

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

+ **WP(C) No.6698/2010**

% **Date of Decision: 31.05.2011**

Delhi Development Authority Petitioner

Through Ms.Kanika Agnihotri and Mr. Aseem
Chaturvedi, Advocates

Versus

Sh.Pan Singh Rawat Respondent

Through Mr. Malay Chand and Mr. M.S.Bhatia,
Advocates

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

- | | | |
|----|--|-----|
| 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.

*

1. The petitioner, Delhi Development Authority, has challenged the order dated 30th April, 2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.1100 of 2009, titled as 'Sh.Pan Singh Rawat v. Delhi Development Authority', challenging the order of minor punishment dated 6th March, 2007 which was affirmed by Appellate Authority by order dated 20th August, 2007.

The original application of the respondent was allowed by the Tribunal and the order of punishment dated 12th March, 2007 and the Appellate order dated 20th August, 2007 imposing the penalty of stoppage of one increment for one year on non-cumulative basis was set aside.

2. The brief facts to comprehend the disputes are that the respondent was appointed as a Lower Divisional Clerk in the petitioner's department. Later on he was promoted to the post of Upper Divisional Clerk on April 1988. In the year of 2004, the respondent was posted in the LIG (Housing) Branch as a UDC and he was the Dealing Assistant in the matter of Sh.Vijay Kumar, who was allotted a flat under the Ambedkar Awas Yajona, in the draw held on 15th October, 2004. The allottee had been issued a demand-cum-allotment letter and was asked to pay an amount of Rs.7,21,100/- after deducting the registration amount along with interest. The allottee, Sh.Vijay Kumar, had paid the amount demanded and also submitted the necessary documents for issuance of the possession letter. Thereafter the case file was sent to AAO(HAU)4 for issuance of the surrender slip. The file shuttled between Accounts and Management Housing for want of complete formalities and finally, from the records in Accounts Wing it came to be known that the

registration in respect of the allottee stood converted to EHS. The case file was thereafter referred to the EHS branch and the AD(EHS) recorded a note in the file stating that the allottee was allotted an EHS flat No.620 Type 'B', Block 'B' Pkt. 3 at Bindapur under the said EHS Scheme in the year 1995. However, no entry for the flat allotted at Bindapur was made in the Registration and Computer by the then Dealing Assistant, because of which the LIG flat No.225 Pkt.5, Mayur Vihar was allotted to him under AAY- 89 Scheme in the draw held on 15th October, 2004. A query was raised in respect of the allottee on 18th March, 2005 regarding the Indemnity Bond for the loss of FDR which was not found to be in order. It had also transpired that the demand-cum-allotment letter of EHS was received by the allottee, but he had not accepted the allotment and had made a request for the refund of the registration money. The registration money was, however, forfeited as per the terms and conditions of the allotment, since the request for the cancellation of the registration was made at a belated stage, well beyond the prescribed period. The matter was also considered by the Commissioner (Housing) for the cancellation of allotment of flat No.225, Pkt. 5, Mayur Vihar on account of double allotment, which proposal was approved by the Commissioner(Housing). The file then came back marked to the Dealing Assistant/respondent and the

cancellation order dated 31st August, 2005 was issued by him. However, the cancellation order issued was a non-speaking order as the reasons for cancellation were not stipulated and the only reason that was mentioned, was that the allottee did not comply with the instructions and it directed that he should apply for refund through the SWU(Housing). There was no mention of the fact that the allottee, Sh. Vijay Kumar, had falsely indemnified that his FDR had got misplaced, which actually he was not in possession of as the same was submitted by him with his request for refund of the registration money.

3. Since the letter dated 31st August, 2005 was issued without stipulating the reasons, an action was proposed against the officials who had got the letter issued without stipulating the reasons for cancellation under Regulation 4(i) of the DDA (Conduct, Disciplinary & Appeal) Regulation, 1999. A memorandum dated 4th December, 2006 was issued to the respondent. The statement of imputation stipulated that the allottee, Sh.Vijay Kumar, was allotted an EHS flat in the draw, held in the year 1995 and the demand-cum-allotment letter was received by him, but he did not accept the allotment and had made a request for surrendering the allotment and refund of his registration amount. However, the file pertaining to him specifically

stipulated that his registration had been cancelled and the registration amount was forfeited on account of the request made at a belated stage beyond the prescribed period, and therefore, the Director (Housing) had ordered the cancellation of registration and cancellation of the allotment of flat under the LIG (Housing) to Sh.Vijay Kumar and the file was sent to the Dealing Assistant/respondent and thereafter the respondent put up a cancellation letter which was signed by the Assistant Director (LIG) Housing.

4. The cancellation letter which was prepared by the respondent, however, did not stipulate any reasons for cancellation and only stipulated that the allottee did not comply with the instructions and he should apply for refund through SWU (Housing). The letter did not stipulate that allottee Sh.Vijay Kumar had falsely indemnified that his FDR had got misplaced. The allottee was not in possession of the FDR as it was allegedly submitted by him with his request for refund of the registration money and that his registration had been cancelled and the registration money was forfeited. Since no reasons were detailed in the letter of cancellation dated 31st August, 2005, the petitioner contended that the respondent exhibited lack of

absolute devotion to duty and thus, contravened Regulations 4 (i) of the DDA (Conduct, Discipline & Appeal) Regulation, 1999.

5. Pursuant to show cause notice issued to the respondent dated 4th December, 2006, the respondent filed a reply dated 15th December, 2006 to the allegation that the cancellation order was not a speaking order, he represented as under:-

“As per the prevailing practice being followed, the cancellation/updation was fed in the computer on 28th August, 2005 and the acknowledgement generated. The Acknowledgement so generated was put up to the concerned A.D.(LIG)H for approval and signatures with addition of “apply for refund”. However, the then A.D.(LIG)H did not raise any objection to the generated acknowledgment and signed the same. From this, it can be inferred that there was nothing wrong with the orders placed before A.D.(LIG)H. As being the junior most in the branch, it was expected of A.D.(LIG)H to have ensured the correctness of the orders if not found speaking orders. Even if there was any ambiguity in the orders, the then A.D.(LIG)H should have corrected the same, being the responsible officer”.

6. The Disciplinary Authority considered the reply dated 15th December, 2006 and by order dated 12th March, 2007 imposed the penalty of stoppage of one increment for one year on non-cumulative basis on the respondent. It was held that he did not apply his mind in handling the issue and failed to safeguard the interest of DDA while discharging his duties.

7. Disciplinary proceedings were also initiated against Smt.Shakuntala Kanojia, Assistant Director, and a similar charge sheet was issued against her. However, after considering her reply dated 24th July, 2006, as in the mean time she had already retired, the petitioner ordered to convey its displeasure to Smt. Shakuntala Kanojia, Assistant Director (Retd.) by order dated 23rd January, 2007.

8. An appeal filed by the respondent was also rejected by the Appellate Authority by order dated 20th August, 2007. Aggrieved by the order dated 12th March, 2007 imposing a minor penalty of stoppage of one increment for one year without cumulative effect and dismissal of his appeal, the respondent filed an original application being OA No.1100 of 2009, titled as 'Sh.Pan Singh Rawat v. DDA.' The respondent contended, inter-alia, that serious lapses on the part of the allottee like giving false indemnity bond, regarding loss of FDR which in fact had already been surrendered to DDA while seeking refund of his registration money after cancellation of the registration on his request, consequent to the non-acceptance of EHS flat previously allotted to him, and other facts should have been brought to his knowledge before he was expected to have incorporated the same in his cancellation letter. It was further contended that the

respondent had been held guilty only out of malice and not on the facts of the case. The respondent also contended that there was no mention of the allotment of the flat no. 620 at Bindapur in the year 1995 to the allottee in the registration register i.e. the main record for the draw, nor any deletion of the registration No.5538 under the AAY-89 scheme was made in housing computer by the concerned staff. The respondent contended that this was a case of double allotment and the lapse was on the part of the then Assistant Director (LIG) H and no serious view and action against that official has been taken.

9. The respondent also challenged the minor punishment imposed upon him, as disproportionate compared to the punishment of displeasure only imposed upon the Assistant Director, Smt.Shakuntala Kanojia, who was also issued a memorandum regarding the same matter.

10. The OA filed by the respondent was contested by the petitioner who filed a counter affidavit of Sh.Alok Swarup, Director (DDA) contending, inter-alia, that the respondent has failed to show any perversity in the punishment order and the order of the appellate authority. The petitioner justified the minor penalty imposed upon

the respondent and contended that from the notings on the file, it is apparent that the respondent was aware of the reasons for the cancellation and it was his duty to have incorporated the reasons in the letter before forwarding it to the Assistant Director for signing the same.

11. The petitioner also contended that from the appeal filed by the respondent, it was apparent that he knew about the decision for the cancellation taken by the Commissioner (Housing) on 24th May, 2006 regarding flat no.225, Pkt. 5, Mayur Vihar and the reasons for the cancellation. The respondent rather categorically asserted in his appeal before the Appellate Authority that the cancellation letter was sent as per usual practice and generated by the computer cell duly approved by the Competent Authority and no reasons were required to be recorded therein, whatsoever they might have been. The Tribunal after hearing the parties allowed the original application of the respondent and set aside the order of minor punishment dated 12th March, 2007 affirmed by the Appellate Authority by order dated 20th August, 2007.

12. The Tribunal relied on the fact that Smt.Shakuntala Kanojia, Assistant Director (H) who had signed the letter of cancellation has

been let off without any penalty whereas the respondent has been discriminated against by the petitioner. The Tribunal also accepted the plea of the respondent that his duty was only to generate the letter, while the letter was cleared by the Assistant Director (H). The Tribunal absolved the respondent of the charges made against him, by relying on the circulars dated 14th June, 1990 and 10th October, 1991 which were produced by the respondent and thus, allowed the original application and set aside the minor punishment imposed upon him.

13. Aggrieved by the order of the Tribunal dated 30th April, 2010 the petitioner has filed the present writ petition, contending inter-alia, that Smt.Kanojia had not been let off without penalty rather a letter of displeasure had been issued to her, as before conclusion of the Disciplinary proceedings and imposition of the penalty, she had retired and in the circumstances, the only penalty which could have been imposed upon her was to communicate the displeasure of the authority. The letter of displeasure was issued to her and it is not that no action was taken against her and in the circumstances, the Tribunal has assumed without any basis that Smt. Kanojia was let off without any penalty. According to the petitioner, the observation of the Tribunal is based on its own assumption and it is contrary to

the facts established on record. In any case, the petitioner contended that the Tribunal could not have re-appreciated the facts and could not substitute its own findings with the findings of the Disciplinary Authority with regard to the charge having been established against the respondent, which decision was affirmed by the Appellate Authority.

14. The petitioner emphasized that the respondent has not been discriminated, but in fact a fair treatment had been afforded to him. The lack of devotion of duty had been established, and in the circumstances, the inferences of the Disciplinary Authority are not liable to be struck down in the facts and circumstances. Referring to the order of the Disciplinary Authority and the Appellate Authority, it was contended that they are reasoned and speaking orders and they do not suffer from any illegality or such perversity which would have entailed the Tribunal to set them aside. The petitioner contended that the scope of interference in judicial review with the imposition of punishment by the Disciplinary Authority is restricted and could be interfered with only if the quantum of punishment was shockingly disproportionate to the charge. Minor penalty has been imposed on the respondent and so it could not be held that the punishment imposed was shockingly disproportionate to the charge made out

against him. Referring to the circulars dated 10th October, 1991 and 14th June, 1990, it was contended that they are not applicable in the case of the respondent and do not absolve him of the charges made against him. The circular dated 14th June, 1990 contemplates that possession letter is to be issued to the allottee only after the Assistant Director and the Deputy Director satisfy themselves about the genuineness of the applicant in reference to the registration record, and such cases are not to be put to the higher authority for these purposes, whereas by circular dated 10th October, 1991 it was decided that before the issue of the possession letter, it would be the responsibility of the concerned Assistant Director to ensure the verification of the payment made by the allottee from the Finance Wing and for this purpose the Assistant Director shall personally contact the Accounts Officer (Cash) Housing and get the payment verified. According to the petitioner, both the circulars are not in respect of not incorporating the reasons in the cancellation letter and therefore could not be relied on by the Tribunal to set aside the minor penalty imposed upon the respondent.

15. The petitioner also relied on the file notings from 4th March, 2005 up to 12th September, 2005 to contend that the file notings had at various places on various dates the initial/signatures of the

respondent and it could not be contended by him that he did not have access to the file and was not aware of the reasons for cancellation of the allotment. The learned counsel for the petitioner, Ms. Agnihotri has also relied on (1997) 3 SCC 72, Indian Oil Corporation Ltd. & Anr. v. Ashok Kumar Arora; (2005) 8 SCC 46 Obettee (P) Ltd. v. Mohd. Shafiq Khan; (1989) 2 SCC 177 Union of India v. Parma Nanda, in respect of pleas and contentions of the petitioner. Reliance was placed on Chapter 15 Clause 3 of the Vigilance Manual and OM No.434/17/80 dated 28th February, 1981 clarifying that the minor penalty proceedings have no effect on pension and since minor penalty proceedings were concluded against Smt.Kanojia, her pension could not be affected. Reliance was also placed on Vigilance Manual Chapter 10 Clause 4 contemplating that the displeasure of the Government should be communicated against the official in the form of letter and it should be placed on the character role of the officer in the manner indicated in para 3.2 for placing a copy of the warning on the CR.

16. The writ petition is contested by the respondent on the basis of the record which was before the Tribunal, as no counter affidavit was filed. The learned counsel for the respondent Mr. Malay Chand contended that the cancellation letter dated 31st August, 2005 was

computer generated and therefore, nothing could be added in the same and in any case, it was put up before the Assistant Director(H), Smt.Kanojia, who should have pointed out the incorporation of the reasons for cancellation. The learned counsel for the respondent also contended that the respondent was not aware of the reasons for the cancellation, and therefore, he could not have incorporated the reasons in the cancellation letter dated 31st August, 2005. Learned counsel also pleaded that the punishment imposed on the respondent is disproportionate to the punishment imposed on Smt.Kanojia, the Assistant Director. The punishment imposed on Assistant Director (H) was only the displeasure communicated to her, whereas in the case of the respondent one increment has been stopped for one year on non-cumulative basis. Learned counsel also contended that it was a case of double allotment and no entry to this effect was made in the registration record and the computer by the then Dealing Assistant/Assistant Director. Reliance was also placed by the respondent on another cancellation letter not incorporating any reasons for cancellation to contend that as per the prevailing practice, the cancellation/updation was fed in the computer and the letter that was generated was put up to the AD(LIG)H for approval and signature and as no objection was raised on the generated

acknowledgement by the AD(LIG)H, therefore, nothing can be imputed to the respondent.

17. Learned counsel for the respondent also relied on (2010) 5 SCC 783, State of UP and Ors. v. Raj Pal Singh, to contend that the punishment imposed on the respondent is disproportionate to the charge allegedly made out against him, and that it is also disproportionate in comparison to the lapse on the part of the Assistant Director (LIG)H, under whose signature the letter of cancellation was issued.

18. We have heard the learned counsel for the parties in detail. The learned counsel for the respondent first contended that the respondent was not aware of the reasons for cancellation of the allotment, however, confronted with the notings on the file, copies of which from 4th March, 2005 up to 12th September, 2005 were filed, which were duly initialed by the respondent on various dates, the learned counsel for the respondent could not refute that the respondent did have knowledge about the reasons for the cancellation of the flat of the allottee, Sh.Vijay Kumar. From file noting, especially of 25th July, 2005 and of 17th August, 2005 which file was with the respondent, it cannot be inferred that the

respondent was not and could not have been aware of the reasons of the cancellation of the flat. This plea of the respondent is therefore, rejected that he could not have had the knowledge of the reasons for the cancellation of the flat.

19. The respondent also could not contend that his duty was only to generate the letter from the computer and to place it before the Assistant Director (LIG) H. The reasons for the cancellation had not been mentioned by the respondent in the cancellation letter dated 31st August, 2005, however, it was written in the computer generated letter that the allottee Sh.Vijay Kumar can apply for refund through SWU(H) as the case was of tripartite agreement. This is not the case of the respondent that whatsoever had been written in his handwriting in the cancellation letter dated 31st August, 2005 was pursuant to the directions given by the Assistant Director (LIG)H. It has not been explained satisfactorily as to why the reasons for the cancellation could not be incorporated by the respondent in the said letter for the cancellation of allotment. In the circumstances, the respondent cannot absolve himself of the lapse on his part in not incorporating the reasons for cancellation of the flat in the cancellation letter dated 31st August, 2005. The respondent in reply to the show cause notice issued to him, had filed a reply dated 15th

December, 2006 wherein he had contended that the prevailing practice had been followed under which the cancellation letter was fed in the computer and the computer generated acknowledgment was produced before the Assistant Director (LIG)H. However, the learned counsel for the respondent is unable to show any documents on the basis of which it can be inferred that there had been such practice as has been alleged by the respondent.

20. From the notings on the file, if it can be inferred safely that the respondent had been aware of the reasons for the cancellation of allotment, and if the facts pertaining to the claim of refund was written by the respondent in the computer generated letter, then why the reasons for the cancellation had not been mentioned clearly constitute a lapse on the part of the respondent and in the circumstances, it could not be held that the charge for minor penalty was not made out against the respondent. The finding of the Tribunal in the facts and circumstances that the charge against the respondent had not been made out is not sustainable.

21. The Tribunal has allowed the original application of the respondent on the ground that Assistant Director (LIG)H has been completely exonerated and let off, and the petitioner has been

imposed with minor penalty. The inference of the Tribunal is palpably not sustainable as in the case of minor penalty proceedings, after the retirement the pension of such employee could not be impacted, however, the displeasure note could be issued against the said employee, after recording the finding that the charge was made out against him/her, which was done in the case of Smt.Kanojia. The charge was made out against her and so it could not be held that Smt. Kanojia was absolved of the charge and was let of. However, on account of a minor penalty proceeding being initiated against her, her pension could not be withheld or reduced and therefore, the displeasure note was issued to her in accordance with rules. In the circumstances, the inference of the Tribunal is apparently unsustainable that the respondent has been discriminated and therefore, the order of the Tribunal is not sustainable.

22. In State of UP & Ors. Vs. Raj Pal Singh (supra), relied on by the respondent regarding the disproportionate punishment, it was held that where the charges are same and identical in relation to one and the same incident, to deal with the delinquent in awarding of punishment in a different manner, would be discriminatory. However, in the case of the respondent, he had been awarded a minor penalty in accordance with the rule applicable during his

service tenure and since the minor penalty would not have resulted in withholding or reduction of pension, an appropriate displeasure note according to rules was issued to the Assistant Director (H). The ratio of the case relied on by the respondent, therefore, does not support the contention of the respondent that he has been discriminated. In OBETTEE (P) Ltd., (supra) it was held that issuing a letter of warning to some workers and taking another action against other workers who stood on different footing will not be discriminatory. In Indian Oil Corporation & Ors.(supra), it was held by the Supreme Court that on consideration of the report and findings of the Inquiry Officer, if the Disciplinary Authority took a lenient view in respect of some employees having regard to the involvement of those employees and imposing different punishment on the respondent considering the entire episode, then the punishment cannot be termed to be discriminatory as there is justifiable reason. In the case of the respondent, as he continues in the service, therefore, minor penalty of stoppage of one increment on non-cumulative basis for one year has been awarded, whereas, letter of displeasure was issued to Smt.Kanojia, as she had retired from the service and the minor punishment could not impact her pension, therefore, it cannot be held that there had been any discrimination and in the circumstances, the findings of the Tribunal that the

respondent had been discriminated is factually and legally not sustainable. Findings to the contrary by the Tribunal, therefore, are not sustainable and are liable to be set aside in the facts and circumstances.

23. In *UOI v. Parma Nanda* (supra), the Supreme Court had held that the Administrative Tribunal in exercise of its jurisdiction does not ordinarily have the power to interfere with the punishment awarded by the competent authority in departmental proceedings on the ground of penalty being excessive or disproportionate to the misconduct proved, if the punishment is based on evidence, and is not arbitrary, mala fide or perverse. The punishment imposed on the respondent, of stoppage of one increment on non-cumulative basis for one year cannot be construed to be excessive or disproportionate so as to attract the ratio of the judgment relied on by the respondent. The Supreme Court in para 27 at page 189 of the *Parma Nanda* (supra) had held as under:

“27. We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the

competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter.

24. On the basis of the evidence on record, it has been established that the respondent was aware of the reasons for cancellation, therefore, he ought to have incorporated the same in the cancellation letter generated from the computer as the details for the refund of amount was written in his handwriting in the computer generated letter, but the reasons for the cancellation were not written. In the circumstances, the Tribunal was not justified with interfering with the penalty imposed on the respondent pursuant to charge of misconduct made out against him.

25. In totality of the facts and circumstances, the Tribunal has committed a manifest error in setting aside the minor punishment imposed on the respondent on the ground that the respondent had

been discriminated against, by relying on the circulars dated 14th June, 1990 and 10th October, 1991, which were not relevant. In the facts and circumstances, the order of the Tribunal for the foregoing reasons is not sustainable and is liable to be set aside.

26. Therefore, for the foregoing reasons, the writ petition is allowed and the order of the Tribunal dated 30th April, 2010 passed in OA No.1100 of 2009, titled as 'Pan Singh Rawat v. DDA' setting aside the order of the punishment dated 12th March, 2007 affirmed by the Appellate Authority dated 20th August, 2007 is set aside. Consequently, the respondent shall be liable for the punishment imposed by the Disciplinary Authority by order dated 12th March, 2007 which was affirmed by the Appellate Authority by order dated 20th August, 2007. Parties are, however, left to bear their own costs.

ANIL KUMAR, J.

SUDERSHAN KUMAR MISRA, J.

MAY 31, 2011

vk