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

+ W.P.(C).8852 /2008

% *Judgment dated 08th September, 2015*

DELHI DEVELOPMENT AUTHORITY Petitioner
Through Mr. Arun Birbal with Mr. Sanjay
Singh, Advocates

versus

I.J.GUPTA Respondent
Through Mr. Sidharth Joshi, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. Challenge in this writ petition is to the order dated 09.01.2008 passed by the Central Administrative Tribunal (hereinafter referred to as '*Tribunal*') by which the OA filed by the respondent was allowed and the impugned order by which the Disciplinary Authority had imposed a penalty of reduction of pay by one stage for a period of two years with cumulative effect was set aside.
2. The basic facts are not in dispute that the respondent herein was working as an Assistant Engineer (Civil) with the Building Department of Delhi Development Authority (hereinafter referred to as 'DDA') in the year 1998. He was responsible at that point of time to ensure that construction at Shankar Road area takes place as per the sanctioned building plans. The respondent was to inspect the sites at the time of recommending 'D' Forms for the buildings under the prevalent Building Bye-laws. During inspection of Plots No.206, 208, 216 and 223 by the vigilance team of DDA, large

scale unauthorized construction was found to be existing. It was found that the owners/builders had covered more than 400% FAR against the permissible limit of 180%, however the respondent in his capacity as Assistant Engineer(Civil) had recommended grant of 'D' Forms for the aforesaid buildings. On 07.12.2001, the respondent was charge sheeted and an Inquiry Officer was appointed, who submitted his Inquiry Report on 10.01.2003 wherein it was held that the charges leveled against the respondent were not established. The Inquiry Report was considered by the Disciplinary Authority, i.e., Engineer Member DDA, who did not concur with the findings recorded by the Inquiry Officer and accordingly, forwarded the copy of the Inquiry Report along with a note recording reasons for disagreement to the respondent with liberty to make a submission within 15 days. Reply was submitted by the respondent on 08.01.2005. After considering the reply of the respondent, a penalty was imposed on the respondent of reduction of pay by one stage for a period of two years with cumulative effect with a condition that the respondent would earn increments during the period of penalty when due. An appeal was filed against the order passed by the Disciplinary Authority, but before the final order could be passed a writ petition was filed in the Delhi High Court, which was then transferred to the Tribunal and which was allowed.

3. Mr. Birbal, learned counsel for the petitioner submits that the learned Tribunal has failed to consider and apply Regulation 26 of the Delhi Development Authority (Conduct, Disciplinary and Appeal) Regulations, 1999 (hereinafter referred to as 'Regulation') and reached an incorrect finding that in the event the Disciplinary Authority intended to differ with the Inquiry Report it was required to remit the matter back to the Inquiry Authority for a fresh report. Mr. Birbal further contends that once the Inquiry Authority had submitted its report, role of the Inquiry Authority

would come to an end and it was open to the Disciplinary Authority to differ from the findings recorded by the Inquiry Authority after complying with the provisions of the Regulations and following the principles of natural justice. Additionally, it is contended that should the Tribunal reach a conclusion that there was violations of any procedural norm by the Disciplinary Authority, it could have remanded the matter back to the Disciplinary Authority.

4. Mr. Joshi, learned counsel for the respondent has vehemently submitted that the petitioner has allegedly discriminated by the respondent, firstly; on the ground that one Mr. S.K.Leekha, who was identically placed as the respondent herein, has been exonerated, and secondly; the finding of the Disciplinary Authority is without any basis and there was no ground for the Disciplinary Authority to differ from the report of the Inquiry Officer who had categorically held that there was no evidence on record to indicate that the owner/builder had carried out any unauthorized construction before issuance of D-Form, nor any documents on record suggested that the unauthorized construction was in existence at the time of issuance of 'D' Form. It is also submitted that Junior Engineers, who were directly responsible for the construction being carried out in the area in question, were exonerated and merely because subsequently major punishments have been awarded to them cannot affect the stand of the respondent herein. An additional ground has also been raised that Regulation 26(1A) has not been complied with which entails that a copy of the Inquiry Report is to be supplied to the delinquent officer irrespective of the fact whether the inquiry has resulted in his favour or not and thereafter, in case the Disciplinary Authority differs at that stage also, a copy of the Inquiry Report has to be furnished to the delinquent officer.

5. We have heard the learned counsel for the parties and also examined the pleadings and material on record. The following statement of Article of Charges were framed against the respondent herein:

“Shri I.J. Gupta, Assistant Engineer(C) while working in Building Department during the year 1998 failed to supervise the functioning of his subordinate J.E. and recommended issue of D-Forms of the plot Nos.206, 208, 216 & 223, Shankar Road ignoring the unauthorized constructions at site to extend undue benefit to the owners/builders of the plots, with the result timely action against unauthorized constructions on these properties could not be initiated.

By his above act, Sh. I.J. Gupta, A.E.(C) has exhibited absolute lack of devotion to his duty and failed to maintain absolute integrity, thereby contravened Rule 4.1(i) & (ii) of DDA Conduct, Disciplinary and Appeal Regulation 1999 as made applicable to employees of the Authority.”

6. As far as the first ground which has prevailed upon the Tribunal to allow the OA is concerned, is on the interpretation of Regulation 26 of the ‘Regulation’, which, *inter alia*, reads as under:

“26. **Action on the Inquiry Report-(1)** The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for the further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Regulation 25 as far as may be.”

7. As per para 12 of the order of the Tribunal after the report of the Inquiry Officer was received, the Disciplinary Authority had not sent the matter back to him for any fresh report. In our view, the learned Tribunal has completely misread Regulation 26(1). We are of the view that the matter is

required to be sent back to the Inquiry Officer only in such a case when the Disciplinary Authority is of the view that either further additional evidence is to be recorded or on account of any other technical reason. Merely because the Disciplinary Authority differs with a report of the Inquiry Officer would not require the Disciplinary Authority to remit the matter back to the Inquiry Officer, except for the reasons as *inter alia* herein stated above. Another ground which has prevailed upon the Tribunal to allow the OA filed by the respondent was the ground of discrimination, as the JE who had prepared the 'D' Form had been let off by the Inquiry Officer whose report was accepted. The learned counsel for the respondent has also vehemently urged the same ground before us, but we find the submission to be without any force for the reasons that subsequently a major penalty has been imposed on the JE and in case a wrong was committed earlier, the same cannot benefit the respondent herein.

8. We have examined the report of the Inquiry Officer who has stated in categorical terms that the testimonies of PW-1 and PW-2 did not indicate that the owner/builder had carried out unauthorized construction before issuance of 'D' Form and also that none of the prosecution documents suggest that the unauthorized construction was existing at the time of issuance of 'D' Form. In our view, although this is a rather attractive argument, but we are not inclined to accept the same on account of the report of the Disciplinary Authority. The Disciplinary Authority had prepared a disagreement note, the relevant portion of which reads as under:

“In the matter of above observations of the Inquiry Officer, I find that the charge sheet issued to Shri I.J. Gupta was quite specific indicating the unauthorized constructions on plot No.212. Construction was carried out on full plot area covering 400% FAR against the permissible limit of 180% FAR. The I.O. in his findings has not been able to understand the technicalities of civil

construction and based his findings on statement of witnesses. It is observed that Shri I.J. Gupta recommended issue of D-form in June'98 in respect of plot No.206 without any compounding fee, but within one month unauthorized constructions in the form of covering of court yard at Ground floor, Ist floor & 2nd floor and unauthorized construction of balcony was reported by JE(Bldg.). It is beyond imagination that all such constructions in 3 floors(one over the other) can be carried out within one month. This shows that findings of the I.O. are based on technical facts and, therefore, not acceptable. The charge mentioned in Annexure II of the charge sheet stands established.”

9. Large scale unauthorized construction is not new in Delhi. It is also not new that what appears on papers and records of the statutory body is not borne out from the physical appearance of the building. The Disciplinary Authority has noted that 400% FAR has been covered while the permissible limit is 180%. In respect of Plot No.206, not even compounding fee was charged. In another case, within one month unauthorized constructions in the form of covering court yard at ground floor, Ist floor and 2nd floor and unauthorized constructions in three floors one over the other could have been carried out in one month. The finding of the Disciplinary Authority, in our view, is not perverse which would require interference by this Court or by the Tribunal. In the case of ***State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya***, reported at 2011(4) SCC 584, in para 6 it was held by the Supreme Court as under:

“6. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with

findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (vide **B. C. Chaturvedi v. Union of India** - 1995 (6) SCC 749, **Union of India v. G. Gunayuthan** - 1997 (7) SCC 463, and **Bank of India v. Degala Suryanarayana** - 1999 (5) SCC 762, **High Court of Judicature at Bombay v. Shahsi Kant S Patil** - 2001 (1) SCC 416).

10. Similar view was expressed by the Supreme Court in the case of **Bank of India v. Degala Suryanarayana**, reported at 1999(4) JT 489.
11. We may also notice that Mr. Joshi has raised an additional ground that there was no compliance of Regulation 26(1A) inasmuch as a copy of the Inquiry Report was not supplied by the Disciplinary Authority, but only supplied after the note of disagreement was made. This ground was not urged before the Tribunal and, more so, the Disciplinary Authority has provided copy of the inquiry report with the supply of note of the disagreement with the findings of the Inquiry Officer and giving him an opportunity to make a representation, which was made by the respondent.
12. Resultantly, the order dated 09.01.2008 passed by the Tribunal is set aside. The writ petition is allowed. Rule is made absolute.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 08 , 2015 pst