

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

+ **WP(C) No. 540/2009**

% **Date of Decision: 26.02.2010**

DDA Petitioner
Through Mr. Arun Birbal, Advocate

Versus

P.C. Jain Respondent
Through Mr. R.S. Kela, Advocate

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.

The petitioner, DDA has challenged the order dated 25th July, 2008, passed by the Central Administrative Tribunal, Principal Bench, New Delhi in TA No. 91/2007 titled as Sh. PC Jain Vs. DDA and Anr. setting aside the penalty order dated 26th June, 2003, whereby the penalty of 20% cut in pension for a period of 10 years was imposed on the respondent.

It is not disputed by the parties that the respondent Sh. P.C. Jain had retired from DDA on 31st January, 1996 and a few days before his retirement on 18th January, 1996, he had been served with article of

charges stipulating that while working as Director (Building) DDA, he had shown undue favor to the allottee of Plot No. J-14 and J-15, Vikaspuri, New Delhi by not issuing demolition orders of unauthorized construction inspite of the report given by the Jr. Engineer and as such the party managed to construct a huge commercial building styled as Pelican Hotel by amalgamating both the plots.

Though the article of charges were framed on 18th January, 1996, however, the considerable time was taken in appointing an inquiry officer who gave a report on 29th May, 1998 holding that respondent was guilty of charge framed against him.

After considering the report of the respondent against the inquiry report, the Disciplinary Authority issued a penalty order on 26th June, 2003, imposing a penalty of 20 % cut in pension for a period of ten years.

The respondent had challenged the order of the Disciplinary Authority by filing a writ petition No. 3169/2004, however, pursuant to notification dated 25th July, 2007, the matter had been transferred to Central Administrative Tribunal, Principal Bench.

Before the Tribunal on behalf of the respondent, it was contended that just few days before his retirement, the article of charge were

framed to victimize the respondent and in any case, the allegations against the respondent were vague and based on surmises without any basis and the inquiry officer had gone far beyond the framework of charge-sheet to find him guilty of imaginary lapses. The Disciplinary Authority also according to the respondent overlooked the above aspects and a major penalty had been issued without due care and caution.

The Tribunal after considering the respective contentions had held that merely because the charge sheet was issued 12 days before the retirement, the same could not be over looked. Since, no malafide was imputed against the enquiry officer, therefore, the Tribunal held that the plea of the respondent that the inquiry officer exceeded beyond his jurisdiction was not accepted.

It was contended on behalf of the respondent that Jr. Engineer (Building) had submitted a report only to the effect that the concerned party has excavated two plots and was constructing full basement. The Jr. Engineer had submitted a report about the unauthorized excavation on 27th January, 1992 and the DD (Building) brought this to the attention of the applicant on 11th February, 1992. The case was marked on 12th February, 1992 to Dy. Director (Enforcement Branch) for putting up show cause notice and thereafter, file had gone back and was received later on in the office of the applicant only on 13th May,

1992.

In the circumstances, the learned counsel for the petitioner is unable to explain as to how there was a delay on the part of the respondent in issuing the show cause notice for 17th July, 1992. The Tribunal noted that this is a case of no evidence as there was nothing to show that the file had come back to the office of the applicant on 13th May, 1992 or it had been brought to the notice of the applicant any day prior to 17th July, 1992. If there is no evidence that the file was before the respondent before 17th July, 1992 apparently, the respondent cannot be held answerable for the delay from 12th February, 1992 up to 17th July, 1992 and the findings of the inquiry officer and Disciplinary Authority are ex-facie not sustainable as there is no evidence in support of such an inference drawn by them.

The Tribunal also noted that reports of the subordinate officers to the respondent was that the demolition work was being attended to and which was corroborated by the statement of party concerned that there was no construction. The findings of the Tribunal which are relevant are as under:-

“12. As noticed earlier, the article of charge itself was not appropriately framed, since the applicant is found responsible about construction of a huge commercial building viz. Hotel. The enquiry officer was not aware of the nature of the charges even. When the lapse alleged was that he was bound to inquire about the excavation and amalgamation carried out in the

plot, the finding is totally different. There was nothing to indicate that during the course, any construction activities were going on. In fact, the reports of the subordinate officers were that demolition work was being attended to, corroborated by the statement of the party concerned that there was no construction. Inherent defect in the charge sheet perhaps has resulted in a finding, which was unauthorized.

13. We may pause here for a moment so as to examine whether there was any bona fide attempt on the part of the DDA in putting all the blames on the applicant for the construction of a Hotel, without due sanction as a fall out of the enquiry report. Facts has been presented that during 1993 a hotel was functioning at the premises. But it is elementary that before an establishment like a hotel is permitted to function, clearance from the DDA and Municipal Authorities is mandatory, in regard to the fitness and compliance with the plans. Even in the manner of supply of electricity and water, the authorities have power to withhold grant of license and permission where the construction is unauthorized. There is no plea that the applicant was presiding himself over all these matters. As a superior officer, the applicant had to rely on the report submitted to him by the subordinate officers and it was not the case of the DDA that he was expected to go and personally examine the works about which violations were reported. There is no suggestion that the successor of the applicant after June, 1993 also had moved a little finger, to hold that construction was irregular and it was subjected to be demolished. The indication on the contrary is that the hotel complex is functioning for all fifteen years as of now.”

The learned counsel for the petitioner in the circumstances, is unable to show as to how the respondent can be held liable for delay or unauthorized construction when the reports from the Jr. Engineer and the Assistant Engineer to him were that no work was being transacted but the demolition work was in progress. This also cannot be disputed that the charge is that demolition orders of unauthorized constructions

were not issued where as the evidence shows that pursuant to the report of the Jr. Engineer and the Assistant Engineer, demolition work was carried on. This also cannot be disputed that for running a hotel various permissions are required and none of these permissions were supervised or were granted at the instance of the petitioner. In the circumstances, the finding of the Tribunal that as a Supervisor officer, the respondent had to rely on the report submitted to him by the subordinate officers cannot be faulted. There is no evidence that after 1993 when the respondent was moved from the post, the successor of the respondent did anything regarding construction, which was alleged to be irregular and was to be demolished. For the period after 1993 no liability can be imputed on the respondent for not carrying out the demolition pursuant to the reports of the Jr. Engineer and the Assistant Engineer.

The learned counsel for the petitioner Sh. Birbal, in the circumstances, is unable to show any cogent evidence in support of charge against the respondent that he had shown undue favor to the allottee of Plot No. J-14 and J-15, Vikaspuri, New Delhi as the reports before the respondent were that the demolition is being carried out and even the party appeared during the proceedings and contended that the demolition has been carried out.

In the circumstances, the order of the Disciplinary Authority

which is based on no evidence and is rather based on its own surmises and conjectures could not be sustained and consequently the order of the Tribunal setting aside the order of the Disciplinary Authority imposing major penalty of withholding 20% of the pension cannot be faulted and the order of the Tribunal is entitled to be sustained.

The order of the Tribunal impugned before us does not suffer from any such illegality or irregularity which will require interference of this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition is without any merit in the facts and circumstances and it is therefore, dismissed.

ANIL KUMAR, J.

FEBRUARY 26, 2010
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MOOL CHAND GARG, J.