

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 4049/2014

New Delhi, this the 19th day of August, 2019

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

Shri Vijay Kumar Agarwal,
Aged 58 years,
S/o Shri Ved Prakash,
R/o 29, Mitra Vihar,
Pitampura, New Delhi.

...Applicant

(By Advocate: Mr. Sidharth Joshi)

Versus

1. Delhi Development Authority,
Through its Vice Chairman,
Vikas Sadan, INA Market,
New Delhi.
2. Hon'ble Lt. Governor,
Chairman,
Revisionary Authority,
Delhi Development Authority,
Raj Niwas Marg, New Delhi.
3. Vice Chairman,
Appellate Authority,
Delhi Development Authority,
Vikas Sadan, INA Market,
New Delhi.
4. Finance-Member,
Disciplinary Authority,
Delhi Development Authority,
Vikas Sadan, INA Market,
New Delhi.

...Respondents

(By Advocate: None)

ORDER (ORAL)

Mohd. Jamshed, Member (A):-

The applicant worked as Assistant Engineer (AE) in Delhi Development Authority (DDA). While he was working as Junior Engineer (JE) in DDA, during the period July, 1983 to October, 1985, he was in charge of the work of MIG units in Rohini project. On a complaint received from one of the residents regarding cracks in the columns of structure, investigations were undertaken and site inspections conducted by the concerned Chief Engineer (CE). Various irregularities were noticed in the construction work. For these lapses and irregularities the applicant was served with a charge memorandum dated 19.03.1998. Four articles of charges were indicated in the charge memorandum.

2. Since the explanation submitted by the applicant was not found satisfactory, Inquiry Officer (IO) was appointed vide order dated 04.02.2000. The IO submitted his report on 31.01.2001 holding articles of charges I, III and IV as "Proved" and charge II as "Not Proved". The applicant submitted his representation on the inquiry report on 12.12.2002 to the DA denying the charges. The DA vide

impugned order dated 30.09.2003 imposed the penalty of reduction in pay by two stages in the existing scale of pay with cumulative effect for a period of two years. The applicant preferred an appeal dated 28.06.2004 before the Appellate Authority (AA). The AA rejected the appeal vide order dated 23.11.2004. Not satisfied by the order of the AA, the applicant preferred revision appeal on 14.11.2012. The Revisionary Authority (RA) also rejected the appeal of the applicant vide order dated 30.05.2014. The applicant submitted that various factors mentioned and explanations given by him have not been taken into account by the Inquiry Officer and also subsequently by DA, AA and RA. Aggrieved by this action of the respondents, he has filed the present OA seeking the following relief(s):-

"i. Quash/set aside the Impugned Order bearing No. 155/Vig.DDA/5203 dated 30.05.2014 passed by the Respondent no. 2, and /or

ii. Quash/set aside the Impugned Order bearing no. 379/Vig./2004/10824 dated 23.11.2004 passed by the Respondent no. 3, and/ or

iii. Quash/set aside the Impugned Order bearing no. 269/Vig./2003/6776 to 6785 dated 30.09.2003 pased by the Respondent no. 4, and/or

iv. Quash/set aside the Impugned Memorandum bearing no. F26(40)94/Vig.VI/2878 dated 19.03.998 and/or"

The applicant has sought quashing of the charge memorandum dated 19.03.1998 and the orders of DA, AA and RA.

3. The respondents, through their counter affidavit opposed the OA and reiterated that the applicant was issued a major penalty charge sheet in view of serious irregularities detected in the project that was under his charge. These include charges of use of unfit water for the construction purposes, non-testing of the concrete sample, failing to detect the poor workmanship and rusting of reinforcement etc. It is also submitted that the IO conducted a detailed inquiry and held article of charges I, III and IV as "Proved" and charge II as "Not Proved". The DA imposed the punishment of reduction in pay by two stages in the existing pay scale with cumulative effect for a period of two years, which was upheld by the AA and RA, through detailed reasoned and speaking orders.

4. We heard, Mr. Sidharth Joshi, learned counsel for the applicant and perused the records. Since there is no representation on behalf of the respondents and this being an old case with 18 adjournments, the OA has been heard ex-parte in terms of Rule 16 of Central Administrative Tribunal (Procedure) Rules, 1987 .

5. The applicant while working as JE was in charge of the work of MIG units in Rohini project and got the work executed through contracting agencies. On a complaint received from a resident of one such flat regarding cracks in the columns of the structure, the site was inspected by CE (R), CE (QC) and also by specialized consultant of DDA. During these investigations and checks various shortcomings and lapses were observed in the work that was undertaken. Holding the applicant responsible a charge memorandum was issued with the following article of charges:-

“Article-I

The water ws tested and found not fit for construction purpose but no remedial measures were taken.

Article-II

A sample of concrete was got tested and as per test the concrete mix was 1:2.6:4.9 against 1:2:4 specified.

Article – III

CE (QC) during the investigation of the work had observed poor workmanship, less cover, delay in rectification which has aggravated the damage.

Article-IV

The concrete has spalled due to rusting of reinforcement. The rusting may be caused by higher chloride/sulphate for seepage of water and moist air etc.

As set out in imputation of misconduct in Annexure – II. Sh. Vijay Kumar Aggarwal JE by his above acts of omission and commission has failed to maintain absolute integrity, exhibited back of devotion to duty, acted in a manner which is unbecoming of a govt. servant and exhibited laxity in supervision thereby contravening Rule-3

of CCS (Conduct) Rules 1964 as made applicable to the employees of the Authority.”

6. Inquiry was conducted and the IO submitted his report on 31.01.2001 holding article of charges I, III and IV as “Proved” and article of charge II as “Not Proved”. Copy of inquiry report was given to the applicant for submitting his representation. The applicant submitted a detailed representation dated 12.12.2002. The DA considered the same and vide order dated 30.09.2003, held as under:-

“Keeping in view the lapses of gross negligence, lack of supervision and lack of devotion to duty, the undersigned being the disciplinary authority has come to the conclusion that ends of justice will be met, if the penalty of reduction of pay by two stages in the existing scale for a period of 2 years with cumulative effect is imposed on Shri Vijay Kumar Aggarwal, J.E.

NOW, THEREFORE, the undersigned in exercise of powers conferred upon him under the said Regulations, hereby imposes the penalty of reduction in pay by two stages in the existing scale of pay with cumulative effect for a period of two years with immediate effect on Shri Vijay Kumar Aggarwal, J.E. During this period of reduction of pay he will earn increments and on expiry of the period the reduction will have the effect of postponing his future increments.”

7. The penalty of reduction in pay by two stages in the existing scale of pay with cumulative effect for a period of two years was imposed on the applicant. His appeal was also considered and decided by the AA. Vide its order dated 23.11.2004, the AA held as under:-

"AND WHEREAS the undersigned being the Appellant Authority has gone through the appeal and related records of the case. From the available records it is seen that the Disciplinary Authority has considered all the aspects brought out in the appeal. There has been no record to prove conclusively that the bore hole from where the water had failed the test had actually been plugged. As such possibility of water being used from this bore can not be ruled out. As regards CTE not pointing out similar defects does not mean that the defects pointed out by the Quality Control Cell, which is also an independent body, did not exist. The reply of the appellant is thus not convincing.

NOW, THEREFORE, the undersigned being the Appellant Authority having taken all facts and circumstances of the case into account and considering the lapse on the part of the appellant is of the view that the penalty of reduction of pay by two stages in the existing scale of pay for a period of two years with cumulative effect imposed upon Sh. Vijay Kumar Aggarwal, J.E. by the Disciplinary Authority is just and reasonable."

8. The applicant submitted a representation to the RA dated 14.11.2012, against the penalty imposed by the DA and upheld by the AA. The RA passed a detailed reasoned and speaking order dated 30.05.2014 reviewing the appeal and held as under:-

"6. I have gone through the impugned penalty order, the petitioner's representation submitted before the Disciplinary Authority, his contentions in the Revision Petition and relevant records of the case. As per the Inquiry report from the test report of Shriram Test House dated 9.9.1983 there is no doubt that sample of water did not confirm to IS: 456-1978 for construction purpose. The Inquiry Report also mentions that rusting may be caused by higher chlorides/sulphates in water, less cover and poor compaction leading void for seepage for water and moist air etc. Besides the quality of water used, Exhibit S-5 leaves no doubt about the poor workmanship by the contractor. The finding of the Inquiry Officer is consistent and logical. The petitioner as Junior Engineer was the onsite engineer responsible to ensure

quality of work executed. Evidently, there is an apparent lack of due diligence on the part of the petitioner. The claim of the petitioner regarding grant of ACP is beyond the scope of the Disciplinary Proceedings, as the orders in the Disciplinary Proceedings has no direct repercussion on entitlement of ACP. As for any indirect effect thereof, it is not a matter for consideration. In Disciplinary Proceedings because it does not have similar implication universally, which is the probable reason for the petitioner to cite an example and claim discrimination.

7. In view of the totality of facts and circumstances of the case discussed above, I am of the considered opinion that the averments adduced by the petitioner in his Revision petition have no merit to grant the relief sought. The penalty levied is adequate with regard to the proven misconduct. I, therefore, see no reason to interfere with the impugned order. The Revision petition is hereby rejected.

The petitioner, Sh. Vijay Kumar Agarwal, Assistant Engineer be so informed.”

9. It is evident from the above that the respondents have followed the due procedure in issuing the charge memo pointing out serious irregularities and in holding the inquiry. The applicant has been given reasonable opportunity for making representations on the inquiry and to other authorities against the inquiry report and subsequent orders. The applicant has presented his case before the DA, AA and the RA. Detailed reasoned and speaking orders have been passed by all the authorities upholding the punishment imposed by the DA.

10. This brings us to the issue of the role of Tribunal to interfere with the disciplinary proceedings and quantum of

punishment imposed. It is pertinent to mention that the Tribunal cannot act as an AA in such matters. It can only review the manner in which the decisions are taken in disciplinary proceedings. The Tribunal examines whether the delinquent employee is given a fair treatment. This includes the procedure adopted in the inquiry, observation of the principles of natural justice and the relevant rules. Tribunal also has to consider if the conclusions are based on evidence and whether the authority has the jurisdiction to conduct such an inquiry. Needless to mention, that the Tribunal can only interfere, if it appears, that the delinquent employee has not been dealt in a manner consistent with statutory rules or if the conclusions are based on perverse interpretation of evidence.

11. As far as quantum of punishment is concerned, the role of the Tribunal is also limited. Unless the inflicted punishment shocks the conscience of the adjudicating authority. The quantum of punishment is entirely within the domain of DA and AA. It is settled law that the Tribunal and Courts cannot assume the functions of DA and AA and decide the quantum of punishment and nature of penalty unless the punishment imposed by DA is found to be shockingly disproportionate. **The Hon'ble Apex Court in**

the case of Parma Nanda Vs. State of Haryana and others reported in 1989 (2) SCC 177 had held as under:-

"The jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the inquiry officer or competent authority where they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the inquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

12. In the present OA, charge memorandum was issued for serious lapses and irregularities during the construction work which could have resulted in serious consequence. The checks and investigations were carried out at a fairly senior level and the irregularities and lapses were established. Subsequently the charge memorandum was issued. We are of the view that the disciplinary proceedings have been conducted in accordance with law and penalty has been imposed by the DA giving reasoned and speaking orders. The same has also been considered by the AA and RA and upheld by them.

13. In view of the above discussion undertaken, we do not find any merit in this OA. The same is accordingly dismissed. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

/ankit/

(Justice L. Narasimha Reddy)
Chairman