

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

+ **W.P. (C.) No. 8151/2008**

% **Date of Decision: 05.11.2009**

DELHI DEVELOPMENT AUTHORITY Petitioner

Through: Mr. Arun Birbal, Advocate.

Versus

K.P. GARG Respondent

Through: Mr. Vinod Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE VIPIN SANGHI

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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. (Oral)

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1. The petitioner Delhi Development Authority has challenged the order dated 16.11.2007 passed in T.A. No. 53/2007 (CWP) No. 5347/1993, Sh. K.P. Garg Vs. Delhi Development Authority setting aside the order dated 07.04.1992 of the disciplinary authority imposing a punishment of removal from service and directing the petitioner to decide with regard to the interregnum period in accordance with the rules and instructions.

2. Brief facts to comprehend the disputes between the parties are that on the ground that while working as Assistant Engineer in Division V at G.T. Karnal Road various contracts were executed by the DDA with the contractors and the respondent had given undue benefits to such contractors, he had been proceeded against under Rule 16 of the DDA (Salaries, Allowances & Conditions of Service) Regulations 1961. Pursuant to the enquiry conducted, an enquiry report dated 31.01.1990 was given where the respondent was exonerated from the charges.

3. Another enquiry was initiated against the respondent pursuant to the order dated 15.01.1991 on the ground that he failed to exercise adequate supervision and control in the work of C/C Type B group II at Trilokpuri which resulted in execution of sub standard work and an enquiry report dated 25.07.1991 was given. The said enquiry report held that the charges against the respondent were partly proved.

4. Consequent to the enquiry report dated 25.07.1991, a notice dated 06.02.1992 was given to the respondent giving him an opportunity to make representation against the penalty proposed to be imposed pursuant to the findings of the enquiry report dated 25.07.1991. The show cause notice required the respondent to file a reply within 15 days from the date of the receipt of notice. Pursuant to the notice, a reply dated 17.03.1992 was given by the respondent contending, inter alia, that the enquiry was conducted by the enquiry officer in common/simultaneous proceedings due to which lot of

confusion had been created in the matters and issues pertaining to other enquiries have been considered which has resulted in holding that the allegations against the respondent stood established. The respondent also asserted that the observations regarding the quality control were of highly technical nature and the enquiry had been conducted by an officer who had no technical expertise which has resulted in incorrect assessment of evidence on the part of the Enquiry Officer. The grievance was also made by the respondent regarding the facility of defense assistant of his choice being not provided to him due to which the defense of the respondent was jeopardized. The respondent also annexed a detailed representation against the show cause notice and enquiry report along with his reply dated 17.03.1992 which was received by the petitioner on 18.03.1992.

5. The disciplinary authority however, passed the order dated 07.04.1992 on the premise that reply to show cause notice dated 06.02.1992 had not been filed on behalf of the respondent and awarded the penalty of removal from service to the respondent with immediate effect. Aggrieved by the order of removal dated 07.04.1992 the respondent preferred a writ petition no. 5347/1993 titled Sh. K.P. Garg Vs. Delhi Development Authority and Anr. which was transferred to Central Administrative Tribunal which was disposed off by order dated 16.11.2007. Though, when the petition was decided no one was present on behalf of the respondent, however, the Tribunal held that

since the reply to show cause notice was before the disciplinary authority, the same should have been considered and the order of the disciplinary authority did not record any reason to impose the extreme punishment of removal and therefore, relying on the decisions of the Supreme Court in *Narpat Singh Vs. Rajasthan Financial Corporation*, 2007 (11) SCALE 458 and *National Fertilizers Ltd. Vs. P.K. Khanna*, (2005) 7 SCC 597 and *Director (Marketing) Indian Oil Corporation Ltd. & another Vs. Santosh Kumar*, 2006 (6) SCALE 358, the Tribunal set aside the order of removal from service.

6. The petitioners have impugned the order primarily on the ground that since the disciplinary authority conferred with the findings of the Enquiry Officer no detailed reasons were to be given and has relied on *Ram Kumar Vs. State of Haryana* (1988) SCC (L&S) 246 and on *National Fertilizers Ltd. and Anr. Vs. P.K. Khanna* JT 2005 (8) SC 125. The order of the Tribunal has also been impugned on the ground that while setting aside the order of punishment, the Tribunal should have allowed the petitioner to proceed with the enquiry and continue the enquiry from the stage of consideration of the reply of the respondent filed before the disciplinary authority. The order is also impugned by the petitioner on the ground that the question whether the respondent was entitled to back-wages and other benefits from the date of his removal to the date of his reinstatement should have been left for the decision of the appropriate authority in accordance with law after the

culmination of the proceedings and depending on the final outcome. The learned counsel has relied on Managing Director, ECIL, Hyderabad and Others Vs. B.K. Karunakar and Others (1993) SCC (L&S) 1184; State of Punjab and Others Vs. Dr. Harbhajan Singh Greasy (1996) SCC (L&S) 1248; Bharat Coking Coal Ltd. & Ors. Vs. Babulal and Anr. 1998 SCC (L&S) 572 and N. Selvaraj Vs. Kumbakonam City Union Bank Ltd. and Another 2006 SCC (L&S) 1710. Reliance has also been placed on a Division Bench order in Writ Petition (Civil) No. 3305/2008 dated 04.11.2008, Delhi Development Authority and Anr. Vs. Sh. Sita Ram and Others.

7. The respondent has contended that the order of removal passed by the petitioner could not be sustained as it was a nonspeaking order, and it was passed without taking into consideration the pleas and contentions raised by the respondent against the proposed penalty of removal from service. He submits that the notice dated 6th February, 1992 was duly replied by the respondent raising various grounds as to why the penalty should not have been imposed. The respondent contended that besides the legal submission that the charge sheet was without jurisdiction and illegal, having been issued without the order of the competent authority as envisaged under Regulation 18, the charge sheet under regulation 16 or 17 could not be issued. The appointment of enquiry officer was also challenged on the ground that vice-chairman of the DDA had not been authorized by the order of the Central

Government to act as disciplinary authority. The respondent had also challenged the enquiry report on the ground that he could not defend himself properly and effectively as the defense assistance of his choice was not appointed. The respondent also impugned the findings of the enquiry officer on the ground of discrepancies in two sets of Article of Charges served on him. The respondent also raised the grievance that the enquiry officers had conducted common proceedings which caused severe damage to the respondent's defense. The imposition of penalty of removal was also opposed on the ground that certain documents denied by the respondent which had not been proved, had been taken into consideration by the enquiry officers and consequently the findings of the enquiry officers are perverse and without evidence. The respondent also highlighted some assumptions made by the enquiry officer as he proceeded on certain premises which were never contended by the respondent.

8. In the circumstances it was contended that non-consideration of his reply by the petitioner, vitiates the order of the petitioner imposing the penalty of removal from service. On behalf of respondent it is also contended that the respondent has superannuated and consequently it will not be proper to hold a fresh enquiry against him after his superannuation. Reliance has also been placed on (2007) 7 SCC 81, U.P Co-operative Federation Ltd. and ors. Vs L.P.Rai.

9. The pleas and contentions of the respondent are contested by the petitioner contending, inter alia, that mere retirement of the respondent by efflux of time would not be a ground to close the enquiry or not to resume the enquiry, in case the punishment imposed is set aside on the technical ground that the reply of the respondent was not considered while imposing the punishment of removal from service. The petitioner also relied on AIR 1996 SC 280, Union of India Vs Ajoy Kumar Patnaik.

10. We have heard the learned counsel for the parties in detail. The Central Administrative Tribunal has set aside the order of removal of the respondent from service by order dated 16th November, 2007 primarily on the ground that the order imposing punishment by the disciplinary authority is a non speaking order and without considering and dealing with the contentions of the respondent raised in the reply filed by the respondent to the show cause notice proposing imposition of penalty of removal from service. Reliance has also been placed on regulations 16 (10) (ii) contemplating consideration of representation or reply in response to the show cause notice. The Tribunal has also held that no reasons have been given for imposing the extreme penalty of removal from service and since no reasons had been given the order of the disciplinary authority would be an illegality. For these reasons the Tribunal has set aside the order of removal from service and has also held that if the respondent has not attained superannuation, he be reinstated forthwith and the interregnum period be decided in

accordance with rules and instructions and law on the subject within one month of the receipt of the order by the petitioners.

11. The plea of the respondent that the disciplinary authority has not given detailed reasons and consequently the order of punishment is vitiated, cannot be accepted in the facts and circumstances of the case. When punishing authority accepts the findings and reasons given by the enquiry officer, he is not required to repeat the reasons contained in the report of the enquiry officer with which he agrees. The Supreme Court in Ram Kumar (supra) had held that when punishing authority accept the findings of the enquiry officer and the reasons given by him, the question of non compliance with the principles of natural justice does not arise and it can also be not inferred that an order of the punishing authority relying on the reasons of the enquiry officer will not be a speaking order. Therefore, this plea of the respondent that the order of the punishing authority was not a speaking order cannot be accepted and on this ground the order of removal of respondent from service by the punishing authority cannot be set aside.

12. This cannot be disputed that regulation 16 (10) (ii) obligates the disciplinary authority to consider representation/reply to the notice proposing imposition of penalty. This is not disputed that in reply to notice dated 6th February, 1992 proposing imposition of penalty of removal from service, a reply dated 17th March, 1992 was given to the petitioners on 18th March, 1992 which was duly received. Though the

notice stipulated that it be replied within 15 days, and as a matter of fact the reply was not filed within 15 days, the facts remains that the reply of the respondent was before the disciplinary authority before he passed the order dated 07.04.1992. The order imposing penalty dated 7th April, 1992 does not consider the representation/reply at all. In the circumstances on account of non-consideration of the reply to the notice proposing imposition of penalty by the petitioner, the order of removal from service of the respondent could not have been sustained and, consequently, the order of the tribunal setting aside the order of removal of the respondent from service cannot be faulted.

13. The next point canvassed by the learned counsel for the petitioner is that after setting aside the order of removal of respondent from the service, the tribunal should have allowed the petitioner to proceed from the stage of consideration of the reply of the respondent. It is also contended that whether the respondent would be entitled to back wages and other benefits from the date of removal from service to the date of reinstatement should have been left to be decided by the petitioner in accordance with the Rules, till after the matter is reconsidered and fresh order passed in the disciplinary proceedings. It is now well settled that there is a procedural lapse in the disciplinary proceedings, and on that account the penalty imposed on the employee cannot be sustained and is set aside, the appropriate course is to permit the disciplinary authority to take a decision, on whether or not it considers it

appropriate to proceed in the matter, and if he decides to restart the enquiry, to follow the procedure from the stage at which the lapse has occurred and to take action according to law. In *State of Punjab Vs Dr. Harbhajan Singh Greasy* (supra) Supreme Court had held that if enquiry was found to be faulty, it would not be proper to direct reinstatement with consequential benefits as the appropriate course would be to remit the matter to the disciplinary authority to follow the procedure from the stage at which the fault was pointed out and to take action according to law. The consequential benefits would depend upon the result of the enquiry and the order passed thereon. Similarly in *Union of India Vs Y.S. Sadhu, Ex inspector* (supra) it was held by the Apex Court that where the departmental enquiry is found to be defective on account of violation of principle of natural justice, reinstatement could not be ordered on account of such infirmities and the appropriate course is to direct fresh proceedings from the stage of alleged illegalities without ordering reinstatement. Thus on the basis of ratio of *Managing Director, ECIL, Hyderabad and ors. Vs B.Karunakar and ors.* (1993) 4 SCC 727; *State of Punjab and ors. Vs Dr. Harbhajan Singh Greasy* (1996) 9 SCC 322 and *Bharat Coking Coal Ltd. & ors Vs Babulal and anr.* 1998 SCC (L&S) 572 it is to be held that the right to reopen the enquiry, when the enquiry has been quashed as not conducted in conformity with the principle of natural justice, cannot be denied. Thus, if the order of removal of respondent from the service is to be sustained on account of non-consideration of his reply/representation, this

should not result in reinstatement of respondent. Rather the proper course would be to direct the petitioner to consider the representation/reply before passing any order imposing any penalty. In the circumstances the direction of the tribunal in the impugned order dated 16th November, 2007 directing forthwith reinstatement of the respondent cannot be sustained and is set aside.

14. The learned counsel for the respondent has contended that the respondent has already superannuated. This however, will not be a ground to deny to the petitioner to conclude their enquiry and to close the matter. The order of the Tribunal dated 16th November, 2007 was stayed by this Court after the present writ petition was filed by order dated 18th November, 2007. The order of removal of the respondent from service has been set aside on account of non-consideration of his reply/representation. Pertinently, it is not a case where the order imposing penalty has been set aside on merits and on the basis that the change against the respondent under any circumstances, could not be made out. The decision relied upon by the respondent in the case of U.P. Cooperative (supra) does not lay down, as a matter of law, that merely because the employee has superannuated, the enquiry cannot be restarted against him after the penalty is set aside on technical grounds by an order of the Court/Tribunal.

15. It will be for the petitioner to take into consideration that the charges were framed in 1988 and the enquiry was conducted in 1992

and that the considerable time has elapsed and that the respondent has superannuated, while deciding whether to restart the enquiry/disciplinary proceedings.

16. For the foregoing reasons the writ petition is partly allowed. The decision of the Tribunal setting aside the order of the removal of the respondent is sustained, however, reinstatement of the respondent is set aside. The disciplinary authority shall be at liberty to proceed with the proceedings from the stage of consideration of the reply/representation given by the respondent to the notice of the petitioner proposing to impose penalty on the respondent. In case the disciplinary authority decides to proceed with the enquiry further despite the fact that the respondent has already superannuated in the meantime, the proceedings be concluded within sixty days from the date of receipt of this order. The disciplinary authority shall also determine the entitlement of the respondent to back-wages and other benefits in accordance with rules and regulations. With these directions the writ petition is disposed off. Parties are however left to bear their own costs.

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ANIL KUMAR J.

NOVEMBER 5th , 2009
'DP'

VIPIN SANGHI J.