

\$~R-10A

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

% *Date of Decision: September 09, 2015*

+ **LPA 297/2008**

R.K.CHAUHAN Appellant

Represented by: Ms.Kiran Suri, Sr.Advocate
instructed by Mr.Parvesh Bhutan,
Mr.Gautam Kumar and Mr.Fahad
Imtiaz, Advocates

versus

THE COMMISSIONER, MCD & ORS. Respondents

Represented by: Mr.Ajay Arora, Advocate with
Mr.Kapil Dutta, Advocate for MCD

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

1. Robert Bolt's play 'A Man For All Seasons' refers to an incident when Sir Thomas More was urged by his daughter, Margaret, and his son-in-law, Roper, to arrest a man they regarded as evil. Margaret said : 'Father, that man's bad'. More replied : 'There is no law against that'. Roper said : 'There is! God's law!'. More said : 'Then God arrest him. I know what's legal, not what's right. And I'll strict to what's legal. I am not God. The currents and eddies of right and wrong, which u find such plane sailing, I can't navigate. I'm not a voyager. But in the thickets of the law, Oh, there I'm a forester.' Roper was not appeased and he levelled the charge that More would give even the Devil the benefit of law. More said :

‘Yes. What would you do? Cut a great road through the law to get after the Devil?’ Roper retorted : ‘I’d cut down every law in England to do that!’ This drew More to say : ‘Oh? And when the last law was down, and the Devil turned around on you, where would you hid, Roper, the law’s from coast to coast – Man’s law, Not God’s – and if you cut them down D’you really think you could stand apprived in the winds that would blow them? Yes, I’d give the Devil the benefit of law, for my own safety’s’.

2. The dialogue between Sir Thomas More, his daughter Margaret and his son-in-law Roper bring out the importance of adhering to the rule of law. Howsoever depriving may be the charge against a person, he would be entitled to the benefit of such due process of law which the law itself has enacted. Under Article 311(2)(b) and (c) a person who is a member of a civil service of the Union or of an All India Service or a Civil Service of a State or holds a civil post under the Union or a State can be dismissed or removed without any inquiry upon the authority empowered to dismiss or remove the person or reduce him in rank, is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry or where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

3. The latter part i.e. the situation contemplated by Article 311(2)(c) of the Constitution of India does not find its reflection under the Delhi Municipal Corporation Act, 1957, but the first part i.e. the situation contemplated by Article 311(2)(b) of the Constitution of India finds a reflection in Section 95 of the Delhi Municipal Corporation Act, 1957 inasmuch as clause (b) of sub-Section 2 of Section 95 empowers the

authority which is competent to remove or dismiss a municipal employee from service without any inquiry, provided the authority is satisfied that for some reason to be recorded by the authority, it is not reasonably practicable to give the municipal employee an opportunity of showing cause.

4. Order dated April 13, 2007 dismissing appellant from service without any inquiry reads as under:-

“No.DOV/PC/Vig./2007/O-18

Dated 13.4.2007

OFFICE ORDER

Whereas Shri R.K.Chauhan S/o Shri Hukam Singh Chauhan R/o D-96, Azadpur Municipal Colony, Delhi-110033 was working as Asstt.Law Officer, Vig.Deptt.,MCD during the period from June 2002 to Feb.2005. He was deputed to act as Presenting Officer before Dy.Director of Inquiries-II and also assigned with the duties of follow up actions in the post inquiry matters. He was also the custodian of the RDA files, entrusted to him during his aforesaid tenure.

*Whereas Shri R.K.Chauhan in the capacity of posting as Asstt.Law Officer in the Vig.Deptt. was required to uphold the sanctity of law, legal procedure and duty assigned to him, however, **had indulged himself in gross malpractices in as much as that he had issued number of forged office orders thereby exonerating/censuring various employees of MCD involved in major/minor RDA proceedings and also destroyed 43 RDA files.***

AND

Now, therefore, commissioner/MCD the Competent Disciplinary Authority after considering the above facts and circumstances and also keeping in view the gross misconduct/illegality committed by Shri R.K.Chauhan, ALO has ordered to impose the penalty of ‘dismissal from service which shall ordinarily be a disqualification for future

employment' upon him by invoking the provisions of Sec.95(2)(b) of DMC Act r/w Regulation 9(ii) of the DMC Services (Control & Appeal) Regulations, 1959 together with Clause (2) of the Article 311 of the Constitution of India, vide his orders dated 9.4.2007, as reproduced below:-

*"Whereas Shri R.K.Chauhan, the Charged Officer (CO), was working as Asstt.Law officer in the Vigilance Department during the period June 2002 to February, 2005. The CO was assigned the duties of Presenting Officer. He was attached with Dy.Director of Inquiries-II and also to present the cases before various Disciplinary Authorities in minor/major penalty cases. **The CO was in possession of RDA files, being Presenting Officer in said cases.***

*Whereas, the then Dy.Law Officer (Vigilance), Shri S.S.Rana had noticed certain irregularities in the processing of RDA file No.1/56/2003. Accordingly, the CO was placed under suspension vide office order No.1/23/2005/Vig./P/2005/S-15 dated 15.2.2005. The almirah of the CO was opened and inventory of files was prepared. **The scrutiny of the record revealed that the CO had destroyed 43 RDA files. He was also found involved in fabricating a number of office orders in disciplinary matters and thereafter, issuing the same in respect of 106 officers/officials without obtaining any orders from the disciplinary authorities concerned. Further, in a number of forged office orders issued by him under his signatures, some fake inquiry numbers were found mentioned whereas, no such inquiries were instituted. Even in some cases, the CO has issued office orders before presenting the case before the Inquiry Officer. Since a number of RDA files, in which fake office orders have been issued, further investigation could not be undertaken because his***

failure to reconcile the files.

Whereas the said act of the CO establishes serious misconduct on his part, which is unbecoming of a municipal employees. He has also failed to maintain absolute integrity in discharging his duties as government servant. Since the act of CO warranted exemplary and deterrent punishment, including criminal prosecution, FIR was lodged with the Civil Lines Police Station, which referred the case to the Crime Branch of Delhi Police and the matter is still under investigation. The CO by adopting such dishonest and illegal method has not only issued forged/fake office orders but also destroyed the RDA/inquiry files, thereby tampered/destroyed the main evidences of the case against him.

Whereas, power to punish a municipal employee for misconduct is contained in Section 95 of the DMC Act, 1957. Sub-section (2) of Section 95 mandates that the power can be exercised after due opportunity is given to the employee to answer the charge(s). Proviso (b) of this sub-section, which is identical to Regulation 9 (ii) of the DMC Services (Control & Appeal) Regulations, 1959 read as under:-

“Whereas the authority empowered to remove or dismiss an officer or other employee is satisfied for reasons to be recorded in writing that it is not reasonably practicable to follow the procedure prescribed in these regulations the Disciplinary Authority may consider the circumstances of the case and pass such orders thereon as it deems fit.”

Whereas, it is well settled law that every action of an administrative or executive authority, which may have adverse effect upon a citizen, has to be preceded

by rules of natural justice and fair procedure. However, a small area has been carved out to cater to exceptional cases, i.e. where the nature of charge is either so sensitive or public interest warrants that an enquiry would not be either practicable or would lead to unfair results or in cases where public interest warrants not to hold a full fledged inquiry and material are sufficient to warrant a view to be taken. Article 311 of the Constitution of India also empowers the competent authority, to dispense with an inquiry, if it is deemed to be not reasonably practicable to hold it. Thus, the condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that it is not reasonably practicable to hold the inquiry contemplated by clause (2) of Article 311. Proviso of Section 95 Clause (2)(b) and Regulation 9 (ii) of the DMC Services (Control & Appeal) Regulations, 1959 is directly in line with the provisions contained in Article 311 of the Constitution of India.

Whereas, the conduct of the CO is most reprehensible and totally unexpected of an officer holding such a sensitive position. The present case is glaring example of dereliction of duty on the part of CO, which gravely affected the public interest. The gravity of charges being so sensitive, public interest warrants not to hold a full fledged inquiry as the material on record reveals that fabricated/forged office orders were issued by the CO, without formally conducting he inquiry and also destroying 43 RDA files involving a number of officers/officials. This act of misconduct on the part of the CO is clear enough to invoke provisions of Clause (9) (ii) of the DMC Services (Control & Appeal) Regulations, 1959. Thus considering the sensitiveness of the charge, the public interest and the material available on record and lastly that holding

of a full fledged inquiry would lead to unfair results, I hereby dispense with the inquiry against the CO. Further, the act of omission & commission and misdeeds of the CO prima facie establishes culpability on his part, which also manifestly does not warrant opportunity of showing cause.

Whereas keeping in view the above facts, I am of the considered view that the continuation of the CO in the municipal service is against the public interest and warrants his outright dismissal from municipal service in accordance with provision of Section 95(2)(b) of the DMC Act r/w Regulation 9 (ii) of the DMC Services (Control & Appeal) Regulations, 1959.

I, Ashok Kumar, Commissioner Municipal Corporation of Delhi being the Appointing Authority hereby order that the CO Shri R.K.Chauhan, ALO be 'dismissed from service, which shall ordinarily be a disqualification for future employment'

This is issued and notified for information and necessary action by all concerned.

Dy.Law Officer (Vig.)"

5. A perusal of the order would show that after listing the alleged irregularities/illegalities committed by the appellant, being : (i) appellant had destroyed 43 RDA files; (ii) appellant had fabricated a number of office orders in disciplinary matters concerning 106 officers; (iii) appellant had forged a number of office orders with fake inquiry numbers mentioned; and (iv) appellant had issued office orders before presenting the case before the Inquiry Officer, the order records the seriousness of the allegations and then proceeds to terminate service of the appellant without an inquiry on the reasoning : **However, a small area has been carved out to cater to**

exceptional cases, i.e. where the nature of charge is either so sensitive or public interest warrants that an enquiry would not be either practicable or would lead to unfair results or in cases where public interest warrants not to hold a full fledged inquiry and material are sufficient to warrant a view to be taken.

6. Now, there is neither any provision in the Constitution nor under the Delhi Municipal Corporation Act empowering a competent authority to dismiss a municipal employee from service merely because the charge is sensitive or because public interest warrants that an inquiry should not be held or that if held would lead to unfair results. Only on two counts an inquiry can be dispensed with : (i) upon recording a satisfaction *that in the interest of the security of the State* it is not expedient to hold such inquiry; and (ii) if *'it is not reasonably practicable to hold such inquiry'*. But pertaining to municipal employees, only on the latter count

7. The impugned order is ex-facie totally misdirected and howsoever painful it was for the Disciplinary Authority to learn of what the appellant did, the Disciplinary Authority was bound to follow the law.

8. Regretfully, even the learned Single Judge has been swayed by emotion, who has gone by the severity of the charge to uphold the impugned order. Though the relevant case law has been noted by the learned Single Judge, but its ratio has not been applied.

9. It is trite that the subjective satisfaction recorded by the Disciplinary Authority, that it is not reasonably practicable to hold an inquiry or that holding of an inquiry would be contrary to the interest of the security of the State are amenable to judicial review, but we need not note said authorities because we find that in the instant case the Disciplinary Authority has not

proceeded to deny right to the appellant of his conduct being enquired into on said two grounds. As highlighted by us hereinabove the reason given is that however, a small area has been carved out to cater to exceptional cases, i.e. where the nature of charge is either so sensitive or public interest warrants that an enquiry would not be either practicable or would lead to unfair results or in cases where public interest warrants not to hold a full fledged inquiry and material are sufficient to warrant a view to be taken. With respect to the use of the expression ‘would not be either practicable’ which has been intertwined with the expressions ‘where the nature of charge is either so sensitive’, ‘public interest warrants that an enquiry would not be either practicable’, and ‘to hold a full fledged inquiry and material are sufficient to warrant a view to be taken’, a feeble attempt has been made to argue that the Disciplinary Authority has held that it is not reasonably practicable to hold an inquiry and thus the order is valid. The argument is like clutching to straw because the words ‘*would not be either practicable*’ in the sentence have to be read in the setting of the sentence and the setting of the sentence is by highlighting that the nature of the charge is sensitive and public interest warrants that an inquiry would not be either practicable or would lead to unfair results.

10. Besides, we find not even an objective facts stated as to why the subjective satisfaction was arrived at that it would be not reasonably be practicable to hold an inquiry. The gravamen of the charge consists of four factual allegations, which we have noted hereinabove in paragraph 5 and we re-note the same. They are : (i) appellant had destroyed 43 RDA files; (ii) appellant had fabricated a number of office orders in disciplinary matters concerning 106 officers; (iii) appellant had forged a number of office orders

with fake inquiry numbers mentioned; and (iv) appellant had issued office orders before presenting the case before the Inquiry Officer.

11. Learned counsel for the respondent has no answer when questioned as to why evidence could not be led that the appellant had destroyed 43 RDA files. Simple evidence had to be led to show how many files were entrusted to the appellant and how many he returned. Similarly, the alleged orders which appellant had statedly fabricated concerning 106 officers, which were to the knowledge of the Disciplinary Authority (and the number 106 guides us that the information was precise) could have been proved by leading simple evidence that the Competent Authority had not signed on the files, and if the related files were missing, to lead evidence of the same being missing. Similarly, the charge of the appellant having forged a number of office orders with fake inquiry numbers mentioned could have been proved with reference to the dispatch registers; and lastly the charge that the appellant had issued office orders before presenting the case before the Inquiry Officer could have been easily proved by proving date when said office orders were issued and the date when the case was presented before the Inquiry Officer.

12. The appeal is allowed. Impugned order dated March 20, 2008 passed by the learned Single Judge is set aside. The writ petition filed by the appellant is allowed and the order dated April 13, 2007 dismissing appellant from service without holding an inquiry is set aside.

13. Since the appellant was under suspension when the impugned order was passed, it would be open to the Disciplinary Authority to treat the appellant under suspension provided a decision is taken to charge-sheet the appellant. In said eventuality the respondent would be entitled to proceed

against the appellant as per law by issuing a charge-sheet.

14. Parties shall bear their own costs in the appeal and the writ petition.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

SEPTEMBER 09, 2015

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