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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WRIT PETITION(CIVIL) No. 455/2016**

Date of decision: 22nd January, 2016

R.C. MEENA

..... Petitioner

In person.

versus

SOUTH DELHI MUNICIPAL COROPORATION Respondent
Through Mr. Aditya Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL):

We have heard Mr. R.C. Meena, who has appeared in person. The impugned order dated 12th May, 2015 passed by the Central Administrative Tribunal, Principal Bench, Delhi dismisses the Original Application No. 43/2012, seeking quashing of the order of penalty passed by the disciplinary authority as modified by the appellate authority vide order dated 27th September, 2011.

2. The appellate authority had modified and reduced the penalty awarded by the disciplinary authority from reduction of pay in the present time scale of pay by two stages for a period of two years with cumulative effect, which would run separately; to reduction of pay in the present time scale of pay by two stages for a period of one year without cumulative effect, which would run separately.

3. Primarily, two contentions have been raised by the petitioner. He contends that he has been discriminated against and was falsely

implicated and a number of other officers similarly placed have been completely exonerated. Secondly, it is submitted that the report of the enquiry officer is perverse and absurd for lack of evidence and had erred in holding that the petitioner had committed misconduct.

4. We have considered the said contentions, but are not persuaded to agree with them. The petitioner was charge-sheeted after unauthorised constructions in Civil Line Zone which came to light in a Public Interest Litigation filed in the Delhi High Court. Out of the five charges which were subject matter of the enquiry report dated 9th December, 2009, charges 2, 3 and 4 were partly or fully proved. The said charges read as under:-

“2. He also failed to get booked the unauthorised construction carried out in the said properties for taking action u/s 343/344 of DMC Act.

3. He also failed to get action initiated for sealing the unauthorised construction u/s 345-A and for prosecution of owner/builder u/s 332/461 or complaint u/s 466-A of DMC Act.

4. He also failed to get action initiated for disconnection of electricity and water supply of the premises to prevent the unauthorised construction.”

5. Finding of the enquiry officer on the said charges are pertinent:-

“As regards charge No.2, CO has inter alia pleaded that as per missal band register for the relevant period, the property No. 2/32 and 7/27, Roop Nagar stood booked vide S.No. 307 and 308 both dated 29.12.2005 vide annexure H-1 to the arguments submitted by the CO. However it appears from Ex. S-2, again (sic) these properties no booking has been shown by the CO himself as the list was prepared by him. Although, the CO has failed to explain as to why he submitted the misleading report earlier which formed the basis of charge No. 2, yet I am inclined to give due benefit to the CO in respect of these two properties in the interest of principle of natural

justice. Accordingly, I hold that charge No. 2 is proved except in respect of these two properties.

Regarding charge 3 & 4, the CO has taken a plea on merits that when the unauthorised constructions have been demolished then there is no use of these actions etc. However, the said plea is not acceptable because as per provisions of Section 332/461, 466-A these actions are meant for curbing unauthorised construction as deterrent legal measures. These actions are focused on the offence committed by the owner/builder who unauthorizedly raised the constructions as they deserved to be punished under the relevant provisions of law. It cannot be argued that with the demolition of u/cs, the offence committed by the offender goes as maintained by the CO. As regards the sealing action u/s 345-A, the same was required as interim measure before carrying out demolition action in such cases, but the same were not resorted to by the CO. He has not adduced any evidence as to how these actions were not attracted in the individual properties on merits of each case. As such, the CO failed to initiate actions as warranted under the said provisions of law in respect of properties pertaining to his wards as reflected in Ex. S-2. Similarly, it is borne out from the record that the CO failed to initiate action for disconnection of water and electricity supply to the premises in question during his tenure before or after demolition of u/c as alleged in charge No. 4. In rebuttal of this charge, CO has taken a plea that when the unauthorised constructions existed on the site, then there was no need to initiate such action. However, this plea is untenable owing to the reason that the owner/builder carried out unauthorised constructions at the first instance which were got demolished subsequently as per Ex.S-2 and before resorting to demolition action initiation of such disconnection of electricity and water connection would not havethe owner/builder in raising of unauthorised constructions in the said properties. As such, I hold that these 3 & 4 articles of charges framed against the CO are proved.”

6. During the course of hearing before us, we had asked the petitioner whether and when the unauthorised construction in the properties were demolished ? The petitioner has stated that the demolition action took place after the court case was filed.

7. We do not see any merit in the first contention. There are factual findings against and indicting the petitioner. The findings of the enquiry officer with regard to the charges Nos. 2, 3 and 4 are lucid and expose his lapses. The charges against the petitioner have to be dealt with on facts proved and established. We do not know the facts, allegation and finding against other officers who had faced disciplinary proceedings.

8. The original order of penalty was modified in the appellate proceedings, thereby giving partial relief to the petitioner. The contention that the petitioner's tenure was limited and for a period of two months and nine days, is not a valid ground to set aside the findings in the enquiry report and the punishments/ penalties awarded. It is in the aforesaid factual background that the punishment/ penalty in question has been imposed. As an Assistant Engineer, it was the petitioner's responsibility and duty to ensure that action and stringent steps were taken as per law to stall and prevent the unauthorised construction, to ensure that notices were issued, sealing was done and information was communicated for disconnection of electricity and water supply. Petitioner was required to exercise proper supervision and control over subordinate staff.

In view of the above, the writ petition is dismissed.

(SANJIV KHANNA)
JUDGE

(NAJMI WAZIRI)
JUDGE

JANUARY 22, 2016
VKR