

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

+ **W.P. (C.) No.2831/2010**

% **Date of Decision: 28.04.2010**

RAJESHWAR TEWARI PETITIONER
Through Mr. A.K. Mishra, Advocate

Versus

DELHI JAL BOARD RESPONDENT
Through Mr. Jitender Kumar, Mr. Sumeet
Pushkarna, Advocates

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. |

MOOL CHAND GARG, J.

*
1. By this writ petition filed under Article 226 of the Constitution of India, the petitioner has assailed the order passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'the Tribunal') dated 05.01.2010 in O.A. No.1190/2009 whereby the petition filed by the petitioner under Section 9 of the Administrative Tribunals Act has been dismissed.

2. Briefly stating the facts of this case are that the petitioner who was working with the respondent was served with a memorandum bearing No.DJB/VIJ/DISP/MINOR/99/CS-76/4487 dated 14.12.1999 whereby he was informed that an action was proposed against him

under Rule 16 of CCS (CCA) Rules, 1965. Statement of imputation of misconduct was also framed against the petitioner stipulating:

- i) It was alleged that the petitioner had allowed mutation of 11 Water connection installed at 6, Alipur Road, Delhi on 06.03.1996.
- ii) It was further alleged that while passing the orders allowed the mutation on 06.03.1996, the petitioner had allegedly failed to ensure the recovery of outstanding water charges to the tune of Rs.1,35,024/- against the other water connections No.931C, 8315K, 1001C, 1945C, 1903C and 6304S which were running on the same property
- iii) It was also alleged that the petitioner had the knowledge of the existence of 36 authorised and 39 unauthorised water connections on the same property and his knowledge was imputed on the petitioner on the ground that the petitioner had visited the site on 20th September, 1996.
- iv) It was further charged that the No Objection Certificates from the Original Consumers and the remaining Venders were not taken.
- v) Other allegations were also raised on the basis of the alleged cancellation order passed by Director of Revenue which were allegedly communicated to the petitioner vide letter dated 17.9.1996.

3. The petitioner gave a reply to the aforesaid memorandum and raised the following points:

- i) That the unauthorized connections were not in the knowledge of the petitioner
- ii) That the property in question was auctioned on 12.9.1993 by the Income Tax Department.

- iii) That as per the records available, out of the total outstanding amount of Rs.3.25 lakhs, 2.15 lakhs was recovered and a deletion of Rs.1.39 lacs was proposed against the arrears of 1.10 lakhs.
- iv) The mutations were allowed on two occasions, i.e., on 09.01.1996 and 02.03.1996 whereas the information regarding the unauthorized water connections was brought to the knowledge of the petitioner by the then Area Meter Inspector during the mid of April, 1996.
- v) That the total outstanding dues against the other water connections in question was only Rs.1,07,186/- and that there were no dues outstanding against water connections Nos.1903C and 6302S. As far as the water connections, for which mutation was done by the petitioner, are concerned it was clearly submitted that there were no dues to be paid.
.....
- ix) As far as the charge regarding obtaining the NOC from original consumers are concerned, it was explained that the same was not considered essential in view of the fact that the original/remaining consumers were in fact dislodged from their properties by Income Tax Department due to the fact that they had become defaulters. It was further submitted that the mutations were done only in the names of the persons/parties who had become the owner of the property through the proceedings conducted by Income Tax Department.
- x) As far as the charge regarding obtaining the NOC from other co-owners are concerned, it was explained that the same was not brought to the notice of the petitioner. However, it was pointed out that none of the mutations

were granted in favour of any person other than the co-owner.

4. Not satisfied with the reply of the petitioner, an inquiry was held and the office of the Principal Administration, Delhi Jal Board passed an order dated 06.10.2000 whereby the penalty of withholding of two increments without cumulative effect was imposed on the petitioner. The main reason given by the Member (Administration) for imposing the aforesaid penalty was that the builder had purchased the entire piece of land from Income Tax Authority with all assets and liabilities and so he was supposed to clear all the outstanding dues of all the water connections and so the petitioner should have recovered the entire outstanding dues of all the water connections from the builder before passing the mutation order.

5. An appeal was filed by the petitioner against the penalty imposed upon him which was dismissed by the Appellate Authority vide order dated 13.07.2001. The appeal was disposed of vide order dated 17.11.2003 whereby the Appellate Authority declined to interfere with the orders passed by it on the ground that no new material or fresh grounds were raised by the petitioner and accordingly the appeal was rejected.

6. The petitioner then filed W.P.(C) No.23138/2008 before this Court on 16.11.2005 which was transferred to the Tribunal and was registered as O.A. as aforesaid. The O.A. was dismissed by the Tribunal

vide impugned order dated 05.01.2010. It is against the said order, the present petition has been filed.

7. Before us, the petitioner has submitted that neither the Appellate Authority nor the Tribunal has considered the submissions made by the petitioner in his reply to the memorandum and reiterated the points raised therein as ground of his defence.

8. We have heard learned counsel for the petitioner and has also taken note of the order passed by the Tribunal. We find from the order of the Tribunal that all the issues raised by the petitioner have been duly considered. In fact, the Appellate Authority also took note of the representation made by the petitioner and has found that the representation was not factually correct. Rather in his representation, the petitioner has admitted his guilt. Some relevant portion of the order of the Appellate Authority is reproduced hereunder;

I, M.P. Tyagi, Member (Administration) have carefully gone through the statement of imputation of misconduct, reply of Sh. Rajeshwar Tiwari in response to the charge-sheet, facts and circumstances of the case and also heard him in person. Sh. Rajeshwar Tiwari has admitted that he had mutated the alleged 11 water connections in 1995-96. He had recovered Rs.2.15 lacs out of Rs.3.25 lacs outstanding against the said water connection at that time. His contention is that the balance amount was to be deleted as construction was started in 1993-94 and there was no consumption of water during the period when the tenements were demolished. I am told that the Builder had purchased the entire piece of land, i.e., 6, Alipur Road in auction from Income Tax Authority with all assets and liabilities so the outstanding dues of all the water

connections should have been recovered from the builder before allowing/getting water connections or electric connections. Sh. Tiwari could not satisfy me as to why all the dues of all the water connections were not recovered before mutation of the water connection.

Further, the C.O. could not give any reply as to why the water connections belonging to the registered consumer were transferred in new apartments without obtaining No Objection from the said registered consumers. As a matter of fact the builder should have applied for new bulk connection instead of allowing mutation of only a few connections without recovery of total outstandings dues in the property. The C.O. has nothing to say against the non-compliance of the orders of the Dy.D.O.R. dt. 12.09.1996 cancelling the 11 mutations of 6, Alipur Road. The reply of the C.O. is not satisfactory and therefore the penalty of "withholding of two increments without cumulative effect" is imposed upon Shri Rajeswari Tiwari, ZRO(W).

9. The Tribunal by way of the impugned order has discussed the charges leveled against the petitioner and has also examined the explanation furnished by the petitioner on record but did not find the explanation satisfactory. Some of the observations made by the Tribunal which throws light on the controversy raised by the petitioner are reproduced hereunder:

8. We may, therefore, advert of the explanation furnished which are on record. We find that sufficiently this alone might be justifiable for the respondents to come to a conclusion that there great lapse admitted by the applicant, at least with reference to some of the default, and conduct which was found, as not conducive to the interest of Delhi Jal Board. He has even pleaded that the amounts shown as

due from the consumers were busted and perhaps Area Meter Reader had recorded wrong entries which were likely to harass the consumers which had resulted in unjustified accumulation of arrears. This was definitely beside the point. This could not have been a defence when it was pointed out that arrears over Rs.1 Lakh could not be recovered because of leniency and lethargy shown by him. In fact the attempt was to implicate 'area meter reader for the whole episode'. In other words, irregularity committed which was there on the issue had not been disputed. He has also raised a defence that only a few connections of the premises mutations had been allowed but simultaneously it is stated that all the connections were given in the names of different consumers. We may also extract herein paragraph 5 of the reply which runs as following:

"It may be incorrect to say that all the above connections belonged to the same property. After execution of the sale deeds the flats against which mutation were allowed on provisional basis on usual terms and conditions so that in case of any objection remedial measures could not be taken, same were registered in the names of different persons by paying the necessary court fees and corporation tax vide registries attached with the mutation documents. We do not charge/realize dues even in the case of ex-allottees/consumers from the new allottees/consumers of the same flat (Govt./DDA), how far it is correct to collect dues against water connections of a separate property. Moreover, properties (in most of the cases) in Delhi are being sold on the basis of GPA, hence mutations, new water/electric connections etc. are being allowed treating the properties separate entities."

In respect of allegations that NOC was not obtained from the previous consumers, the applicant had taken a stand that the same may not be considered as essential because it may not be judicious to ask for NOCs from a consumer declared defaulter and dislodged from his property and the Income Tax Department

had assigned the property to new owner. He even characterized the requirement as a “funny proposal” to ask an owner from his tenant/occupier for fixing/mutating a water connection of his own property. He has also pleaded that in respect of NOC from the co-owners it had not been brought to his notice that there were co-owners in the same sale deeds.

9. As could be seen from materials on record applicant had also made clear that in his discretion he had not considered it proper to cancel the mutation, as according to him, the better course would have been to suspend the mutation. This is his stand vis-à-vis the charge that he had disobeyed orders of his superior.

10. If we take note of the above response of the applicant, it would rather appear as a case where he had practically admitted his conduct. Therefore, it could not be urged that the disciplinary authority had committed an error in finding him answerable for the defaults.

10. From the aforesaid, it is apparent that the Tribunal did found favour with the contention of the respondent that the conduct of the petitioner was not conducive to the interest of Delhi Jal Board. His reply regarding amount shown as due from the consumers were busted and which were perhaps on the basis of wrong Area Meter Reader entries which only goes to help the consumers who are supposed to make that payment. Moreover, the defences which he has tried to point out to justify non-recovery of arrears of more than Rs.1 Lac goes to show that he was lenient and lethargic in dispensing with his duty and was trying to pass the burden on others. Moreover, insofar as the NOC having not been obtained there is not even any defences led on behalf of the petitioner.

11. In these circumstances, we find that the order passed by the Tribunal upholding the penalty imposed against the petitioner which is a minor penalty of withholding of his two increments with cumulative effect only does not call for any interference by us while exercising our powers under Article 226 of the Constitution of India. Accordingly, the writ petition is dismissed.

MOOL CHAND GARG, J.

APRIL 28, 2010

'anb'

ANIL KUMAR, J.