

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

+ **W.P.(C) No.3631/2010**

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Date of Decision: 24.05.2010

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

Versus

Sh.Om Prakash Respondent
Through Mr.Siddharth Joshi & Santosh Kumar,
Advocates.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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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.

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The petitioner has impugned the order dated 27th May, 2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A.No.2104 of 2008, titled as 'Om Prakash v. Delhi Development Authority & another', allowing the application of the respondent for quashing the charges framed against the respondent on the basis of a quality control report which was made without any inspection of the actual site.

The respondent was a Superintending Engineer and he had challenged the Charge Memorandum dated 24th March, 2008 initiated against him under Regulation 27 of DDA (Conduct, Discipline & Appeal) Regulations, 1999.

The charge pertained to the period 1993-95 when the respondent was posted as an Executive Engineer-RPD-10. The alleged irregularities were imputed against the petitioner on the basis of inspection of the quality control cell on 14th July, 1995 of the similar work as was executed under the supervision of the petitioner and not the work which was got executed by the petitioner. The misconduct against the respondent in the charges was as followed:-

“While making payment in R/A bill Shri Om Prakash E.E. (Now S.E.) committed the following irregularity in respect of above mentioned work:-

Shri Om Prakash E.E.(Now S.E.) failed to take timely action for removal of efflorescence and rectification of defective plaster at the initial stage of the execution of the work as pointed by Q.C. Cell, DDA thereby putting Deptt. to a financial loss of Rs.5,42,647/-.

Shri Om Prakash E.E. (Now S.E.) by his above act failed to maintain devotion to duty and acted in a manner unbecoming of a Govt. servant thereby contravened Regulation 4 (1)(i) & (iii) of DDA Conduct, Disciplinary and Appeal Regulations, 1999 as made applicable to the employees of DDA.”

The charges framed against the respondent were challenged by him primarily on the ground that the whole basis of the alleged irregularities was the general report prepared by the quality control cell

of the adjoining site and not pertaining to the site which was under the respondent as an executive engineer.

The petitioner relied on an Inspection Note enclosed with letter dated 28th may, 1995 from the executive engineer, quality control cell addressed to the respondent categorically admitting that the defects were noticed in a similar type of work at the adjoining site. The relevant extract is as under:-

“As per the program, the inspection team inspected the site on 14.07.1995. During the discussion, at the site EE/RPD-10 pointed that the work as completed on 5.1.95. Since the quality control inspections are to be conducted within six months from the date of completion, **the work could not be inspected in detail.** However, the defects notices in a similar type of work at the adjoining site are mentioned below, to take care of these defects and other defects before finalizing the bills.”

The respondent also relied on the fact that on the date of inspection i.e. 14th July, 1995, he was under orders of transfer from that Division and he had handed over the charge on 18th July, 1995. The respondent also contended that the memorandum regarding defects was received in the Division after he was transferred and the petitioner has failed to disclose as to what happened during intervening period from 1995 till 15th November, 2006, when a letter was received from the Chief Engineer, Rohini Zone. The respondent had challenged the framing of charge against him on the ground that relevant documents

for framing the charge were not supplied to him and the fact that houses were defectives in the quality was pointed out as the houses were lying vacant for 8 years up to 2003 on account of non-availability of water and electricity. The respondent had also raised the plea that maintenance after completion of work in 1995 was not done by the successor after handing over the charge of the Division in July 1995.

The Tribunal noted the un-explained delay from 1995 till 2006 and relied on various judgments. Taking into consideration the fact that the basis of alleged defectives work was the inspection report by the quality control cell which not based on inspection of the work which was under the supervision of the respondent but was based only on the assumption that if there had been defects in the adjoining work, therefore, the work which was got executed by the petitioner must also be defective, has quashed the charge memo against the respondent.

Learned counsel for the petitioner has very emphatically contended that the charge against the respondent could not be quashed and has relied on the decision of the Supreme Court in Civil Appeal No.16353 of 2000, titled as 'DDA v. I.J.Mongia', decided on 16th February, 2001 holding that in case of quality of construction which is alleged to sub standard, merely because the Delhi Development Authority was negligent in proceedings against the delinquent officer, could not be a ground for quashing or setting aside the disciplinary

action against the officer concerned. The Supreme Court had held that in some cases delay in taking departmental proceedings may cause serious prejudice to the delinquent officers and in appropriate cases the Court may interfere but where sub standard houses are constructed, material of the sub standard houses would always be available and it would be open to the DDA to take action. The case of the respondent, however, is a distinguishable as report of the quality control cell is not based on the actual inspection of the houses which were under the supervision of the respondent as an executive engineer/RPD-10 which is admitted by the quality control cell in its letter dated 28th May, 1995. It has been categorically admitted that the inspection was carried out of the similar type of work at the adjoining site and not of the site which was under the respondent. In the circumstances, it could not be held even prima facie that work was defective and so therefore, charge against the respondent that he failed to take timely action for efflorescence and rectification of defectives plaster is not made out to entail framing any charge of misconduct.

Learned counsel for the petitioner has also failed to give any explanation that if the respondent was transferred from the Division on 14th July, 1995 and according to the averments of the respondent which have not been denied by the petitioner that houses were lying vacant for 8 years, and no maintenance work was carried out by the successor of the respondent, even prima facie it cannot be inferred that

the respondent failed to take timely action for removal of efflorescence and rectification of defectives plaster at the initial state of the execution of the work. Since the inspection was not carried out, it could not be held as to how the quality control cell could come to the conclusion that the rectification of the defectives plaster at the initial state of the execution of the work had not been done and it could be attributed to the respondent. Ratio of the case of 'DDA v. I.J.Mongia' is not applicable to the present facts and circumstances of the case as the allegations of sub standard work cannot be imputed to the respondent.

In the entirety of the facts and circumstances, the learned counsel for the petitioner has failed to make out any such illegality, irregularity or perversity in the order of the Tribunal, which would require 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 of the case, is without any merit, and it is therefore, dismissed.

ANIL KUMAR, J.

MAY 24, 2010

'VK'

MOOL CHAND GARG, J.