

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

+ **W.P.(C) No. 9091/2006**

Date of Decision : September 29, 2008

Jugveer Petitioner

Through : Mr. Rajeev Sharma,
Advocate

Versus

Municipal Corporation of Delhi & Ors. Respondents

Through: Mr. Sanjeev Sabharwal,
Advocate

CORAM :

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

SUDERSHAN KUMAR MISRA, J

1. The petitioner is working as a Junior Engineer (Civil) in MCD. He is aggrieved by an order passed by the Vigilance Department on 21.4.2006. This order came to be passed under Regulation 16 of Delhi Municipal Corporation Services (Control & Appeal) Regulations, 1959. By this order, the Commissioner, MCD has set aside the orders dated 2.9.2005 and 13.2.2006 passed by the Deputy Commissioner/C.L. Zone. As a result of this, the earlier office order dated 1.8.2003 working out the periods for which the penalties imposed on the petitioner were to run one after the other, i.e., consecutively, was revived. The question before this court is whether this revival of the order of 1.8.2003 whereby penalties

imposed on the petitioner were to run consecutively amounts to an enhancement of the punishment when compared to the orders of 2.9.2005 and 13.2.2006 which had directed the punishments to run concurrently, but were now set aside.

2. The petitioner was recruited by the respondent as a Junior Engineer (Civil) in 1988. He has so far served the respondent for about 18 years or so. At one point during this period he happened to be posted for one year and eight months in the City Zone of the MCD. During this tenure, as many as 15 charge sheets are said to have been served upon the petitioner. Ultimately, as many as 14 different orders came to be passed against the petitioner. By these orders, which were passed from 30.11.1992 to 22.5.2001, separate penalties, inter alia, imposing stoppage of one, two or three increments, with or without future effect, as well as reduction in the present time-scale, came to be imposed. Ultimately, on 1.8.2003, an office order was issued by the Executive Engineer-XVII, MCD, where the manner in which all these penalties would be given effect to was worked out. According to that order, these penalties were to be implemented one after the other i.e., consecutively. In doing so, the Executive Engineer found that these penalties imposed on the petitioner will run upto the date of his retirement, i.e., 30.4.2021. He also found that since the petitioner was retiring on 30.4.2021, therefore the last penalty, which had been imposed on the petitioner on 22.5.2001, could not be implemented.

The following penalties have been imposed on the petitioner by the Competent Authority :-

S. No.	Type of Penalties	Office Order No. & Date
1.	Stoppage of two increments without future effect	No.1/382/91/P/Vig. PKS/92/89 dt. 30.11.92
2.	Stoppage of one increment without future effect	No.1/204/91/P/Vig. PKS/92/956 dt. 31.12.92
3.	- do -	No.1/450/90/Vig./P/610/93/261 dt. 23.3.93
4.	Stoppage of three increments without future effect	No.1/281/92/Vig./P/DCS/94/502 dt. 12.5.94
5.	- do -	No.1/366/92/Vig./P/SK/94/555 dt. 2.6.94
6.	Stoppage of two increments without future effect	No.2/59/94/Vig./P/UD/94/1802 dt. 7.11.94
7.	Stoppage of two increments with future effect	No.107/92/DE-DDI(I) /843 dt. 10.11.95
8.	Stoppage of three increments without future effect	No.2/3/95/Vig./P/RK/98/579 dt. 28.8.98
9.	Reduction by four stages in the present time scale for four years	No.1/4/92/Vig./P/RK/98/597 dt. 2.9.98
10.	Stoppage of two increments without future effect	No.2/131/95/Vig./P/RK/98/699 dt. 13.10.98
11.	Stoppage of three increments with cumulative effect	No.141/92/DE/DDI(I)/ 115 dt. 5.3.99
12.	Stoppage of three increments without future effect	No.2/222/95/Vig./P/RK/ 2000/119 dt. 21.02.2000
13.	Stoppage of ONE increment without future effect	No.2901/DEC/DOI/2000/ 681 dt. 07.11.2000
14.	- do -	No.25/98/DE/DOI/II/256 dt. 22.05.2001

In the same order, the Executive Engineer also noted that;

“.....these penalties of Sh. Jugveer Singh will run upto date of his retirement i.e., 30.04.2021.”

3. Aggrieved by this order, the petitioner filed Writ Petition No.6914/2003 in this Court. He contended, inter alia, that in a

similar case, several penalties imposed on another employee, Shri Suraj Prakesh Sagta, which were to run consecutively, were later on directed by the Deputy Commissioner, City Zone to be implemented concurrently. In that matter, by an interim order, this court directed the respondents to consider the petitioner's case afresh. A direction was also issued to the respondents to obtain the opinion of the Govt. of India in this respect. According to the petitioner, pursuant to those directions by this Court, on 2.9.2005, the Deputy Commissioner/C.L. Zone directed that since there is no specific order directing any of the penalties to run separately, therefore, in this case, the penalties will run concurrently.

4. The petitioner states that since the respondents were not implementing the above order of the Deputy Commissioner, directing that the penalties will run concurrently, he was denied consideration for the post of Assistant Engineer. This prompted him to file another writ petition no. 462/2006 in this Court praying that the respondents be directed to consider the petitioner eligible for the post of Assistant Engineer (Civil) with effect from 26.2.2003. On 20.2.2006, during the pendency of that writ petition, the Executive Engineer XVII informed the petitioner that an order has been passed by the Deputy Commissioner, Civil Lines Zone on 13.2.2006, directing that the punishments imposed on him will come to an end with effect from 1.9.2002. Satisfied with the above order, the petitioner withdrew writ petition No.462/2006 on 21.4.2006. He also withdrew his earlier Writ Petition No. 6914/2003.

5. Thereafter, the impugned order dated 21.4.2006 communicating an order of the Commissioner, MCD dated 20.4.2006, was served upon the petitioner. This order stated that;

“In a review case, preferred under Regulation 16 of DMC Service (Control & Appeal) Regulation, 1959, the Commissioner/MCD vide his order dated 20.4.2006 has set aside the impugned order dated 2.9.2005 and 13.2.2006 passed by the Dy. Commissioner/C.L. Zone thereby allowing to run the penalties concurrently imposed in different RDA cases upon Shri Jugveer, JE.”

6. The counsel for the respondents has urged that the decision of the Commissioner, MCD, is in accordance with the power of review vested in him under Regulation 16. The relevant portion of Regulation 16 of D.M.C. Regulations, 1959 reads as follows;

“16 (1) Notwithstanding anything contained in these regulations:-

(i) the Commissioner, in case the order proposed to be reviewed has been made by the Dy. Commissioner or other officer subordinate to him;

(ii) the Corporation in case the order proposed to be reviewed has been made by the Standing Committee;

(iii) the Central Government in case the order proposed to be reviewed has been made by the Corporation;

may at any time, either on his or its own motion or otherwise call for the record of proceedings enquiry and review any order made under these regulations from which an appeal is allowed but from which no appeal has been preferred or from which no appeal is allowed and may:-

(a) confirm, modify or set-aside the order; or

(b) confirm, reduce, enhance or set-aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed, or

(c) remit the case of the authority which made the order or to any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case, or

(d) pass such orders as it may deem fit.

Provided that no order imposing or enhancing any penalty shall be made by the reviewing authority unless the municipal officer or the municipal employee has been given reasonable opportunity of making a representation against the proposed penalty...”

It is the respondent's case that the aforesaid decision dated 21.4.2006, directing that the penalties imposed should run

consecutively instead of concurrently, does not amount to enhancement of any existing penalty to bring it within the ambit of proviso to Regulation 16. He states that, therefore, the respondents were under no obligation to grant the petitioner any opportunity of making the representation envisaged by Regulation 16.

7. As explained above, the effect of the impugned decision of the Commissioner is that instead of running concurrently, as directed by the Deputy Commissioner on 2.9.2005, the penalties imposed on the petitioner shall now run consecutively. This order could have been prompted by one of the two situations; a) because he felt that the decision of the competent authority directing that the penalties run concurrently was incorrect, inter alia, for the reason that the competent authority had no power to direct the same; or b) because he felt that the direction that the punishments should run concurrently amounted to an inadequate punishment, and that punishment by way of penalties running consecutively was more appropriate to the circumstances of the case. Be that as it may, and regardless of the reasons that prompted the decision of the Commissioner, if in fact the penalty stands enhanced by this change from concurrent to consecutive, it is obvious that the provisions of Regulation 16 ought to have been complied with, and in case no opportunity has been given to the affected officer, this decision must fall to the ground. Consequently, what remains to be considered by this Court is whether the order of the Commissioner whereby the penalties imposed upon the petitioner were ordered to run consecutively instead of concurrently can be termed as an enhancement of the punishment.

8. According to ***Chamber's 20th Century Dictionary, 1995***, the word "enhance" is a transitive verb which means, "to heighten; to intensify; to add to or to increase". Similarly, ***West's Legal Thesaurus/Dictionary*** defines it as, "to make greater; increase; intensify; embellish; augment; amplify; expand". ***Black's Law Dictionary***, 8th Edition defines the expression "enhanced" as, "made greater; increased.....", and the word "enhancement" has been defined as, "the act of augmenting; the state of being enhanced.....". It therefore follows that the word, "enhancing", which is also a transitive verb, employed in the proviso to Regulation 16, clearly means increasing the penalty by making it greater, or in other words, more burdensome or onerous.

9. When compared with an order directing a punishment to run concurrently, it is obvious that a punishment running consecutively is more onerous. This proposition also gains strength from pronouncements of the Supreme Court. In ***Ram Lal Vs. State of Haryana (2003) 9 SCC 242*** the sentence awarded to the appellant was to run consecutively, and an appeal was preferred by the appellant praying for the sentences to be allowed to run concurrently. The Supreme Court rejected the contention of the appellant on the ground that the offence committed by the appellant was of serious nature, thought and it felt that under the circumstances, it was inappropriate to make the punishment run concurrently. Clearly, the Supreme Court considered consecutive punishment more onerous and arduous.

10. Similarly, in ***Brij Basi Lal Vs. State of Uttar Pradesh (1981) 3 SCC 584*** the magistrate directed that the sentence awarded to the appellant shall run consecutively. The Supreme

Court modified the sentence from consecutive to concurrent on the ground that the sentence imposing consecutive punishment was more onerous as compared to the gravity of the offence. Also, in ***Rajbir Vs. State of Haryana (1996) 7 SCC 86*** the Supreme Court modified the consecutive sentences ordered by the Designated Courts to concurrent sentences on the ground of the same being unjustified and harsh. In ***Ranchhod Lal Vs. State of Madhya Pradesh (1965) 2 SCR 283*** it was urged by the petitioner before the Supreme Court that the imposition of consecutive sentences on him is prejudicial and that he is being harassed by the same. His prayer that the sentences be ordered to run concurrently was dismissed by that Court for the reason that the offences committed by the petitioner do not warrant any lenient view to be taken. Looking to all these decisions, indubitably, the Supreme Court is of the view that a direction imposing concurrent sentences is more lenient than one imposing consecutive sentences.

11. In this case, enhancement can also be inferred from the fact that by the impugned order, the penalties which were supposed to cease with effect from 1.9.2002 are now to continue till the date of retirement of the petitioner i.e. till 30.4.2021. In other words, because of the impugned order the petitioner will continue to be visited by the consequences of the penalties imposed for another 18-1/2 years approximately. The order of the Commissioner under Regulation 16 of the D.M.C Regulations, 1959, setting aside the orders dated 2.9.2005 and 13.2.2006 passed by the Deputy Commissioner/ C.L. Zone, is therefore onerous in nature and hence amounts to enhancement of the penalty. It, therefore, follows that, as required by the proviso to Regulation 16, the Commissioner could not have done this without giving a reasonable opportunity to

the petitioner of making a representation against the order he was proposing to make. It is made clear that the only question being decided by this Court is that under the circumstances, the Commissioner could not have acted under Regulation 16 without granting the requisite opportunity in terms of the proviso thereto.

12. The impugned order dated 21.4.2006 is, therefore, set aside. However, looking to the circumstances of the case, and specially in view of the fact that the petitioner is a Junior Engineer (Civil) with the Municipal Corporation of Delhi, which is a public authority with a crying need for higher efficiency at every level of its hierarchy; and with a view to balancing the need for efficient functioning of the Public Authority with the rights of the individual officer to fair consideration and treatment; the Commissioner MCD is permitted to examine the matter afresh if he so desires. He may do so only after giving the petitioner a reasonable opportunity of making a representation against the proposed order as required by the proviso to Regulation 16. He shall then issue a reasoned order thereafter. The entire exercise be completed within four months from today.

13. It is ordered accordingly.

14. The writ petition is disposed of in the above terms.

Sudershan Kumar Misra, J.

September 29, 2008
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