

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

+ **WP(C) No.2523/2010**

%

Date of Decision: 19.04.2010

Municipal Corporation of Delhi Petitioner
Through Ms.Shobha Gupta, Advocate.

Versus

Sh.B.L.Sharma Respondent
Through Mr.S.S.Tiwari, Advocate.

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 petitioner has impugned the order dated 8th December, 2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No.1299 of 2009, titled as 'Sh.B.L.Sharma v. Lieutenant Governor of Delhi and another', allowing the Original Application of the respondent and directing the petitioner to decide the period during his dismissal by the disciplinary authority and setting aside of the order of

the dismissal by the appellate authority during which the petitioner considered the respondent to be under deemed suspension and directed the petitioner to pass a speaking order in respect of the said period.

The respondent joined the petitioner as a Junior Engineer and was promoted as Assistant Engineer. The charges were framed against the respondent for allowing the owner of the building to carry out unauthorized construction in three properties in Malka Ganj under his charge and an enquiry reported dated 25th March, 2006 was submitted to the Disciplinary Authority. After considering the enquiry report, the disciplinary authority imposed the penalty of dismissal from services by the order dated 20th July, 2006.

An appeal was preferred by the respondent. After hearing the respondent, the Appellate Authority passed the order dated 14th May, 2008 setting aside the penalty of dismissal from service and imposed the penalty of "Reduction of the time scale of pay by two stages" within two years with cumulative effect.

According to the respondent, the Disciplinary Authority by its order dated 23rd May 2008 modified the Appellate Order dated 14th May, 2008 which the disciplinary authority was not entitled to do. By the order dated 23rd May, 2008 passed by the disciplinary authority it was held that the respondent be treated as under deemed suspension w.e.f.

20th July, 2006 up to the date of his reinstatement and the period of suspension was held to be not spent on duty and the payment to the respondent was restricted to subsistence allowance allegedly already drawn.

After the order dated 23rd May, 2008, the respondent also issued posting order. The respondent joined his posting pursuant to order dated 9th July, 2008. He, however, challenged his deemed suspension w.e.f. 20th July, 2006 on the ground that he was never placed under suspension during enquiry proceedings and he had never drawn any subsistence allowance, and therefore, there could not be retrospective suspension, and alleged deemed suspension is bad in law. It was also contended that FR No.54-B of fundamental rules could not be applied in case of the respondent as he was never placed under suspension, nor he was drawing any subsistence allowance prior to the order of dismissal passed by the disciplinary authority. It was also contended that the Appellate Authority order could not be modified by the Disciplinary Authority as the Disciplinary Authority had become functus officio.

The respondent challenged the order of the petitioner by filing an original application under section 19 of the Administrative Tribunal Act, 1985, The Original Application challenging the order of the petitioner treating the respondent under deemed suspension and the period

during the deemed suspension as not spent on duty, was allowed. The Tribunal while allowing the original application of the respondent also relied on another judgment of the Tribunal in the case of “Sh.S.B.Bhardwaj v. Lieutenant Governor through Chief Secretary and another’, being O.A.No.1738 of 2009, decided on 17th November, 2009 involving the similar issue and directed the petitioner to decide this period in accordance with law by passing a speaking order.

The petitioner, Municipal Corporation of Delhi has challenged this order contending, inter-alia, that the order of deemed suspension was passed under Rule 54 of the Fundamental Rules. The Learned counsel for the petitioner has also relied on Regulation 5(5) of DMC Services (Control & Appeal) Regulations, 1959. According to the learned counsel by virtue of said Regulation, the Disciplinary Authority is competent to pass an order for placing the respondent under deemed suspension during intervening period i.e. from the date of dismissal 20th July, 2006 up to his reinstatement 12th June, 2008 as the respondent has not been exonerated by the petitioner, and the major penalty has been inflicted upon him.

The Regulation 5(5) of DMC Services (Control & Appeal) Regulations, 1959 is as under:-

“Where a penalty of dismissal, removal or compulsory retirement from service imposed upon municipal officer or other municipal employee is set aside or declared or

*rendered void in consequence of or by a decision of a court of law and the disciplinary authority on a consideration of the circumstances of the case, decides **to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, such officer or employee shall be deemed to have been placed under suspension in accordance with this Regulation from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.***

This Court has heard the learned counsel for the petitioner. The Tribunal while setting aside the order of the respondent which is challenged before this Court has relied on another judgment being O.A.No.1738 of 2009, decided on 17th November, 2009 titled as “Sh.S.B.Bhardwaj v. Lieutenant Governor and Commissioner of MCD’, where in similar circumstances, the Tribunal had held that in case the Appellate Authority set aside the punishment without ordering further enquiry, in such an event Regulation 5(4) or Regulation 5(5) of DMC Services (Control & Appeal) Regulations, 1959 would not have any application. It was further held that since the employee was never placed under suspension, therefore, he cannot be placed under deemed suspension after termination of enquiry proceedings without directing further enquiry on the same allegations.

Learned counsel for the petitioner has not been able to deny that the order dated 17th November, 2009 passed by the Tribunal against the

Municipal Corporation of Delhi in similar circumstances in O.A. No.1738 of 2009 has not been challenged and has become final.

This is not disputed by the petitioner that the respondent was never placed under suspension. If the respondent was not placed under suspension and his dismissal order was modified to reduction of the scale of pay by two stages by the Appellate Authority, under Regulation 5(5) of DMC Services (Control & Appeal) Regulations, 1959, the respondent could not be placed under deemed suspension. The Regulation 5 contemplates that where a penalty of dismissal is set aside and it is decided to hold a further enquiry against him on the allegations on which the penalty of the dismissal was originally imposed, such officer or employee shall be deemed to have been placed under deemed suspension, according to this Regulation, from the date of the original order of the dismissal.

Admittedly, though the order of dismissal had been set aside, however, the petitioner, Appellate Authority decided not to hold any further enquiry against the respondent on the allegations on which penalty of dismissal was imposed. If that be so there could be no occasion to place the respondent under deemed suspension under Regulation 5(5) of DMC Services (Control & Appeal) Regulations, 1959. In the circumstance, the petitioner cannot impugn the order of the Tribunal, on the ground that it is in violation of Regulation 5(5) of DMC

Services (Control & Appeal) Regulations, 1959 and the petitioner was entitled to place the respondent under deemed suspension. The petitioner cannot justify its order of deemed suspension even on the basis of FR No.54 of Fundamental Rules. In any case the Appellate Authority while modifying the order of dismissal imposed by the Disciplinary Authority has not passed any such order and consequently, the Disciplinary Authority could not pass the order placing the respondent under deemed suspension and holding that during the said period, the respondent shall be entitled only for suspension allowance already drawn by him though the respondent was not placed under suspension and had not drawn any suspension allowance.

The Tribunal by its order impugned before us, however, has still allowed the respondent to decide about this period, from the date of order of dismissal by the disciplinary authority till the appellate authority had set aside the order of dismissal and had reinstated the respondent in accordance with law by passing a speaking order. In the circumstances, this Court does not find any such illegality or irregularity or such perversity in the order of the Tribunal which will necessitate any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

The writ petition, in the facts and circumstances, is without any merit, and it is, therefore, dismissed.

ANIL KUMAR, J.

APRIL 19, 2010
'VK'

MOOL CHAND GARG, J.