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

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Date of Decision: 15.12.2014

% **W.P.(C) 3618/2014 and C.M. No.7369/2014**

DELHI DEVELOPMENT AUTHORITY

..... Petitioner

Through: Mr. Arun Birbal & Mr. Sanjay Singh,
Advocates.

versus

H L SHARMA

..... Respondent

Through: Mr. Apurb Lal & Mr. Daleep Singh,
Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE VIPIN SANGHI

S. RAVINDRA BHAT, J. (OPEN COURT)

1. The petitioner, Delhi Development Authority (DDA) – in these proceedings under Article 226 of the Constitution of India, challenges an order of the Central Administrative Tribunal (CAT) dated 11.10.2013 in T.A. No.11/2011, whereby the applicant/respondent's dismissal from the post of Junior Engineer was quashed and he was directed to be reinstated with 50% arrears of salary and emoluments from the date of dismissal, i.e. 16.04.1985.

2. Briefly, the facts are that the applicant was, at the relevant time, holding the post and discharging the functions of Junior Engineer in the DDA. In the course of his duties, he was assigned the work of supervising a housing project, i.e. C-2, MIG Housing Pocket, Bodella. On 28.12.1982 and on the next date, i.e. 29.12.1982, a total of 12 flats collapsed in that complex/ block. The applicant and few other officials were immediately placed under suspension, and later were issued with charge sheet on 16.05.1983. The gist of the charges against the applicant was that he did not exercise proper supervision and that the use of substandard construction materials, combined with his omission resulted in collapse of the building. The applicant denied the charges. Inquiry proceedings were

conducted by an officer who did not belong to the DDA, i.e. an officer deployed by the Commissioner of Departmental Inquiries, Chief Vigilance Commissioner. After conclusion of those proceedings, a report was submitted on 31.10.1984 which held, *inter alia*, that the charges against the applicant were proved. In compliance with the existing regulations governing DDA in that regard the applicant was issued with letter/ notice on 21.12.1984 asking him to reply to the proposal for imposition of penalty. He did so and resisted the move; he also countered the findings of the Inquiry Officer – by the reply dated 17.01.1985. It is in this background that the disciplinary authority imposed the penalty of dismissal on 16.04.1985.

3. The applicant appealed to the concerned authority and during pendency of those proceedings preferred a writ petition under Article 226 of the Constitution of India before this Court being W.P. No.2863/1987. This writ petition was ultimately allowed on 25.02.1999. A learned Single Judge of the Court was of the opinion that the authority who issued the charge sheet and issued the order of dismissal was not competent and the regulations framed in that regard are *ultra-vires* the Delhi Development Act, 1957 (“the Act”). The DDA appealed against the decision, to the Division Bench, by preferring being L.P.A. No.171/1999. Whilst the appeal was pending, the Delhi Development Authority (Validation of Disciplinary Powers) Act, 1998 (hereafter referred to as “the Validation Act”) was brought into force and given effect to. The said enactment by Section 3 provided as follows:

“3. Validation of disciplinary powers exercised or action taken by Vice- Chairman or other officers.- Notwithstanding any judgment, decree or order of any Court or Tribunal or other Authority to the contrary, where any disciplinary powers or action which the Central Government or the Authority may exercise or take under the Delhi Development Authority (Salaries, Allowances and Conditions of Service) Regulations, 1961 had been exercised or taken by the Vice-Chairman or other officers of the Authority during the period on and from the 22nd day of November, 1979 to the 1st of March, 1994 , such disciplinary powers or action shall be deemed to have been validly and effectively exercised or taken by the Vice-Chairman or such other officer as if the Vice-Chairman or such other officer had been specified, with the previous approval of the Central Government in the said Delhi Development Authority (Salaries,

Allowances and Conditions of Service) Regulations in that behalf and accordingly, no suit or other proceeding shall be instituted, maintained or continued in any Court or Tribunal or before other authority on the ground that the Vice- Chairman or such other officer was not competent to exercise such disciplinary power or take such action.”

The DDA's appeal, i.e. LPA No.171/1999 was taken up for hearing, and allowed on 17.05.2011. The Division Bench, taking note of the Validation Act, set aside the order of the learned Single Judge and remitted the matter for consideration.

4. In this background, the CAT by order dated 23.01.2012 further remitted the matter to the appellate authority directing it to decide the appeal. The applicant was apparently aggrieved and approached this Court, which required the CAT to go into the matter considering that the applicant had suffered on account of long delay. It is in these circumstances that the CAT, by the impugned order of 11.10.2013, held that the order of penalty was illegal.

5. The CAT was persuaded to quash the penalty imposed on the applicant, primarily on two grounds. First, that the disciplinary authority in its order dated 16.04.1985 whilst imposing the penalty of dismissal did not take into account the submissions of the applicant made in his representation and that the said order was an unreasoned one. The second ground which found favour was that the CAT was of the opinion that the applicant was discriminated against in that the two other charged employees, i.e. Sh. M.L. Varshney and Sh. Dalip Singh were not proceeded with after the penalty was quashed in the first round of litigation. In other words, in sum, the applicant's submission was that he alone was affected and meted with the penalty of dismissal leaving out the others, was held to be merited.

6. Learned counsel for the DDA urges that the impugned order is unsustainable. He took this Court through the findings of the Inquiry Officer and highlighted that the supervisory failure of the applicant was pointed and specific. Learned counsel submitted that the defense of the applicant, i.e. he was over-burdened and that he could not, therefore, exercise effective control of the time, was consciously discussed by the inquiry

report; nevertheless, the Inquiry Officer was of the opinion, after weighing the merits of the materials before him, that the degree of supervision expected from the applicant had not been exercised. It was also pointed out that the inquiry report showed details and the extent to which there was dilution of materials used in the construction.

7. It was submitted that given the findings recorded by the Inquiry Officer, which were clear as to the culpability and acts of and omissions of the applicant, it ought not to have quashed the penalty order on the narrow ground that the disciplinary authority did not record any specific reasons. Learned counsel places reliance upon Regulation 16 of the Delhi Development Authority (Salaries, Allowances and Conditions of Service) Regulations, 1961 (hereinafter called “the Regulations”) to say that the positive obligation cast on the DDA is only to record reasons where the disciplinary authority disagreed with the findings of the Inquiry Officer. Here, submitted counsel, since the DDA did not disagree, but rather concurred with the findings and observations of the Inquiry Officer, there was no compulsion to record separate reasons.

8. Learned counsel relied upon the decisions of the Supreme Court in *National Fertilizers Ltd. & Another Vs. P.K. Khanna*, (2005) 7 SCC 597; *Ram Kumar Vs. State of Haryana*, (1987) SCC Supp 582; as well as Division Bench judgment of this Court in *Delhi Development Authority Vs. K.P. Garg*, (W.P. (C.) No.8151/2008 decided on 05.11.2009). It was contended that these authorities have categorically ruled that, in such circumstances, the disciplinary authority is not compelled to record separate reasons to be given by the Inquiry Officer and that concurrence of that authority with the reasoning, or conclusions of the Inquiry Officer would be sufficient.

9. Learned counsel for the DDA also urged that so far as the plea of other delinquent employees/officers left out and having gone unpunished is concerned, the CAT fell into error in entertaining such an arguments without a base, or foundation in the pleadings. It is submitted that nevertheless what was completely overlooked was that after the quashing of the charge sheet and penalty imposed upon Sh. Varshney, the Executive Engineer, the Validation Act was made in 1998. After being reinstated, he retired from

service and later died in 2002. In these circumstances, no steps could be taken to inquire the issue and the penalty order was issued against the said Sh. Varshney. Learned counsel submitted that as far as Sh. Dalip Singh is concerned, after quashing of the charge sheet, the DDA could not take any action since he stood repatriated to his parent department, i.e. Central Public Works Department.

10. Learned counsel highlighted that the question of parity with respect to issuance of charge sheet, or penalty cannot be viewed in a superficial manner and no public employee, who is otherwise found guilty, or culpable of a misconduct, can claim that since others equally, culpable are not punished, (or not punished the same manner as she or he is) she/he should be shown leniency or not dealt with at all. In support of this submission, he relied upon *Administrator, Union Territory of Dadra & Nagar Haveli Vs. Gulabhia M. Lad*, (2010) 5 SCC 775.

11. Mr. Apurb Lal, learned counsel for the applicant urged that this Court should desist from interfering with the impugned order of the CAT. It was argued that the Expert Committee set up by the DDA itself to go into the cases which led to mishap, i.e. collapse of 12 residential units was documented and it was found that DDA had deployed inadequate staff as against requirement of 21 Junior Engineers, only 11 of such officers were, in fact, deployed. This clearly undermined the requirement of having adequate personnel.

12. Learned counsel also highlighted that in terms of paragraph 7.13 of the inquiry report itself, the findings recorded by the Inquiry Officer were contrary to the materials available with him and even observations made were contrary. It was submitted that these aspects were highlighted by the applicant in his representation but were not discussed. Learned counsel emphasized that, in these circumstances, the decision of the CAT based upon the judgment in *Roop Singh Negi Vs. Punjab National Bank & Others*, (2009) 2 SCC 570, was justified and does not call for interference.

13. As regards the second point, learned counsel submitted that the other two officers, i.e. M/s. Varshney and Dalip Singh, were not proceeded with even though in their case,

the penalty orders had been quashed. Learned counsel relied upon the judgement reported as *Man Singh Vs. State of Haryana*, (2008) 12 SCC 331, to submit that the principle of equality and non-discrimination has to be respected in all fields – public law and behaviour, even in the case of disciplinary proceedings.

14. It was lastly argued that the Inquiry Officer – as well as the disciplinary authority fell into error in not appreciating that the second charge of having released monies, leveled against the applicant were entirely unfounded. Learned counsel relied upon the extract of relevant parts of the inquiry report to show that the role played by the Assistant Engineer was prominent and found to be culpable, whereas he, as Junior Engineer did not have any role in that regard.

Analysis and Conclusions

15. Regulation 16 (10) of the Regulations governing the conduct and penalties which DDA can impose, prescribes the procedure to be followed after conclusion of a departmental inquiry (where the disciplinary authority is not the Inquiring authority). It obliges the disciplinary authority to furnish a copy of the Inquiry report, and propose the penalty, if the report is concurred. The delinquent officer is given an opportunity to represent against the findings of the inquiry. The disciplinary authority thereafter has to decide the nature of the penalty to be imposed (Regulation 16 (10) (b) (ii)); pursuant to the opinion the penalty has to be imposed (Regulation 16 (11)). In contrast, Regulation 16 (9) which enables the disciplinary authority to differ from findings of the Inquiry officer, provides that:

“(9) The disciplinary authority shall, if it is not the inquiring authority, consider the record of the inquiry and record its findings on each charge.”

16. In the *National Fertilizers case* (supra), the Supreme Court held that where the disciplinary authority merely concurs with the findings recorded by an inquiry authority, no separate reasons need be given:

“12. The respondent's reliance on the decision in Managing Director v. V. Karunakaran, is misplaced. That decision relates to the right of a delinquent

officer to a copy of the Enquiry Officer's report. In the course of the judgment the Court had no doubt said that the report of the Enquiry Officer is required to be furnished to the employee to make proper representation to the Disciplinary Authority before such authority arrives at its own finding with regard to the guilt or otherwise of the employee and the punishment if any to be awarded to him. By using the phrase "its own finding" what is meant is an independent decision of the Disciplinary Authority. It does not require the Disciplinary Authority to record separate reasons from those given by the Enquiry Officer. The concurrence of the Disciplinary Authority with the reasoning and conclusion of the Enquiry Officer means that the Disciplinary Authority has adopted the conclusion and the basis of the conclusion as its own. it is not necessary for the Disciplinary Authority to restate the reasoning."

17. *Ram Kumar* (supra) is also an authority for the same proposition. In the present case, the difference in structure of Regulation 16 (9) and (10), apart from the considerations spelt out in the two judgments cited by the DDA, support the conclusion that where the disciplinary authority adopts or concurs with findings of the Inquiry Officer, separate reasons are not required; however, if there is disagreement with findings of the Inquiry Officer, separate reasons have to be recorded. If this is kept in mind, the fundamental logic which impelled the Supreme Court to hold, in *National Fertilizers* (above) about there being no necessity to record separate reasons, is immediately apparent. It is because the Inquiry Officer is duty-bound to record as well as discuss the evidence led in the proceedings elaborately and then record his conclusions. The report and the proceedings connected with it are then furnished to the Disciplinary authority, who decides upon the future course of action; if it has to be a penalty, the officer concerned is asked to give a representation after going through the report. At this stage, the disciplinary authority has the benefit of going through all materials. Thus, if the findings of the Inquiry Officer are to be accepted, there can be no fresh reasons.

18. In the present case, the Enquiry report pertinently stated as follows:

"6.8 Shri M.L. Sharma, JE, in his defence have also mainly emphasized on his heavy work-load. Being a JE, he was directly involved in close supervision of additional 4 works apart from the instant case which, according to him, was not physically possible for him to carry out. Procurement of cement from the various cement stores of DDA was being done by him directly and according to him, this used consume, the entire

day for him very often. In addition, he was also being called to assist in the works in the Asiad Projects, Labours, masions, etc. were also being diverted from his work site. Though he had brought his difficulties to his superior authorities orally, but no help was given to him. According to him, even after the mishap, no additional JE was posted on the site till he was there.

6.9 The use of lime mortar especially on the top floor has also been cited by him as one of the reasons of mishap. It has been brought out during the inquiry that the lime mortar was instructed to be used by the concerned authorities as an economy measure to save resources on cement. This mishap had taken place in the corner bloc on 1st to 3rd floor which confirms the theory that it took the impact of the rain showers directly and the lime mortar on the top floor was washed out giving rise to a chain reaction. The use of pozzolona cement which, according to him takes more time to get the required strength and dry up, is also one of the factors as no specific instructions were given as to when the shuttering were to be removed where pozzolona cement has been used in the casting of the roofs etc. When the roofs were being cast, according to him, the EE, Shri ML Varshney, had also come on the site and have observed the unsatisfactory quality of the cement which looked "silty". Further, the Electrical Department, in order to lay conduit pipes in the walls had made big channels therein with chisel and hammer & that too in walls built with lime mortar. The impact of this might have been made the bricks free from the lime which could have also affected the stability of the structure. Moreover, the size of the channels also makes an impact e.g. in a 9" thick wall, a channel of 3" obviously makes it weaker.

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7.13 Keeping in view all the factors and circumstances in the case, I find that there is quite a substantive force in the arguments in the defence that there was a heavy work-load on all the 3 officials, namely, Shri ML Varshney, EE, Shri Dalip Singh, AE and Shri ML Sharma, JE and their working capacity were over stretched to almost a breaking point. The work of such a magnitude could itself require the sole attention of a JE and AE (especially JE) who is directly involved on everyday supervision and EE is expected to devote much of his time to this. On the contrary, what has happened is that even the JE had been over loaded with so much work which is physically impossible for a man at his level to supervise constantly. In fact, a look on his workload would indicated that he was expected to remain at more than one site at the same time which could only be possible through a miracle. The Asiad factor has indeed been also one of the most important reasons to divert the attention, time and energy of these officials, that the prevailing working condition at DDA was

unsatisfactory, hardly requires any reteiration. Lime mortar and pozzolona cement have been extensively used by DDA in the name of economy measures while no thought seems to have been given to its quality control. No guide line or instruction have been issued about the quality control of lime mortar which in Delhi are supposed to be of a very low quality as has come through the evidence. Even such important material like cement which had been procured departmentally, to enquire quality and standard even, CE(QC) has expressed his helplessness to strictly adhere to the norms of quality control. According to him even if a consignment of cement is found to be loss in weight or inferior in quality, it has somehow to be used as the manufacturers/ suppliers do not take any responsibility. In fact, surprise checks through quality control has shown that during the relevant period, inferior quality of cement were being received in DDA.

7.14 Be it what may be and in spite of the foregoing adverse working conditions, I find that the field staffs of the charged officers failed to perform their duties as mentioned in CPWD Circular dated 10.2.78 which had been indicated in the charge-sheet the JE, who makes the entries in the measurement Book should have entered that the use of proper quality of materials i.e. sand, stone, concrete lime, etc. were of standard for execution of work and should have supervised the brick masinary and other allied items of work properly and effectively. It seems that the above was not done and he had not recorded the measurement of the defective works. Similarly, AE is also responsible for exercising checks on quality of various items of works. He is responsible for RCC works, reinforcement concrete, centering and shuttering, etc. He also owes a general responsibility for the entire work apart from specific responsibility of these particular items. Moreover, AE proposes the items of work for payment and in case he was not satisfied with the quality of work, he was free to propose withholding of payment. It seems that the AE could not perform his primary duty in the instant case effectively. The EE is also supposed to inspect the work probably once in a week or atleast once a fortnight to satisfy himself that the works are executed according to the specifications. He is also responsible for the general quality of work with particular reference to line and levels and adhearance to architectural details. EE is also the primary Disbursing Officer for the department and he can withhold payments to contractors in case he was not satisfied with the quality of work. To this extent, the EE also could not perform his duties as he was expected to do. The field staff has failed to show whether the inverted beam B2 (Ex.S-6(i&ii) at roof level was at all constructed. They have also failed to show whether the less weight of cement bags if any was even brought to the notice of the superiors or authorities concerned. The quality of lime should also have been tested which they did not seem to have done. It is also not very clear that the

water sample from this very site was got tested for use in construction.

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8. **FINDINGS:**

8.1 *I find that the charges against S/Shri M.L. Varshney, Executive Engineer, Dalip Singh, Assistant Engineer and M.L. Sharma, Junior Engineer of DDA, are established subject to my observations in paras above.”*

Earlier, in the report, the Inquiry Officer found that upon testing, it was discovered that the cement-sand ratio in the constructed blocks (which collapsed) contained 1 part cement and 9-11 parts sand, as against the permissible limit of 1 part cement and 4 parts sand. Having regard to these circumstances, this Court is of opinion that the CAT should not have interfered with the penalty order on the ground that it did not record separate reasons.

19. As far as the issue of parity in treatment in regard to penalty goes, the DDA has given sufficient explanation - i.e that after the quashing of the charge sheet and penalty imposed upon Sh. Varshney, the Executive Engineer, the Validation Act was made in 1998, and subsequently he retired from service and later he died in 2002. In these circumstances, no steps could be taken to inquire the issue and the penalty order was issued against the said Sh. Varshney. Likewise, Sh.Dalip Singh could not be proceeded with after quashing of the charge sheet because he stood repatriated to his parent department, i.e. Central Public Works Department. These reasons were enough to distinguish why the applicant was proceeded with whereas others could not be. In any case, in *Gulabhia M. Lad* (supra) the Supreme Court held that the discretion vested in a disciplinary authority to impose penalty having regard to the circumstances should not be lightly interfered with on grounds of discriminatory treatment:

“13. The legal position is fairly well settled that while exercising power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the Disciplinary Authority, and/or on appeal the Appellate Authority with regard to the imposition of punishment unless

such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the Court/Tribunal. The exercise of discretion in imposition of punishment by the Disciplinary Authority or Appellate Authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the Court or a Tribunal would not substitute its opinion on reappraisal of facts. In a matter of imposition of punishment where joint disciplinary enquiry is held against more than one delinquent, the same or similarity of charges is not decisive but many factors as noticed above may be vital in decision making. A single distinguishing feature in the nature of duties or degree of responsibility may make difference insofar as award of punishment is concerned. To avoid multiplicity of proceedings and overlapping adducing of evidence, a joint enquiry may be conducted against all the delinquent officers but imposition of different punishment on proved charges may not be impermissible if the responsibilities and duties of the co-delinquents differ or where distinguishing features exist. In such a case, there would not be any question of selective or invidious discrimination.”

In the present case, the inability of DDA to punish the other charged employees could not have been good reason for the CAT to interfere with the penalty order imposed upon the applicant/respondent.

20. In conclusion, it must be said that the CAT's application of legal principles to the facts appearing from the record have revealed a disturbing anxiety to seize upon any argument - however slender or appealing to the mind - to interfere with the action of the DDA. It is a matter of concern that the penalty imposed on the applicant respondent in respect of an incident where substandard quality construction led to the collapse of about 12 flats – which undermine public confidence in the work of the DDA itself, despite the findings of the inquiry officer and an independent probe, was set aside. The CAT should be more circumspect and objective in considering every case before it, from all angles, giving due weight to all facts and not give voice to its predilections as readily as it did in the present case.

21. For the above reasons, this Court is of the opinion that the petition has to be allowed. The interim orders are hereby quashed. The writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J

VIPIN SANGHI, J

DECEMBER 15, 2014

B.S. Rohella

