

**Central Administrative Tribunal
Principal Bench**

OA No.4195/2015

New Delhi, this the 20th day of November, 2019

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

B.S. Manik (Group B), Aged about 62 years,
S/o late Sh. Sewa Singh Manik,
R/o EC-175, Maya Enclave, Hari Nagar,
New Delhi-110064,
Presently retired AE(C) from DDA - Applicant

(By Advocate: Mr. RA Sharma)

Versus

1. Delhi Development Authority,
Through its Chairman,
(Lt. Governor of Delhi)
Raj Niwas, Delhi-110054
2. Vice Chairman,
DDA, Vikas Sadan (B Block)
1st Floor, Near INA,
New Delhi-110023
3. Engineer Member,
DDA, Vikas Sadan (B Block)
1st Floor, Near INA,
New Delhi-110023 - Respondents

(By Advocate: Ms. Sriparna Chatterjee)

: O R D E R (ORAL):

Justice L. Narasimha Reddy, Chairman:

The applicant was working as a Junior Engineer in Delhi Development Authority (DDA) and he has since retired from service. A charge memo was issued to him

on 12.08.2008, alleging that slabs, beams, balconies, sun shades etc. certified by him were not of good quality and standard and the DDA had to incur Rs.17.83 lacs (approx.) for rectification or replacement of the structures. Another allegation was that the chloride contents in the mass of concrete used for the works was found to be beyond 0.175% and the same became the main source of corrosion, aided by carbonation which resulted in execution of sub-standard work. The applicant submitted an explanation denying the allegation.

2. Not satisfied with the explanation, the Disciplinary Authority (DA) appointed the Inquiry Officer (IO). Through a report dated 25.08.2009, the IO held the articles of charge against the applicant, as 'partly proved'. The DA proposed to disagree with the findings of the IO and issued a disagreement note, vide show cause notice dated 04.01.2011. The applicant submitted his explanation to that on 17.01.2011. Ultimately, the DA passed an order dated 14.09.2011, imposing the penalty of 'reduction of pay by two stages in the time scale for a period of one year and directed that the applicant shall not earn any increment during the period of reduction and on expiry of the period of

reduction, it would have the effect of postponing his future increments of pay. In other words, it was imposed with cumulative effect. The appeal and revision preferred by the applicant were rejected on 13.05.2013 and 18.12.2014 respectively. Hence this O.A.

3. The applicant contends that the allegations made against him are totally devoid of any substance and they are based on imagination. He submits that on the basis of oral and documentary evidence adduced before him, the inquiry officer found the charges as 'partly proved'; and though disagreement note was issued by the DA, the articles of charge were taken as 'proved' without assigning any reasons, whatsoever. He submits that the disciplinary authority, appellate authority and the revisionary authority did not consider the various grounds raised by him.

4. On behalf of the respondents, a detailed counter affidavit is filed. It is stated that the applicant was required to pay attention in the context of certifying the material and structures and on account of laxity on his part, the DDA had to incur huge expenditure for their replacement. It is stated that the disciplinary authority

followed the prescribed procedure and came to the conclusion that the charges are proved. It is also stated that the punishment imposed against the applicant is commensurate with the charges proved against him.

5. We heard Mr. RA Sharma, learned counsel for the applicant and Ms. Sriparna Chatterjee, learned counsel for the respondents.

6. The articles of charge against the applicant read as under:-

“Article-I

That the said Sh. B.S. Manik, has recommended payment for the item of RCC work such as Slabs, columns, beams, balconies, sun shades etc. He failed to exercise effective supervision of the work which resulted in execution of poor quality of RCC works, RCC slabs of Flat No.207, 250, 267, 266 & 270 paid vide MB No. 706 Page 21.2, are being dismantled and relaid at an extra cost causing financial loss to the Deptt. As per the TS Sanctioned by CB (Rohini) for the special repair on amount of Rs.17.83 lacs (approximately) is likely to be spent for rectification of RCC members, which is an anticipated financial loss to the Deptt.

Article II

As per the investigation report of M/s Engineering and Development Consultant, the chloride contents is beyond the threshold limit of 0.175% by mass of concrete and as per the report duly endorsed by CE/QC vide letter dated 12.2.07 it is perhaps coming out from the ingredients of concrete such as water and sand appears to be the

main source of corrosion aided by carbonation which resulted in execution of sub standard work.”

7. The allegation was that the applicant did not exhibit proper attention in the context of certifying the RCC Structures used in the construction of buildings by DDA. Both the articles are different facets of the same allegations. The applicant denied the articles of charge by submitting an explanation and the IO was appointed. After examining the oral and documentary evidence adduced before him, the IO recorded his conclusion as under:-

“On the basis of documents and oral evidence adduced before me during the inquiry as well as on the basis of DDA, Conduct, Disciplinary and Appeal Regulations, 1999 and after careful assessment of the above deliberation, I hereby hold charges as framed against Sh. B.S. Manik, A.E.DDA under Article A-I and A-II as “Partly Proved”.

8. In a charge of the nature extracted above, the findings that it is partly proved is rather difficult to discern. When the allegations are of negligence, the finding was required to be either in the positive or negative. Obviously for this reason, the DA issued a disagreement note to the applicant. On his part, the applicant submitted his explanation.

9. Once a disagreement note is issued, the basis on which the DA proposes to disagree with the findings of the IO is required to be mentioned. Thereafter a definite finding has to be recorded, duly referring to the oral or documentary evidence, which according to the DA, was not properly appreciated by the IO. In the absence of such an exercise, the very purpose of appointing an IO would be defeated and it would be left to the sweet will of the DA to arrive at his own conclusion, whatever be the findings in the inquiry. In the instant case, the manner in which the DA has arrived at the findings is as under:-

“AND WHEREAS, undersigned being the Disciplinary Authority has gone through the report of the IO and the submissions made by the CO in his representation and has come to the conclusion that the charged official has failed to discharged his duty diligently as is evident from the report of M/s Engineering & Development consultants, suggesting execution of poor quality of RCC work with strength of concrete as low as 74Kg/Cm² and the chloride content was beyond threshold limit of 0.175 by mass of concrete and the ends of justice will be met if the penalty of reduction of pay by 2 stages in the time scale of pay for a period of one year is imposed upon Sh. BS Manik AE. It is further ordered that he would not earn increments during the period of reduction and on expiry of the period of reduction, it would have the effect of postponing his future increments of pay.”

10. The first part of the paragraph did nothing more than repeat the contents of the articles of charge. The second part of it has indicated the punishment. No reference was made to any oral or documentary evidence, that constituted the basis for the DA to come to the conclusion different from the one, arrived at by the IO. We, therefore, find that there is a serious flaw in the order of punishment.

11. In the normal course, the order of punishment must be set aside and the case should be remitted to the DA for passing a fresh order, in accordance with law. However, in view of the fact that the applicant has retired from service and the issue dates back to more than a decade, we are of the view that ends of justice would be met, if the penalty of reduction of pay by two stages in the time scale of pay for a period of one year is treated as the one without cumulative effect.

12. Learned counsel for the respondents brought to our notice that in OA No.4194/2015, a similar order of punishment was challenged and the Tribunal dismissed the same through an order dated 03.01.2019. We presumed the same and find that the question

pertaining to the disagreement by the DA was not dealt with, in detail.

13. We, therefore, partly allow the OA and direct that the punishment imposed against the applicant through an order dated 14.09.2011 shall stand modified to the one of reduction of pay of the applicant by one stage for a period of one year without any cumulative or future effect. The pension of the applicant is pre-determined. He shall not be entitled to any arrears if it is decided within two months from today.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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