

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

+ W.P.(C) No. 196/2010

% *Date of Decision: 13 .01.2012*

MUNICIPAL CORPORATION OF DELHI *Petitioner*
Through Ms. Mini Pushkarna with Mr. Amit
Singh, Advocates

Versus

B.B. BAJAJ *Respondent*
Through Mr. Raman Duggal, Advocate

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MS. JUSTICE VEENA BIRBAL

VEENA BIRBAL, J.

1. Present is a petition under Article 226 and 227 of the Constitution of India by which petitioner has challenged impugned order dated 30.07.2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in T.A. No. 800/2009 by which directions have been issued to the petitioners to reinstate the respondent in service with all consequential benefits and 50% of back wages.

2. The respondent was appointed as a LDC in MCD on 31.07.1979. He was promoted to the post of UDC on 10.01.1996 and

was assigned the duties of Licensing Inspector. At the relevant time, the respondent was posted in the South Zone of MCD at Green Park.

3. On 13th June, 1997 an unfortunate fire incident took place at Uphaar Cinema which claimed numerous lives.

4. After the incident, the Deputy Commissioner (South Zone) of the Government of NCT held an administrative inquiry *inter alia* into the role of officials of MCD in the tragedy. Pursuant to the report given by the Deputy Commissioner disciplinary proceedings against some of the officials of MCD were initiated. The respondent was served with charge-sheet dated 20.04.2000. The contents of the charge-sheet are reproduced below:-

“Articles of Charge

Article of charges framed against Shri B.B. Bajaj, LI, Municipal Corporation of Delhi.

Sh. B.B. Bajaj, UDC had been working as Licensing Inspector in Licensing Department/South Zone during the year 1996-97. He failed to maintain devotion to duty and absolute integrity and committed gross misconduct on the following counts:-

1. He failed to carry out detailed inspection and point out various irregularities which were existing at ‘Uphaar Cinema’ premises in his report for issuing NOC for renewal of annual cinematography licence of the said cinema for the year 1996-97 and he made report in routine manner and recommended for NOC on which NOC was issued by AO/South Zone vide his letter

No.873/AO/SZ/96 dated 25.09.1996 and was sent to DCP/Licensing and as such necessary action could not be initiated by the zonal office to get rectified/removed various irregularities existed in the said premises which resulted into a drastic tragedy occurred in the said cinema hall on 13.06.1997.

2. He did not take any action against the storage of PVC foams, which was existed at basement in the said cinema premises and was being stored there without having any licence issued by the Corporation and against the regulations made under DMC Act.
3. He also did not take any action including prosecution against the management of said cinema for storage of films at basement of cinema premises of which Municipal licence was not got renewed after 31.03.1996.

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

5. A departmental inquiry against the respondent was initiated which was conducted by the Commissioner for Departmental Inquiries, Central Vigilance Commission as an Inquiry Officer. The Inquiry Officer submitted his report dated 9th April, 2003 holding the petitioner guilty of charges leveled against him. On that basis, a show cause notice dated 7th October, 2003 asking the respondent to show cause as to why the respondent be not dismissed from the services was got issued by MCD and ultimately the respondent was dismissed from the service. The appeal preferred by the respondent was dismissed by

the appellate authority i.e. the Commissioner, MCD vide order dated 7th May, 2004.

6. Against the orders passed by the disciplinary authority and the appellate authority, the respondent filed a writ petition before this Court which got registered as W.P.(Civil) No.22879/2005. During the pendency of the said writ petition, MCD was brought within the jurisdiction of Central Administrative Tribunal (Central Administrative Tribunal) and thus the pending writ petition got transferred to Central Administrative Tribunal for adjudication and was re-numbered as TA No.800/2009.

7. Vide the judgment dated 30th July, 2009 the Tribunal allowed T.A. No.800/2009, and directed MCD to reinstate the Respondent in service with all consequential benefits but with 50% back wages. Aggrieved by the judgment dated 30th July, 2009 the petitioner MCD has preferred the present writ petition.

8. The order passed by the disciplinary authority as also the appellate authority was set aside by the Tribunal on the following grounds:-

(a) Giving of a show cause notice against the proposal of imposing the penalty of dismissal showed pre-determination of issues on the part of the disciplinary authority;

(b) The respondent had given a detailed representation in response to the show cause notice against the

proposed penalty but the same has not been considered as no reasons have been recorded in the penalty order as to why the contentions raised in the representation were not accepted by the disciplinary authority. The disciplinary authority being quasi judicial authority was required to pass a reasoned order dealing with the contentions raised by the appellant in the representation.

(c) In his appeal a specific plea had been raised by the appellant qua discrimination and yet the appellate authority turned down the appeal by a non-speaking order.

(d) The respondent has been discriminated inasmuch as the act of non inspection by the respondent has been very seriously viewed but the officials of the other departments of MCD against whom similar charges were made have been let off with minor penalties.

9. The counsel for MCD has contended that the Tribunal erred in holding that penalty order passed by the disciplinary authority was illegal as the disciplinary authority prior to passing that order had given a show cause notice to the respondent against the proposed penalty. It was contended that regulation 8 of the DMC Regulations of 1959 itself envisage that the disciplinary authority shall give such a notice before passing the penalty order. It was also contended that prior to the 42nd amendment of the Constitution, Article 311 of the Constitution also laid down such a requirement as a mandatory requirement before passing the penalty order. Though vide the 42nd amendment, such requirement ceased to be a part of Article 311, the

same cannot be interpreted to mean that even if the regulations specifically stipulate such a procedure, and the disciplinary authority follows that procedure, the same would make the penalty order illegal. It was further contended that Tribunal erred in relying upon the decision reported as Managing Director, ECIL Vs. B. Karunakar [1993 SCC (L&S) 1184] for this purpose, as the Supreme Court in that judgment did not hold that if a show cause notice against the proposed penalty is required to be given by the disciplinary regulations, giving of the same would vitiate the penalty order. It was also contended that the order passed by the disciplinary authority and the appellate authority were speaking orders. On the merits of the case, it was submitted that the Tribunal erred in setting aside the penalty order and the appellate order, as the misconduct of the respondent stood established during the disciplinary proceedings. The counsel for the respondent on the other hand justified the impugned judgment and also contended that the respondent has been discriminated.

10. The Charge-sheet against the respondent has already been reproduced as above. During the course of inquiry proceedings 5 witnesses (SW-1 to SW-5) appeared on behalf of the MCD. In addition to the general statement of the respondent, Inquiry Officer recorded the statement of one Shri B.S. Negi, Licensing Inspector, Central Zone, Lajpat Nagar, New Delhi, as a defence witness.

11. After completion of the inquiry proceedings, Inquiry Officer held as follows:-

“.....However, as per documents, deposition (prosecution & defense), it is established that Building department, health department and license department failed to take action as per their duties but CO being Licensing Inspector also recommended NOC renewal of licence without inspection of site and article of charge No.1,2 & 3 stand PROVED against CO.”

12. From the relevant notings as attached to the writ petition, it appears that inquiry report was considered by the Disciplinary Authority thereafter it passed the following order:-

“In this case, Sh. B.B. Bajaj, Licensing Inspector has been proceeded against for major penalty after obtaining the first stage advice from CVC. CDI/CVC was appointed as I.O who conducted departmental against Sh. Bajaj and held the charges as proved. A copy of the inquiry report was served upon the charged official. He did not submit any reply within stipulated period in response to inquiry report.

I have gone through the inquiry report and other relevant documents placed in the file. Inquiry Officer in his report has proved all the three charges. I agree to the findings of the Inquiry officer and hold Sh. B.B. Bajaj responsible.

In view of above, I propose to impose the penalty of “dismissal from service which shall ordinarily be a disqualification for further employment” upon Sh. B.B. Bajaj, Licensing Inspector.

Further action may be taken by the Vigilance Department.

Sd/-
15.7.03
Deputy Commissioner
South Zone”

13. It further appears that thereafter a show cause notice proposing penalty of “dismissal from service which would ordinarily be a disqualification for further employment” was issued by the Vigilance Department of MCD vide the following memo:-

“MUNICIPAL CORPORATION OF DELHI
VIGILANCE DEPARTMENT

16, RAJPUR ROAD,
CIVIL LINES, DELHI-110054.

No.1/16597/Viv./P/AM/03/1758

To

Shri/Smt. B.B. Bajaj, UDC/LI
Through AAO/INTERNAL Audit K. Gate.

MEMO

With reference to the statement of imputation/charge sheet issued and carved upon Sh. B.B.Bajaj/UDC/LI vide No.1/16597/Vig./P/AM/03/1758 dated 20.04.2000 under regulation 8/8-A of the DMC service (Control & Appeal) Regulations, 1959, the DL/South Zone in the capacity of Disciplinary Authority after affording him/her a personal hearing and examining the record of the case, has proposed to inflict upon him/her the penalty of “Dismissal from service which shall ordinarily be disqualification to future employment” vide his/her orders dated 15.7.2003 (copy enclosed).

Sh. B.B. Bajaj, UDC/LI is hereby given an opportunity to make much representation as he/she wish to make against the aforesaid orders he/she may do so within 15 days of the receipt of this memo, failing which, it will be presumed that he/she has not

representation to make and further orders will be liable to be passed against him/her without any reference.

His/her representation, if any, addressed to the Disciplinary Authority may be directly submitted in Room No.301 of the Vigilance Department Civil License 16, Rajpur Road, Delhi.

The receipt of this memo should be acknowledge in the following from immediately.”

14. Though from the noting of the disciplinary authority, it would be seen that though the disciplinary authority had recorded that a copy of the inquiry report with an opportunity to make the representation had been served on the charged official but he did not submit any reply to the same within the stipulated period, no such notice was brought on record of this court. During the course of arguments, MCD was asked to produce the relevant communication of April 2003 asking the respondent to show cause against the inquiry report as referred to in the note of the Disciplinary Authority. MCD took time for that purpose and further time was sought on 20.1.2011. Ultimately, no such communication could be produced and it was conceded that no opportunity was given to the respondent to show cause against the inquiry report and only the show cause notice against the proposed penalty was issued. It cannot be disputed that in view of the judgment of the Supreme Court in Managing Director ECIL Vs. B. Karunakar (*supra*), MCD was under an obligation to furnish delinquent employee a copy of the inquiry report with an opportunity to make a representation against the findings arrived at by the Inquiry

Officer. In the circumstances, it is obvious that in the note dated 15.7.2003 of the disciplinary authority erroneously recorded that the respondent did not make any reply within the stipulated period in response to the inquiry report and proceeded to agree with the enquiry officer without permitting the respondent to make a representation against the inquiry report. Show cause notice issued by the vigilance department of MCD in pursuance of noting of the disciplinary authority only permitted the respondent to make a representation against the proposed penalty and not against the findings recorded by the Inquiry Officer which has already been accepted by the authority before issuance of the show cause notice. Thus the respondent was not permitted to raise the pleas against the findings recorded by the enquiry officer. In the facts of this case, it cannot be disputed that by not giving the opportunity against the report of the inquiry officer prejudice has been caused to the respondent. Thus the order passed by the disciplinary authority cannot be sustained on this ground itself.

15. In the facts of this case, this court need not to go into the contention of the petitioner that the penalty order was not bad in law as the petitioner was given an opportunity to show cause against the proposed penalty in view of the provisions of Regulation 8 of the MCD Regulations.

16. Moreover, the order passed by the appellate authority in pursuance of the appeal filed by the respondent reads as follows:-

“In the present case, the Charged Official (CO) Sh.

B.B. Bajaj Ex. UDC has filed an appeal against the orders dated 20.11.2003 of the disciplinary authority, thereby inflicting the penalty of 'dismissal from service which shall ordinarily be a disqualification for future employment' upon the CO. In view of the principles of natural law & justice, opportunity of personal hearing was afforded to the CO and accordingly, he was heard in person.

After going through the present case in its entirety, I found that no new ground/facts have been furnished by the CO, which warrant fresh consideration in the matter. Since all the article of charges leveled against the CO are very serious in nature, and the same have been stand 'PROVED' by the Inquiry Officer, I uphold the orders dated 20.11.2003 of the Disciplinary Authority thereby inflicting the penalty of 'dismissal from service' which shall ordinarily be a disqualification for future employment upon the CO and accordingly, the appeal of the CO is disposed of."

17. A perusal of the appellate order would show that the sole reason which weighed in the mind of the appellate authority for dismissing the appeal was that no new ground/fact had been furnished by the C.O. which warranted fresh consideration in the matter that the charges levelled against CO were of serious nature and same had been held to have proved by the Inquiry Officer.

18. The approach of the Appellate Authority cannot be considered in accordance with law. The Appellate Authority was not bound by the findings recorded by the Inquiry Officer or even the disciplinary authority. It was required to look into the contentions raised by the

respondent and thereafter decide as to whether the charges levelled against the respondent got established during the inquiry proceedings and the punishment imposed on the respondent was justified. Fact that the charges were serious in nature was no ground to look into the justification of the findings recorded by the Inquiry Officer. The learned counsel for the respondent has also relied on decision in Civil Appeal No.7114-15 of 2003 titled as MCD vs Association of Victims of Uphaar Tragedy & Ors, decided on 13.10.2011. The learned counsel for petitioner contends that the ratio of said judgment is not very relevant for the controversies between the parties. Perusal of said precedent reveals that none of the controversies relevant in the 'present' writ petition have been adjudicated conclusively by the Supreme Court.

19. In view of the above discussion, it must be held that the orders passed by the disciplinary authority as also the appellate authority cannot be sustained and are liable to be set aside.

20. In the normal course, the case would have been remitted back to the disciplinary authority for reconsideration of the matter. However, in this case, there is one more aspect of the matter which needs to be taken note of.

21. The Inquiry Officer on the basis of evidence which had come on the record concluded that though the respondent was guilty of the charges leveled against him, the officials of the departments of MCD,

namely, the Building Department, Health Department and Licence Department had also failed to take the relevant action as per their duties. From the notings on the file which have been reproduced above, it would appear that the findings recorded by the Inquiry Officer were accepted by the Disciplinary Authority, and the appellate authority. The respondent in the TA had filed a comparison showing though that he had been visited with the penalty of dismissal, whereas the officials of the Building Department, the Health Department and General Branch on the same post as well as on higher posts have been imposed minor penalties. This fact has not been disputed or controverted. The respondent has raised contention of discrimination, but none of the authorities have assigned any reason to treat the case of the respondent in a different manner than the officials of the other departments of MCD. Even in the counter affidavit filed by the respondent in CWP No.2879/2005 no cause was shown for taking different position in case of respondent as compared to other officials. The Tribunal on the basis of the material before it has returned a finding that the said officials were identically situated but they have been differently punished which cannot be justified in law. Even in the present writ petition, the MCD has failed to show any reason to apply different yard-stick in case of the respondent than the other officials.

22. In our opinion, there is no case for interfering with the findings of facts arrived at by the Tribunal which are justified on the basis of material before it. There is neither illegality nor perversity in the

findings of facts recorded by the Tribunal on this aspect which would justify exercise of jurisdiction under Article 226 of the Constitution. The writ petition is therefore, dismissed. Parties are left to bear their own costs.

VEENA BIRBAL, J.

ANIL KUMAR, J.

JANUARY 13, 2012

srb/kks