

Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.4226/2014

Thursday, this the 5th day of September 2019

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

Jagdish Chander
Age 57 years, Assistant Engineer
s/o Shir Godha Ram
r/o B-1412, DDA Flats
East of Kailash
New Delhi

..Applicant

(Mr. Rajeev Sharma, Advocate)

Versus

1. Lt. Governor of Delhi
Govt. of NCT of Delhi
Raj Niwas, New Delhi
2. North Delhi Municipal Corporation
(Through its Commissioner)
Dr. S P Mukherjee Civic Centre
J L Marg, New Delhi
3. The Commissioner
North Delhi Municipal Corporation
Dr. S P Mukherjee Civic Centre, 4th Floor,
J L Marg, New Delhi

..Respondents

(Mr. R V Sinha, Advocate)

O R D E R (ORAL)

Justice L. Narasimha Reddy:

The applicant worked as Assistant Engineer (AE) in the
North Delhi Municipal Corporation (North DMC), the 2nd

respondent herein and was posted in the Sadar Paharganj Zone in the year 2005.

2. A building collapsed in that area, resulting in death of seven persons. Disciplinary proceedings were initiated against the applicant, and two others, viz., Executive Engineer (EE) and Junior Engineer (JE). A charge memo was issued to the applicant on 10.08.2005 alleging that on account of failure on his part, serious loss of life and other damage has taken place. The explanation submitted by the applicant was not accepted by the disciplinary authority (DA). Similar charge-sheet was issued to EE and his explanation was also not found satisfactory. Common inquiry was ordered against both of them.

3. Through his report dated 21.06.2012, the Inquiry Officer (IO) held that the charges framed against the applicant and the EE are not proved. The DA, however, disagreed with the findings and issued a disagreement note dated 10.05.2013 to the applicant, and the latter offered his remarks to the same. Not satisfied with the remarks, the DA passed order dated 16.06.2014 imposing the punishment of 'reduction in rank' on the applicant. Aggrieved by that, the applicant preferred appeal, and that was rejected through an order dated 21.10.2014. This O.A. is filed challenging the order of punishment passed by DA, as affirmed by AA.

4. The applicant contends that it was the duty of JE to make spot inspection and report it to him, and he in turn, was only to report to the EE, for necessary orders. He submits that there was dispute as to the identity of the building also, and despite that, the DA has chosen to differ with the findings without any basis and imposed the punishment of 'reduction in rank'. He contends that the JE, who was the employee of Delhi Development Authority (DDA) and on deputation to 2nd respondent, was exonerated of the charges and the order of punishment passed against the EE was set aside by this Tribunal in O.A. No.4228/2014, through an order dated 26.07.2016.

5. The respondents filed counter affidavit opposing the O.A. It is stated that the applicant failed to discharge his duties, as regards the building in question. It is also stated that the DA has assigned cogent reasons in support of his conclusion and the punishment was also imposed commensurate with the lapses on the part of the applicant.

6. We heard Mr. Rajeev Sharma, learned counsel for applicant and Mr. R V Sinha, learned counsel for respondents, at length.

7. The charge against the applicant is that he failed to discharge his duties in the context of a collapse of building

within his jurisdiction. In the set up of the Corporation, there exists the EE, AE and JE. All of them are assigned the duties at different stages, for the purpose of preventing the unauthorized construction and ensuring the safety of the building. It is not in dispute that the building collapsed, which resulted in death of seven persons. The allegation against the applicant and two other EE and JE, are that they did not take adequate steps even after the Police reported the matter. The EO submitted the report holding that the charges are not proved against the applicant and EE.

8. The DA issued a detailed note proposing to disagree with the findings. His version was that had the applicant and other Engineers, at different ranks, taken proper care to ensure that no unauthorized construction is made, the tragedy would not have taken place.

9. It is seriously urged before us that the report submitted by the Police was in respect of one building, whereas the charge was in respect of property bearing No.5079, Rui Mandi, Sadar Bazar. This plea would have held water, had it been the case of the applicant from the beginning, that the building bearing No.5079, Rui Mandi, Sadar Bazar, did not collapse at all. The record discloses that only one building collapsed and it turned out to be the one, bearing No.5079. The mere fact that a different number was mentioned in the police report, does not

make much difference. The AA has addressed this issue in a very succinct and perfect manner, and we do not find any basis to interfere with the same.

10. It is true that the EE was also imposed the punishment of reduction in rank and he filed O.A. No.4228/2014. In the order dated 26.07.2016 passed by this Tribunal, it was held as under:-

“12. There is an additional reason for allowing this Application. The applicant is not the person who is entrusted with the site inspection personally. He ought to depend upon subordinate staff, particularly the JE (Building), whose onerous duty was to inspect the unauthorized construction and report to the AE (Building) and/or the applicant, EE (Building). The applicant was never reported about the alleged unauthorized construction in property No.5079, Rui Mandi, Sadar Bazar, nor even in respect of the three properties mentioned in the police complaint. The misconduct, if any, can only be attributed to the JE(Building) or his immediate senior, i.e., AE (Building), and not to the applicant. No evidence has been led or material placed on record during the inquiry proceedings or even thereafter to indicate that the applicant was responsible for inaction and had the knowledge of such unauthorized construction.

13. For the above reasons, this Application is allowed. The impugned orders dated 16.06.2014 passed by the disciplinary authority and the appellate order dated 21.10.2014 are hereby quashed. The applicant shall be entitled to all consequential benefits available to him under law.”

11. In a way, the order in O.A. indicts the JE and the applicant herein. We are of the view that such an observation cannot be taken on its face value because the applicant was not party to that. At the same time, we find it difficult to accept that

there was no lapse on the part of the applicant. The applicant did not state the nature of steps taken by him and pleaded that the collapse took place despite that. No such version has come from the applicant. The whole episode is full of passing the blame against one and other. The applicant stated that it was the duty of JE to report to him and that of the EE to take a decision. He wanted to play safe. Similar efforts were made by the Engineers, above and below the applicant. A tragedy resulted in seven deaths and persons cannot be ignored just like that.

12. Order of punishment is to the effect that it shall be 'reduction in rank'. It appears that the DA meant it to be the order of reversion. We are of the view that such a serious punishment against the applicant, even while the JE and EE were exonerated, cannot be sustained in law. The applicant has since retired from service. We feel it appropriate that the modification in punishment from 'reduction in rank' to 'reduction in pay scale by two stages with cumulative effect', will meet the ends of justice.

13. We, therefore, partly allow the O.A. modifying the punishment to the one of "reduction in pay scale by two stages with cumulative effect". The retiral benefits of the applicant shall be revised accordingly, within two months from the date of receipt of a copy of this order. The applicant will be entitled to

be paid the arrears of pension alone and not the arrears of salary on account of the modification of punishment.

There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

September 05, 2019
/sunil/

