

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) No.3623/2008**

% **Date of decision : 09.05.2008**

D.K. Gupta Petitioner
Through: Mr.Rajiv Sharma, Advocate.

Versus

MCD and others Respondents
Through : Mr.Ajay Arora and Mr.Kapil Dutta,
Advocate for respondents/MCD.

CORAM :-

* **HON'BLE MR. JUSTICE ANIL KUMAR**

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| 1. Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not? | NO |
| 3. Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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The petitioner has challenged the decision of disciplinary and appellate authority imposing the punishment of reduction of pay in time scale by three stages for a period of three years with cumulative effect.

The petitioner is a Junior Engineer and a charge sheet was issued to the petitioner contending that he did not take any effective step/action to stop and demolish the unauthorized construction carried

out in property No.A-8, Hardev Puri, Main 100' Road, Shahdara (N) Zone and helped the owner/builder to complete the under-construction consisting of one hall and staircase and loft at ground floor, 4 rooms, one kitchen, under-construction at first floor, 3 rooms, 2 kitchens, one under-construction at second floor and one room, one store, one under-construction and staircase at third floor in the said property. Another charge against the petitioner was not taking demolition action against under Section 343/344 of the DMC Act and for not initiating sealing action under Section 345-A and failure to prosecute owner/builder under section 332/466-A of the DMC Act in respect of the said property.

The charge sheet was duly communicated to the petitioner and the inquiry was conducted against the respondent. The inquiry officer gave a report holding that all the charges against the petitioner were made out and consequently the disciplinary authority imposed a punishment of reduction of pay in time scale by three stages for a period of three years with cumulative effect. The appeal filed by the petitioner before the Appellate Authority was also dismissed and the order of disciplinary authority dated 9th May, 2007 was upheld in the appeal by order dated 12th December, 2007 upholding the penalty imposed of reduction of pay in time scale by three stages for a period of three years with cumulative effect.

The petitioner has challenged the order of the disciplinary and appellate authority on the ground that the charge sheet had been prepared on assumptions as the construction was completed on 17th January, 2000 much prior to the date of posting of the petitioner and inspection was conducted on 19th June, 2000 after the transfer of the petitioner and on the day of inspection, it was found that stone/tile cutting work was going on. Learned counsel for the petitioner has contended that the penalty has been imposed on the petitioner on the assumption that if the stone work was in progress on the date of inspection then such work must have continued even during the time the petitioner was posted as Junior Engineer. The petitioner has also challenged the penalty imposed upon him on the ground that the Junior Engineers posted in the area were much less than the number of Junior Engineers required and consequently it was not possible for to have knowledge of all the unauthorized construction carried out in the colony/area and he had come to know about the unauthorized construction only on the basis of news item. The petitioner has also contended that there he has been discriminated inasmuch as the other persons during the tenure of the whom the unauthorized construction was carried on, no action has been taken.

Perusal of the inquiry report reveals that the reference received from the Commissioner regarding carrying on unauthorized

construction carried out at property No.A-8, Hardev Puri, Main 100' Road, Shahdara (N) Zone was taken into consideration along with other material. On perusal of all the material it was found that the finishing work was going on and one hall with staircase with loft at ground floor, four rooms, one kitchen, stairs, WC and Balcony at first floor, three rooms, two kitchen, L/B, one WC, stairs at Second Floor and one room, one store, one WC, stairs at Second Floor and one room, one store, one WC, stairs at Second Floor and one room, one store, one WC land stair case at third floor were incomplete and the construction was still going on. The inquiry officer has considered the documents PW1/A to PW1/H and has inferred that unauthorized constructions was carried out in the property from January 2000 to July 2000. Since the petitioner was posed as Junior Engineer from 4th February, 2000 till 2nd April, 2000, therefore, it could not be inferred that the petitioner could not have the knowledge of the unauthorized constructions. Considering the testimonies and the documents, it has been inferred that the charges for not taking action for the unauthorized constructions and for demolition and sealing had been made out.

This is no more res integra that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India will not substitute the findings of the inquiry officer with its own finding. While exercising its powers of judicial review under Article 226 of the

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Constitution of India this Court is not to re-appreciate the evidence. It is a settled position of law that in exercise of jurisdiction under Article 226 of the Constitution of India, the Court does not interfere with factual findings and restrain itself from re-appreciating evidence while exercising powers of judicial review. The objective of judicial review is to ascertain that a person received a fair treatment and objective and it is not to re-appreciate the entire pleas and evidence and draw inferences again. The findings and inferences of the Labor Court are based on evidence and documents on record and there does not appear to be any manifest errors in them. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. If an enquiry is properly conducted, then the departmental authorities are held to be the sole judges of the facts and if there be some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be argued upon or disputed before the Tribunal. The following judgments rendered by the Supreme Court fortify the aforesaid conclusion:

- (i) Martin Burn Ltd. v. R.N. Banerjee 1958 SCR 514.
- (ii) State of Orissa v. Bidyabhushan Mohapatra MANU/SC/0361/1962.
- (iii) State of A.P. v. S. Sree Rama Rao MANU/SC/0222/1963.

(iv) State Bank of India and Ors. v. Samarendra Kishore Endow and Anr. MANU/SC/0655/1994.

(v) Regional Manager, Rajasthan SRTC v. Sohan Lal MANU/SC/0841/2004.

(vi) Bharat Forge Co. Ltd. v. Uttam Manohar Nakate (2005) 2 SCC 489.

(vii) Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane MANU/SC/0832/2004.

(viii) Muriadih Colliery v. Bihar Colliery Kamgar Union MANU/SC/0131/2005.

(ix) V. Ramana v. AP. SRTC MANU/SC/0539/2005.

(x) Hombe Gowda Educational Trust and Anr. v. State of Karnataka and Ors. MANU/SC/2522/2005.

(xi) L.K. Verma v. H.M.T. Ltd and Anr. MANU/SC/0703/2006.

The findings of the enquiry officer are not perverse nor have any manifest errors. The pleas of the petitioner are solely for re-appreciating the inferences drawn by the authorities. The plea of the petitioner that he could not have knowledge has not been believed. The objective of judicial review is to ascertain that a person received a fair treatment and objective is not to re-appreciate the entire pleas and evidence and draw inferences again. The Apex Court in (1995) 6 SCC 749 B.C.Chaturvedi Vs Union of India at page 759 in para 12 had held as under:

“ 12 . Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the

individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or **whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion.** But that finding must be based on some evidence. **Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding.** When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. **The Court/Tribunal in its power of judicial review does not act as Appellate Authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence.** The Court/ Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. **If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."**

For the charges against the petitioner, the punishment cannot be termed shocking or illogical or suffering from procedural impropriety or is in defiance of logic or moral standards. The Learned counsel is

unable to point out as to how, the punishment imposed is in defiance of logic or moral standards. The Supreme Court in *Damoh Panna Sagar Rural Regional Bank Vs Munna Lal Jain*, (2005) 10 SCC 84 had held as under:

"The court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision. The court should not interfere with the administrator's decision unless it is illogical or suffers from procedural impropriety or is shocking to the conscience of the Court, in the same that it is in defiance of logic or moral standards. Unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional circumstances and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. When a Court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law. In the normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the appellate authority to reconsider the penalty imposed. In the case at hand, the High Court did not record any reason as to how and why it found the punishment shockingly disproportionate.

So long as the charges are proved against the petitioner, he cannot contend that the others persons allegedly also responsible for

unauthorized constructions should also be punished before action can be taken against him or that there is discrimination.

For the foregoing reasons, I do not find any perversity or manifest error so as to entail interference with the findings of the disciplinary authority and the appellate authority under Article 226 of the Constitution of India in the present facts and circumstances of the case. The writ petition is without any merit and it is, therefore, dismissed.

May 09, 2008
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ANIL KUMAR, J.