

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

% **Date of decision: 30.05.2008**

+ **W.P(C) No.4304/2008**

Shri Anil Tyagi Petitioner
Through: Mr.Rajeev Sharma, Advocate.

Versus

Lt. Governor & Others Respondents
Through : Nemo.

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.

1. The petitioner impugns the order dated 25th July, 2007 of the Lieutenant Governor in the appeal filed by the petitioner against the penalty of stoppage of two increments without cumulative effect imposed upon him by the Commissioner MCD by order dated 20th September, 2006.

2. In the appeal, the Lieutenant Governor had modified the order dated 20th September, 2006 and reduced it to the Censure without affecting his future prospects of promotion. The petitioner has challenged the same again on the ground that the petitioner was not

posted in the concerned Division when the work was awarded and the same was completed by the Contractor and because after the expiry of stipulated period, the legal notice which was served by the Contractor was not in compliance of clause 25 of the agreement.

3. By order dated 5th April, 2005, learned single Judge in an Arbitration Petition No.67 of 2006 had directed the respondent no.2/Corporation to file an affidavit under the signatures of the Commissioner, MCD, setting out the reason why the admitted amount had not been remitted to the contractor and who was the officer responsible for it. The Commissioner, MCD, was also directed to conduct an inquiry and pay the amount to the Contractor along with interest and liberty was granted to recover the interest amount from the delinquent officer for detaining the admitted amount to the Contractor.

4. Pursuant to the order dated 5th April, 2006, a preliminary inquiry was conducted which revealed that though the bill was prepared in 1999 and the entries were made in the same year, neither the contractor came forward to accept the entries of the bills nor the Divisional Authorities tried to get the same verified from the Contractor and consequently the bills remained unattended till May 2006.

5. Minor penalty proceedings under Regulation 8 A of the DMC Services (Control & Appeal), Regulation, 1959 were initiated against the petitioner for his failure to process the legal notice received from the contractor from his Advocate for the appointment of an Arbitrator and after conducting an inquiry the penalty of stoppage of two increments with cumulative effect was imposed upon the petitioner.

6. The petitioner filed an appeal and raised the ground that he was posted in the Division after a gap of six years since the work was executed and bills were prepared for final payment and as no handing over/taking over of charge took place, no knowledge could be imputed to him about the pending bills. The pleas of the petitioner were considered by the Appellate Authority/Lieutenant Governor and considering various parameters, the Appellate Authority held that the penalty imposed is not proportionate to the gravity of his misconduct although the petitioner failed to process the legal notice served by the Contractor which was on account of confusion caused due to new zonal setup regarding the Division. Consequently after considering the respective contentions, modified the penalty of stoppage of two increments without cumulative effects and reduced it to "Censure without affecting the future prospects of promotion".

7. The petitioner seeks interference in the facts and circumstances. It is no more *res integra* that in exercise of jurisdiction under Article 226 of the Constitution of India the Court will interfere when it feels that the punishment imposed is shockingly disproportionate and it would be appropriate to direct the disciplinary authority or the appellate authority to re-consider the penalty imposed. 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.

8. This also cannot be disputed that the disciplinary authority and the appellate authority are fact-finding authorities and have exclusive

power to consider the evidence. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude and gravity of the misconduct. The High Court while exercising the power of judicial review, can not normally substitute its own conclusion on the penalty and impose some other penalty. 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 punishment cannot be termed shocking or illogical or suffering from procedural impropriety or 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 learned counsel rather wants this Court to re-appreciate the entire evidence and infer that the notice given by the Contractor was not in consonance with clause 25 and therefore, he was not entitled for any thing and in the circumstances no penalty can be imposed on the petitioner. This, however, cannot be done within the scope of judicial review.

9. There is no perversity or manifest error, in the facts and circumstances. The Court in exercise of jurisdiction under Article 226 of the Constitution of India shall not re-appreciate the evidence and pleas and contentions of the petitioner so as to reach a different inference and award a different penalty. There are no grounds to interfere with the order of the Appellate Authority reducing the

punishment of the petitioner from stoppage of two increments without cumulative effect to “Censure without affecting his future prospects of promotion”.

10. In the facts and circumstances, the writ petition is, therefore, without any merit and it is dismissed .

May 30, 2008
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ANIL KUMAR, J.