

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

% Date of decision: 03.12.2010

+ WP (C) No.6272 of 2010

MUNICIPAL CORPORATION OF DELHI ...PETITIONER
Through: Ms. Mini Pushkarna, Advocate.

Versus

H.C. SINGHAL ...RESPONDENT
Through: Mr. Bharat Bhushan Bhatia,
Mr. Navjot Kumar &
Ms. Rashmi Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE M.L. MEHTA

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

SANJAY KISHAN KAUL, J. (Oral)

1. The respondent, Shri H.C. Singhal, while functioning as Zonal Engineer (Building) in the City Zone of the Municipal Corporation of Delhi from 16.12.1981 to 23.4.1983 was alleged to have committed gross misconduct and failed to maintain devotion to duty and absolute integrity on account of delay in dealing with unauthorized construction of a commercial complex in Chandni Chowk and failing to comply with instructions from superior authorities resulting in framing of charges against him and a departmental inquiry being

held. This departmental inquiry found the respondent guilty and an Office Order dated 16.2.1993 was issued by the disciplinary authority after giving opportunity to the respondent upholding the finding of the inquiry and imposing penalty of dismissal from service about fifteen (15) days prior to the date of retirement of the respondent. The order of the disciplinary authority was affirmed by the appellate authority (Lieutenant Governor) vide order dated 18.4.1994.

2. The respondent aggrieved by this order of dismissal from service filed a writ petition before this Court, being CWP No.3056/1994. Only a limited notice to show cause was issued in that writ petition on the question as to whether the respondent had been dismissed by an authority who is subordinate to the authority who had appointed the respondent. The writ petition was ultimately dismissed on 23.2.1995 with a long speaking order. We may notice that the last line of the order says that the petition is 'dismissed in limine', which implies that the petition was not admitted. The petitioner aggrieved by this order preferred a Special Leave Petition No.12903/1995 before the Hon'ble Supreme Court and the same was dismissed on 12.7.1995.
3. A second round began thereafter as the petitioner filed a Revision Petition before the President of India against the order of the disciplinary/appellate authority. This Revision Petition was found not to be maintainable and this was communicated to the respondent on 10.6.1999 while simultaneously informing him that a Review Petition could be filed for consideration of the Lieutenant Governor under the DMC Services (Control & Appeal) Regulations, 1959. The

petitioner thereafter filed a Review Petition before the Lieutenant Governor on 27.10.1999, which was rejected vide order dated 27.4.2000. The said order notes the pleas raised by the respondent that the fault was of the Junior Engineer, who was subordinate to him in not moving the file expeditiously as also his grievance about lack of reasonable opportunity to defend himself and the factum of three other officers being awarded minor penalties while the petitioner had been awarded the extreme penalty of dismissal from service. The Lieutenant Governor has noticed that there were no infirmities in the conduct of the inquiry proceedings and due procedure was followed in awarding the punishment and all issues had been dealt with.

4. The respondent thereafter filed a writ petition before this Court, being WP (C) No.5205/2000, once again making the same prayer as made in the earlier writ petition, i.e. quashing the order of dismissal from service and the order of the appellate authority rejecting the appeal. This writ petition was transferred to Central Administrative Tribunal (for short 'CAT') in view of transfer of jurisdiction and vide impugned order dated 19.2.2010, the petition has been allowed. The order of the CAT is now sought to be challenged by the petitioner/MCD in the present petition under Article 226 of the Constitution of India.
5. It is seen from the impugned order that the CAT has, once again, gone into the inquiry report and found that the punishment imposed was harsh and that others have been let off with minor penalties. The penalty of dismissal from service has been modified to that of

compulsory retirement directing the petitioner to disburse all retiral dues to the respondent.

6. We have heard learned counsels for the parties. We find the impugned order completely unsustainable.
7. The order against the respondent of dismissal from service dated 16.2.1993 and the appellate order rejecting the appeal dated 18.4.1994 form subject matter of adjudication in the earlier writ petition filed by the respondent. All grievances as were permissible in law including relating to proportionality of sentence were liable to be raised at that stage. It is not as if against the same order at different times separate petitions can be filed raising piecemeal grievances. The Division Bench of this Court did not deem it appropriate to issue notice on other aspects except the question of authority of the person who had dismissed the respondent from the service. Learned counsel for the respondent has greatly emphasized on the fact that the operative line of the order dated 23.2.1995 passed in CWP No.3056/1994 states that the petition is 'dismissed in limine'. We, however, find that the order is not a non-speaking order but running into couple of pages dealing with the issue and the judgements on the point. The order has been passed after notice to the Corporation and hearing both the parties. The phraseology 'dismissed in limine' means that 'it is not a case fit for admission and no Rule or Rule DB issued in the matter'. Not only that the Special Leave Petition filed by the respondent was also dismissed.
8. The scope of any review by the Lieutenant Governor thereafter is limited. However, despite this the Lieutenant Governor has taken the

trouble of noticing all the pleas of the respondent, once again, and passed a speaking order on 27.4.2000.

9. In a challenge to that order all that could have been examined was whether the exercise of the review power by the Lieutenant Governor was in accordance with law or not. It could not have amounted to a re-hearing of the issue of the validity of the order of dismissal and of the appellate order. The order dated 27.4.2000 cannot be said to be erroneous or improper. The respondent could not even have prayed once all over again for the order of dismissal and the appellate order to be set aside, which is the prayer which was made in the writ petition which was transferred to the CAT and has resulted in the impugned order but could only have on a limited aspect impugned the order of the Lieutenant Governor dated 27.4.2000 exercising review jurisdiction.
10. We fail to appreciate how the CAT could have, once again, gone into the issue of the proportionality of sentence when that aspect was either not raised or the earlier Bench of this Court had not found it fit to be examined. Learned counsel for the respondent states that such a plea was not raised. If the plea of proportionality of sentence was not raised then it amounts to respondent having given up that plea while challenging the dismissal from service.
11. We also find that had even the issue of proportionality of sentence being examined, a finding could not have been reached that the sentence was too severe or disproportionate so as to be interfered with. The menace of unauthorized construction and officers of public authority looking the other way when such construction is carried out

permeates the city of Delhi. In the present case the respondent was the concerned officer who took no steps against the unauthorized construction of a commercial complex in Chandni Chowk which is a congested area. Not only that even when communication was sent to him by the superior officer he claims to have marked it to a subordinate officer and did not supervise the same. Such dereliction of duties has to be dealt with without unnecessary sympathy.

12. We consequently set aside the impugned order of the CAT dated 19.2.2010 and make the rule absolute leaving the parties to bear their own costs.

SANJAY KISHAN KAUL, J.

DECEMBER 03, 2010
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M.L. MEHTA, J.