

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

+ **WP(C) No.547/2009**

%

Date of Decision: 26.02.2010

Delhi Development Authority Petitioner
Through Mr.Arun Birbal, Advocate for the Petitioner

Versus

Sh.P.C.Jain, ... Respondent
Through Mr.R.S.Kela, Advocate for the respondent.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

- | | | |
|----|---|-----|
| 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.

*

The respondent, Delhi Development Authority, has challenged the order dated 29.04.2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in T.A No.89/2007, tilted as 'Sh.P.C.Jain v. Delhi Development Authority' quashing the charge sheet and the penalty of 20% cut in the pension for ten years imposed against the respondent and to restore the cut in pension.

The respondent was accused of not taking appropriate action regarding unauthorized construction at the Plot Nos.159-160 Transport Centre Rohtak Road, New Delhi which were auctioned by Delhi Development Authority (DDA) for workshop purposes, and were purchased by M/s Pushpa Builders Ltd. in 1987. According to petitioner, the matter regarding unauthorized construction was brought to the notice of the respondent by his U.O. dated 1st January, 1990, but the respondent who was Director (building) at that time did not take any action immediately.

An appeal was filed by the Builder/Lessee of the property where the Appellate Tribunal had directed to demolish the unauthorized construction within 15 days, failing which the Delhi Development Authority was authorized to seal the property or carry out the demolition itself.

The allegation against the petitioner was that he granted one month time more up to 23rd November, 1992 for re-sealing the premises and thus, committed a gross misconduct contravening Rule 3(1) (i)(ii)(iii) of C.C.S. (Conduct) Rules, 1964 as made applicable to the employees of the DDA. Pursuant to the departmental proceedings initiated against the respondent, which were initiated only one day before his retirement, a

penalty order dated 31st May, 2000 was passed imposing 20% reduction in his pension for a period of 10 years.

An appeal was filed by the respondent against the penalty order dated 31st May, 2000, however, it was contended on behalf of the petitioner that the appeal was not maintainable, and consequently, during the pendency of the appeal, a writ petition was filed before the High Court. The penalty order had imposed a 20% cut in the pension of the respondent for a period of 10 years.

The writ petition filed before the High Court was transferred to the Central Administrative Tribunal, Principal Bench, New Delhi and was registered as T.A.No.89/2007. Before the Tribunal it was agreed between the parties that the question about the pendency of the appeal need not be gone into, and T.A.(Transfer Application) be decided on merits.

The respondent had contended that the penalty of 20% cut in the pension was imposed on him pursuant to the departmental proceedings initiated just one day before his retirement on 30th January, 1996 was unsustainable as he had a meritorious record of services and the action had been taken against him as he was strict in his dealing and a lobby had been working against him. It was asserted that charge sheet was issued to him one day prior to his retirement on 30th January, 1996 for

an incident which dates back to 1999, and no cogent and plausible reason had been disclosed by the petitioner for the delay.

The respondent also contended that the allegations made against him were without any factual basis and did not constitute misconduct actionable under law. The report of the Enquiry Officer was also challenged on the ground that the Enquiry Officer had relied on the facts and documents which were not proved and to which the respondent had not been given access too, and consequently, there had been denial of principle of natural justice, and the respondent had not been given any opportunity to explain.

After considering the rival contention, the Tribunal had held that the Article of charge was not definite in nature and not in consonance with Discipline and Appeal rules prescribed for drawing article of charges and statement of allegations so that specific dereliction of duty could be specified which could be explained by a delinquent employee. From the charge sheet it was inferred by the Tribunal that it did not disclose as to what action was expected from the respondent which was not taken by him, and how, it was in violation of which rule or regulation.

It was noted that building was not required to be demolished at any point of time because it had been cleared by the Committee which

enjoyed jurisdiction for passing such orders. Only certain portions were objectionable which were required to be demolished. It was also noted that admittedly demolition order dated 31st December, 1990 was issued much before the letter of the Vice Chairman dated 27th March, 1991, and therefore, the plea that the demolition order was issued only after the letter of the Vice Chairman dated 27th March, 1991 is ex facie incorrect. The patent mistake is also apparent from the fact that only pursuant to demolition order dated 31st December, 1990 an appeal was filed by the Builder before the Appellate Tribunal where the order was passed to either demolish the portions which were not in consonance with the Building Bye-laws or to seal the property. The tribunal also considered that in fact, building had been sealed and remained sealed until 31st August, 1992, when an application for removal of seal had come from the Builder.

This had also not been disputed before the Tribunal that the option was given by the Appellate Tribunal either to demolish the portions which were unauthorized, or seal the building, and since the building was sealed, till the building remained sealed, the portions of the property which were unauthorized were not to be demolished.

Since the additional structure was removed by the Builder himself, not demolishing or under taking any act to demolish the unauthorized

portions will not be infraction of any of the direction of the Appellate Tribunal. In any case the object was to prevent any further unauthorized construction which was successfully done by sealing the premises.

The Tribunal also relied on the facts that the Enquiry Officer called for various files and noted the facts without disclosing them to the respondent and without giving him an opportunity to give explanation regarding them. It was held that in the circumstances, adverse inferences could not be drawn against the respondent for not explaining various facts which were culled by the Enquiry Officer from various files.

It was not expected of the respondent to remember everything and to answer Enquiry Officer regarding the contents of various files which were not relied upon along with the documents of articles of charges. Apparently the procedure adopted by the enquiry officer was patently wrong and was in denial of principles of natural justice. In the circumstances, the Tribunal has held that the issue seems to have pre-decided against the respondent and has quoted an extract of the Enquiry Officer Report, which is as under:-

“The CO granted time extension without any justification to enable the builder to continue the unauthorized construction and also approach the Hon’ble High Court to obtain ex parte decision. The CO was repeatedly informed that the builder was not demolishing unauthorized construction and was going ahead with the unauthorized construction. In spite of being aware of this, the CO granted repeatedly extension of time to the Builder.”

The observations of enquiry officer and inferences drawn by him are patently contrary to record as demolition order was issued on 31st December, 1990 much before the letter from the Vice Chairman dated 27th March, 1991 was issued. The patent error is also apparent from the fact that it was against the demolition order dated 31st December, 1990 that builder had approached the Appellate Tribunal where the order was passed either to demolish the unauthorized portions of the construction, or to seal premises pursuant to which the premises was sealed, and it remain sealed till 31st August, 1992 when the builder had moved for demolition of sealing premises. This is also apparent that pursuant to demolition order dated 31st December, 1990 no unauthorized construction was carried on in the premises. In the circumstances, apparently the charge against the petitioner was vague and findings are patently incorrect and based on Enquiry Officer's assumption and surmises and conjectures.

Though it is true that the jurisdiction of the Tribunal in judicial review is limited, however, disciplinary proceedings being quasi-criminal in nature, there should be some cogent and reliable evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, but it cannot be lost sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analyzing the evidence and

documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot make his own assumptions. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with. In case of the respondent the enquiry officer called for the files and culled the facts from there without disclosing them to the respondent and without seeking explanation of the respondent. Various inferences of the enquiry officer are also based on his own assumption and surmises and conjectures.

The learned counsel for the petitioner has not been able to dispute that just one day before the retirement of the respondent two more enquiries were initiated on similar ground for other buildings where unauthorized construction was alleged in 1990 and penalty of cut in pension was ordered which orders were also challenged by the respondent in two other original applications which were also decided by the Central Administrative Tribunal dismissing the charge sheet and penalty imposed upon the respondent. Aggrieved by quashing of the penalty imposed in other cases, the petitioner had filed two other writ

petitions being W.P.(C) No.8759/2008, titled as 'D.D.A. v. P.C.Jain' and W.P.(C) No.540/2009, titled as D.D.A. v. P.C.J. which have also been dismissed by this Court.

In the facts and circumstances, the learned counsel for the petitioner has failed to make out any such illegality or irregularity in the order of the Tribunal dated 29th April, 2008, which will necessitate any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

The writ petition is, therefore, without any merit, and it is dismissed.

ANIL KUMAR, J.

FEBRUAR 26, 2010
'VK'

MOOL CHAND GARG, J.