

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

+ **WP(C) No.3826/2011**

% **Judgment reserved on: 28th July, 2011**
Judgment pronounced on: 12th September, 2011

**DELHI URBAN SHELTER
IMPROVEMENT BOARD**

..... PETITIONER

Through: **Mr.Vinay Sabharwal, Advocate.**

Versus

SH. G.S. MEHRA

..... RESPONDENT

Through: **Ms.Sunita Tiwari, Advocate.**

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJIV KHANNA

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| 1. Whether reporters of the local papers be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

DIPAK MISRA, CJ

Invoking the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, the Delhi Urban Shelter Improvement Board (for short 'the Board') has assailed the order dated 19.11.2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (for short 'the tribunal') in TA No.523/2009.

2. The facts in a nutshell are that the respondent, a retired employee of the Municipal Corporation of Delhi (MCD), had approached the tribunal challenging the order dated 1.7.2008 whereby in pursuance of the proceedings initiated under Section 8-A of the DMC Services (Control and Appeal) Regulations, 1959 (for short 'the 1959 Regulations'), a minor penalty of censure was inflicted on him. That apart, the order dated 10.4.2008, whereby the charge of Deputy Director from the applicant was taken over and others were promoted, was also challenged. After the MCD, by virtue of a notification issued under Section 14 of the Administrative Tribunals Act, 1985, came within the ambit and sweep of the said Act, the matter stood transferred to the tribunal for adjudication.

3. The respondent was employed with the then existing Slum & J.J. Department of MCD. By order dated 21.12.2004, he was asked to look after the current duty charge of Deputy Director. While he was holding the said post, a charge sheet was issued on 21.12.2006 in respect of certain misconduct. In pursuance of the charge sheet, an enquiry was conducted and after conclusion of the disciplinary proceedings, punishment of censure was imposed by order dated

1.7.2008. Before the punishment came to be inflicted, the current duty charge assigned to the respondent for the post of Deputy Director was taken over from him for administrative reasons. The respondent filed the writ petition for quashment of the charge sheet dated 21.12.2006 and further quashment of the order by which the current duty charge of the respondent had been taken away. A claim was also made for promotion on adhoc basis as Deputy Director.

4. A counter affidavit was filed by the petitioner herein contending, inter alia, that the respondent was on the current duty charge and, hence, no right accrued in his favour. Though the current duty charge was withdrawn, yet it had nothing to do with the initiation of the disciplinary proceedings which was done for administrative reasons. It was also asserted that five incumbents were promoted to the post of Deputy Director on adhoc basis in the year 2008 and none of them were junior to the respondent.

5. The tribunal referred to the decision in ***Roop Singh Negi v. Punjab National Bank & Ors.***, 2009 (1) SCALE 285 and came to hold that the misconduct had not been proved and he had been made a scapegoat and, therefore, the penalty could not be sustained. After so

holding, the tribunal directed as follows:

“6. The applicant has been looking after the current duty charge of the post of Deputy Director since 2004 whereas his juniors, who happened to perform the current duty charge, have been promoted as Deputy Director on ad-hoc basis since 2005, in this view of the matter taking off the said charge from the applicant only, on the basis of penalty of censure, which has now been declared illegal as a consequence thereof the applicant till his retirement has to be deemed to be on current duty charge and deserves consideration for ad hoc promotion as has been done in cases of his junior colleagues from 2005 or which a review DPC or the methodology as adopted by the respondents shall be brought in force so that the applicant be placed at par with his junior colleagues with all consequential benefits within a period of two months from the date of receipt of a certified copy of this order....”

6. It is worth noting, an application was made for correction of the said paragraph on the ground that a typographical error had crept in. The tribunal, by order dated 25.11.2010, passed the following order:

“In the interest of justice, as some typographical error has crept-in into the order dated 19.11.2009 whereby the word ‘colleagues’ has been referred to

as ‘juniors’ in paragraph 6 of the order, this MA is disposed of with a direction to the Registry to make necessary correction in the order and issue a fresh copy of the same to the parties.”

7. We have heard Mr. Vinay Sabharwal, learned counsel for the petitioner, and Ms. Sunita Tiwari, learned counsel for the respondent.

8. Upon perusal of the factual matrix in entirety and the order passed by the tribunal, two issues emanate for consideration - one, whether the tribunal was justified in quashing the punishment imposed on the respondent and, secondly, whether the direction issued in the impugned order to consider the respondent for adhoc promotion, as has been done in the case of junior colleagues from 2005, and extend all consequential benefits is justified or not. First, we shall refer to the justifiability of the order of the tribunal cancelling the order of punishment. In this context, we may refer to the statement of imputation in the chargesheet dated 21.12.2006, which reads as follows:

“Sh. G.S. Mehra was working as Dy. Director/JR/ West Zone, Slum & JJ Deptt. He was duty bound to exercise proper supervision and control over the

functioning of his subordinate staff to ensure proper maintenance of allotment filed.

Director (HQ) vide his orders dated 26.03.2011 directed Jt. Director (Vig) to investigate and submit the report regarding missing files/records/documents from the zonal office of West Zone. The investigation was conducted by the Vig. Deptt. The investigation revealed that more than 6000 allotment files were missing during the working tenure of Shri G.S. Mehra, Dy. Director. But he did not issue any circular to traceout the said missing files. He also did not ensure the adoption of proper procedure regarding handing over / taking over of the charge by the staff working under his supervision and control. He also did not take any action against the concerned erring official who were responsible for missing of the said 6000 allotment files. He also did not lodge FIR in the police station regarding missing of allotment files.

From the foregoing, it is evident that Sh. G.S. Mehra Dy. Director failed to exercise proper supervision and control over the functioning of his subordinate staff due to which more than 6000 allotment files were lot causing difficulties to the department to recover licence fee and ground rent etc. from the plot holder and also financial loss to the department.

He, thereby, contravened Rule 3(1)(i)(ii)(iii) & 3(2) of CCS (Conduct) Rules, 1964 as made applicable to the employees of MCD.”

9. An enquiry was conducted and ultimately, the punishment of censure was imposed. The tribunal, while setting aside the punishment, has opined as follows:

“What has been alleged against the applicant is that he has not taken any action for tracing out the missing files. Perusal of record would clearly reveal that the applicant joined only in 2004 and it is established from the Vigilance Report submitted after due investigation that files sent missing from the year 2001. As such, while no action has been taken against any of the staff till 2004 in which year the applicant joined the post of Deputy Director in the Section from where files were missing, he has been made scapegoat as for three years i.e. from 2001 when the files got missing, neither any FIR was lodged by any of the officers holding the post no any action, was initiated in that regard. However, the applicant, immediately on his joining the post of Deputy Director in the Section of 2004 and after coming to know about the missing files, initiated action for restructuring of the files has not only acted diligently but efficiently without any negligence. In such view of the matter without any fault attributed to the applicant with regard to missing files, the applicant has been punished that too without passing a speaking reasoned order without dealing with his contentions made in his representation against the

show cause notice. It appears that without any material to prove the misconduct on the part of the applicant and just to put the blame on the applicant and to justify their action, the respondents have made the applicant not only scapegoat but victimized him which appears to be unfair and non-judicious exercise of the discretion vested in them. In the result, penalty cannot be countenanced in law.”

10. As far as the quashing of the punishment of censure is concerned, we are only inclined to think that the analysis made by the tribunal cannot be faulted. The tribunal has analyzed the facts and dealt with the conduct of the respondent and since it observed that the respondent had no role in the entire episode and the order passed by the disciplinary authority is cryptic, we find that the order is justified. Hence, we are not inclined to interfere.

11. Presently to the direction given by the tribunal after quashing the punishment in paragraph 6 of the order impugned, which we have reproduced hereinabove. To appreciate the controversy, it is appropriate to refer to the order dated 21.12.2004 whereby the respondent, along with others, was entrusted with the current duty charge of the post of Deputy Director. On a perusal of the said order, it

is quite clear that five incumbents were given the current duty charge of the post of Deputy Director in their own pay scale for a period of one year till the post is filled up on regular/adhoc basis, whichever is earlier. The said order was subject to the following terms and conditions:

- “1. The appointment is in the officer’s own pay scale and as a stop-gap arrangement.
2. It will confer no right on the officer for claiming ad-hoc or regular appointment to this post or any other service benefit, whatsoever.
3. The period of service rendered on current duty charge will not count as officiation in the higher grade for any purpose, whatsoever.
4. Other condition of service will be governed by the relevant rules and orders may be in force from time to time.”

12. On a perusal of the aforesaid order, it is quite vivid that it was a stop gap arrangement and did not confer any right on the incumbent officers and further it was not to be treated as officiation in the higher grade for any purpose.

13. That apart, he had made a bald allegation that his juniors were

promoted on adhoc basis since 2005. No right accrued in his favour while he was holding the current duty charge. The learned counsel for the petitioner has brought on record the seniority list wherein the respondent has been placed at S.No.5. Four others who were senior to the respondent have been promoted as Deputy Director on adhoc basis. The list clearly shows that none of the juniors was promoted to the post of Deputy Director on adhoc basis. The said seniority list has been published on 5.5.2008. The respondent has been superannuated on 30.4.2009. We really fail to appreciate how the tribunal could have issued direction for consideration of the respondent for promotion when none of his juniors was promoted on adhoc basis. The tribunal has presumed that he was senior and after the punishment was quashed, he should be considered for promotion.

14. In view of the aforesaid premised reasons, we are of the considered opinion that the order of the tribunal quashing the order of punishment is justified for directing the present petitioner to consider him and extend the consequential benefits.

15. Resultantly, the writ petition is allowed in part and the order passed by the tribunal as regards the direction contained in paragraph 6

of the order impugned is quashed. There shall be no order as to costs.

CHIEF JUSTICE

SANJIV KHANNA, J.

SEPTEMBER 12, 2011
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