhi-92

... Respondents

(Through Shri K.M. Singh, Advocate)

ORDER (Oral)

Justice L. Narasimha Reddy, Chairman

The applicant was working as a Veterinary Officer in the East Delhi Municipal Corporation. There was some dispute as to the functioning of slaughter house at Idgah, Delhi. As a result of litigation that ensued in this behalf, it was decided

by the Corporation to construct a modern abattoir at Ghazipur. The applicant herein was appointed as Coordinator of that Project, on 22.09.2004.

2. The applicant was issued a charge memo on 19.11.2007, alleging that he did not take adequate steps as Coordinator and failed to discharge his duties. The applicant submitted his explanation, denying the charge. Not satisfied with that, the Disciplinary Authority (DA) appointed an Inquiry Officer (IO). Through his report dated 20.05.2009, the IO held that none of the charges framed are proved. The DA, however, disagreed with the findings and passed an order dated 2.03.2012 imposing the punishment of reduction in pay in the pay scale by three stages for a period of three years with cumulative effect. Aggrieved by that, the applicant filed an appeal before the Lieutenant Governor, Delhi. The appeal was rejected through order dated 26.08.2014. Hence, this OA.

3. The applicant contends that he was just appointed as a Coordinator to undertake liaison between various authorities and was not conferred with power of any kind whatsoever. He submits that the Corporation has appointed as many as four sub-committees headed by senior most officers but every alleged lapse was attributed to him alone. It is stated that the Corporation has also involved the private consultants and agencies such as M/s Centre for Integrated Animal

Husbandry and Dairy Development, M/s Gherzi Eastern Limited, New Delhi etc. He further submits that the IO submitted his report after undertaking thorough analysis but the DA straightaway disagreed with the findings, without assigning any reasons and imposed the punishment. He states that the Appellate Authority (AA) has mechanically rejected the appeal by reiterating the findings recorded by the DA.

4. Respondents filed detailed counter affidavit opposing the OA. It is stated that the applicant failed to follow the terms and conditions of the agreement and on account of lapse on his part, the Corporation had to suffer a huge financial loss. It is also stated that the DA has followed the prescribed procedure while imposing the punishment and the AA has also rightly affirmed the view taken by the DA.

5. We heard Shri Rajeev Sharma, for the applicant and Shri K.M. Singh, for the respondents.

6. The substantive post held by the applicant was Veterinary Officer. Even while continuing him in that post, he was assigned the duty of Project Coordinator. The relevant order reads as under:

“In order to coordinate with the various agencies, departments and consultants involved in the execution of project of temporary and modern slaughter house by Veterinary Service Department, Dr. M.L. Sharma, AVS(M) working as OSD to Director (Vety. Services) is designated as **Project Coordinator**. He will work as Project Coordinator in

his own pay-scale and will not get any extra financial remuneration for this work, however, he will continue to assist Director (Veterinary Services) in all the matters related to the department.

Dr. Dinesh Sharma, AVS(M) working as Incharge, Rabies Control Programme will also work as Member-Secretary of the Society for Stray Canine Birth Control in place of Dr. M.K. Sharma.

This issues with the prior approval of Commissioner, MCD.”

7. Except that the applicant was required to coordinate between the various authorities, he was not conferred with any power nor assigned any specific duties. Added to that, he was required to remain in his own pay scale and to continue to assist the Director.

8. The project of construction of modern abattoir is so complicated that the approval of various authorities at different stages of the work has to be obtained and financial implications are very high. Not only the different departments of the government but also private stakeholders were involved. Obviously, for that reason, the Corporation constituted various sub-committees to look into –

- (i) civil works
- (ii) plant and machinery
- (iii) CNG
- (iv) Electricals

9. In each of the sub-committees, the Chief Engineer of the concerned department is the Chairman and about ten members are included therein. The applicant figures at the

bottom, as a member of the committee. To oversee the work of the sub-committees, a high power committee was constituted consisting of the following members:

- “(i) Representative of Department of Animal Husbandry, GOI
- (ii) Representative of Ministry of Urban Development, GOI
- (iii) Representative of Ministry of Civil Aviation
- (iv) Representative of Government of NCT of Delhi
- (v) Representative of MCD”

10. When this is the set up through which the abattoir was to be constructed, one just cannot think that its progress depended exclusively upon the initiative of the applicant alone.

11. A charge memo was issued to the applicant on the following counts:

- “i. He failed to float the fresh tenders/bids for the constructions of slaughter house at Ghazipur.
- ii. He also failed to obtain approval from the Competent Authority for increasing capacity of animals from 2500 to 10000 due to which the claim of contractor increased from 65 crores to 185 crores.
- iii) He also failed to place the exact position of the slaughter house before the Hon’ble Supreme Court on 8.2.2006.
- iv) He also failed to get the approval from the Corporation regarding change of terms and conditions of the agreement while signing the same.
- v) He also failed to get the approval for changing the fuel from diesel to electricity and to CNG which caused avoidable expenditure.
- vi) He also failed to get the approval for increasing the capacity of ETP from 250 KLD to 1750 KLD.
- vii) He also failed to take any permission/approval from the Corporation to decide the scope of work and rate of plant and machinery.

- viii) He also failed to use the public exchequer properly as he included a lot of avoidable work in the project such as purchases of 4 crores work of refrigerated vehicles, construction of fence on the top of the boundary walls, bye pass road, number of buildings for police station and security campaign etc. which should have been done by the lessee in the form of porta cabin.
- ix) He also failed to follow the terms and conditions of the agreement whereby all the taxes should have been borne by the contractor which were subsequently burdened upon the MCD which caused financial loss to the MCD to the tune of Rs. 20 crores.
- x) He vide letter No.14/DVS/2004 dated 31.5.2005 had allowed the contractor/bidder M/s Food Processing Equipment Pvt. Ltd. to place the order for manufacturer of plant and machinery of the increased capacity without deciding the cost of the items.”

12. The applicant submitted his explanation denying the charges. Not satisfied with that, the DA appointed an IO. In his report running into thirty typed pages, the IO concluded as under:

“In view of the above, I am inclined to accept all his submissions/pleas in defence of charge No.1 to 10 and hold that none of these charges stand proved against the CO.”

13. Once the IO submitted a report holding that the charges are not proved, two courses are open to the DA:

- (i) to accept the findings and drop the proceedings; or
- (ii) to differ with the findings and come to his conclusion after giving opportunity to the charged officer.

The procedure to be followed as regards the latter course is fairly well settled. In the instant case, the DA has chosen not to accept the findings of the IO.

14. Once the DA wanted to differ with the findings of the IO, it was required of him to issue a disagreement note –

- (i) indicating the reasons on the basis of which he intends to disagree with the findings; and
- (ii) to issue notice to the applicant requiring him to explain as to why a different view be not taken on the charges.

The concluding portion of the disagreement note is required to be worded in such a way that the disagreement is tentative in nature and the employee is given opportunity to explain.

15. The DA in the instant case has straightaway arrived at the finding that the view taken by the IO is not correct. No discussion was undertaken with reference to the relevant charges. It was a common discussion in two paragraphs. The conclusion was not tentative, is evident from the paragraph which reads as under:

“It is also evident on the face of record that while dealing with files pertaining to proposals of the project the C.O. submitted fresh proposals every time suggesting changes in the payment schedule which ultimately had gone in favour of contractor and against the MCD. Evidently at one point of time as per agreement dated 25/8/2004 the taxes were to be paid by the contractor but subsequently vide Office Order dated 21/3/2005 the taxes were borne by the MCD putting an extra burden of taxes amounting to Rs.15-20 crores. The C.O. as Project Coordinator of Ghazipur Slaughter House was required to act in a vigilant and impartial manner by pin pointing irregularities on each & every occasion but the C.O. failed to do so for the reasons best known to him. The Inquiry Officer without considering the vital information available on record simply reiterated the defence taken by the C.O. and held the charges leveled against him as ‘not proved’ by not considering the core issues supported with vital

documents produced during the course of inquiry proceedings.”

16. In the context of forming an opinion also, what is required to be issued is a notice. An order, if at all, has to ensue after the employee submits his objection to the proposed disagreement and a decision taken by the DA.

17. In the instant case, an order was passed on 27.05.2011 to which the applicant was required to submit his representation, if any. The relevant paragraph reads as under:

“In conspectus of the matter the C.O. is fully responsible for the misconduct committed by him and therefore I entirely disagree with the findings of the inquiry officer. A copy of the inquiry report alongwith above disagreement note shall be served upon the C.O. The C.O. may submit his representation if any against the disagreement note within a fortnight from the date of receipt of the copy of inquiry report and disagreement note. Ordered accordingly.”

18. This does not, at all, conform to the prescribed procedure. Neither the disagreement was tentative in nature nor it was in the form of notice. When the DA has arrived at a conclusion even before giving opportunity to the applicant, the entire proceedings get vitiated.

19. The DA passed order dated 2.03.2012, imposing the punishment. There again, no findings were recorded with reference to the individual charges. There cannot be a wholesale and common disagreement on the findings of all the ten charges. What is more curious is that while the order

of punishment is dated 2.03.2012, the AA felt as though there was a separate order dated 22.02.2013 through which the penalty was imposed.

20. We accordingly allow the OA and set aside the impugned orders. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/dkm/