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

**Date of Decision: July 17, 2017**

+ W.P.(C) 4553/2016, CM Nos. 19006/2016, 7579/2017 & 17403/2017  
UMED SINGH

..... Petitioner

Through: Mr.Ashutosh Lohia, Adv. with  
Ms.Pragya Srivastava, Adv.

versus

DELHI URBAN SHELTER IMPROVEMENT BOARD THROUGH:  
ITS CEO

..... Respondent

Through: Mr.Parvinder Singh, Adv.

&

+ W.P.(C) 5152/2016, CM No. 17402/2017  
HEMANT KUMAR

..... Petitioner

Through: Mr.Biswajeet Swain, Adv.

versus

MEMBER (ADMINISTRATION) DELHI URBAN SHELTER  
IMPROVEMENT BOARD

..... Respondent

Through: Mr.Parvinder Singh, Adv.

**CORAM:-**

**HON'BLE MR JUSTICE V. KAMESWAR RAO**

**V. KAMESWAR RAO, J. (ORAL)**

**CM No.17403/2017 (for condonation of delay in filing the short affidavit)in W.P.(C) 4553/2016**

This is an application filed by the respondent seeking condonation of 4 days delay in filing the short affidavit. As I note, reply affidavit has been filed by the petitioner and Mr. Lohia has no objection in taking the same on record, the application is allowed. The short affidavit is taken on record.

Application stands disposed of.

**CM No. 17402/2017 (for condonation of delay in filing the short affidavit) in W.P.(C) 5152/2016**

This is an application filed by the respondent seeking condonation of 4 days delay in filing the short affidavit.

As the learned counsel for the petitioner has no objection, the delay of 4 days in filing the short affidavit is condoned. The short affidavit is taken on record.

Application stands disposed of.

**CM No.7579/2017 in W.P.(C) 4553/2016**

This is an application on behalf of the petitioners seeking extension of time to file reply to the short affidavit filed by the respondent. As reply affidavit to the short affidavit filed by the respondent was filed by the

petitioner in the registry on July 15, 2017 (Saturday) and the same was not on record, it has been called for and taken on record, as such the present application has become infructuous. The same is disposed of as such.

**W.P.(C) Nos. 4553/2016 & 5152/2016**

1. As an identical issue arises for consideration in these writ petitions, the same are being disposed of by this common order.
2. The petitions have been filed by the petitioners challenging the show cause notices dated January 7, 2016, which have been issued by the Member (Administration) of the respondent-Delhi Urban Shelter Improvement Board ('DUSIB', in short) under Rule 19 of the CCS (CCA) Rules, 1965, calling upon the petitioners, on their conviction in FIR No. 35/2008, under Sections 7 and 13 of the Prevention of Corruption Act, 1988 read with Section 120B of the Indian Penal Code, 1860 by the Special Judge, ACB, Tis Hazari Courts, Delhi to show cause, why penalty of removal, which shall not be a disqualification for future employment, be not imposed on them.
3. On the receipt of show cause notices, the petitioners have submitted their replies on February 29, 2016. It has been pointed out by Mr. Lohia and Mr. Bishwajeet Swain, learned counsel's appearing for the petitioners, that in their replies sent to the respondent-DUSIB, the petitioners have averred

that the show cause notices under replies are technically wrong as the judgment dated September 28, 2012 of learned Special Judge, ACB has not been taken into consideration by the Disciplinary Authority. It is at the show cause notice stage, the present petitions have been filed. In the writ petitions, insofar as the competency of the Authority to issue the impugned show cause notices under Rule 19 of the CCS (CCA) Rules, 1965 is concerned, the averments as pointed out by the learned counsel for the petitioners are in para “D” (in Writ Petition No. 4553/2016) and para “(b)” (in Writ Petition No. 5152/2016), of the “Grounds” which reads as under:

*“D. ....In the present case, the competent “appointing” authority was the then Commissioner (Slum & JJ Wing) (the now CEO, DUSIB) which appointed the petitioner in 1987 and the present impugned show cause notice is being issued by Member (Admn.). .*

*XXX*

*XXX*

*XXX*

*(b) ....In the present case, the competent appointing authority to remove the petitioner is the CEO of Slum & JJ Wing, who appointed the petitioner in 1989 and the impugned show cause notices are being issued by the Member (Admin) who is neither the competent authority nor equivalent to the appointing authority, therefore, the impugned show cause notices are totally illegal and malafide in the eyes of law”.*

Mr. Lohia clarifies, it is not the Commissioner (Slum & JJ Wing), but the Vice-Chairman, Delhi Development Authority (DDA), who is competent. In support of his contention, Mr. Lohia states, the petitioners were appointed in the DDA by Vice-Chairman, DDA in the year 1987 & 1989 respectively. On April 1, 1992, the Slum & JJ Wing of the DDA was transferred to the MCD on as is where is basis and on such transfer, the employees recruited in the Slum & JJ Department prior to September 1, 1992, continued to be governed by the terms and conditions as prevalent in DDA. He would also draw my attention to page 33 of the reply affidavit of the petitioners, which is an office order dated September 1, 1992, more specifically, paras (e) and (h) to contend that the Slum & JJ Department of the MCD was to continue as a separate entity with its own separate staff, accounts, stores etc till orders are issued to the contrary and the employees of the DDA, on transfer continued to work as part of Slum & JJ Department of MCD with the same service conditions by which they were governed in DDA. He also states, that the said office order also stipulated that such employees of DDA continued to be members of the cadres of DDA of which they formed part of. He also draws my attention to page 47 of the reply affidavit which is a communication dated September 24, 2015 from the

DUSIB to the Dy. Director (P-I), Delhi Development Authority, wherein a reference was made that the employees were transferred on “*as is where is basis*”. He also states, that in terms of Section 30 of the DUSIB Act, 2010, the conditions of service of the petitioners who were appointed in DDA shall continue to be same till altered by the Board with the prior approval of the Government. According to him, there is no such approval of the Government. He states that the petitioners had sent applications under RTI, calling upon the respondent to furnish the service record of the petitioners, but, unfortunately, the same has not been given to the petitioners, which became a handicap for the petitioners to establish that the appointments of the petitioners was in DDA and they continue to be such. It is the Vice-Chairman of the DDA, who is the Disciplinary Authority, and the show cause notice by Member (Admn.) of DUSIB needs to be set aside.

4. Mr. Biswajeet Swain, learned counsel appearing for the petitioner in Writ Petition No. 5152/2016 adopts the arguments as advanced by Mr. Lohia.

5. On the other hand, Mr. Parvinder Chauhan, learned counsel for DUSIB would contend, the case argued by Mr. Lohia and Mr. Swain, is different from the one set up by the petitioners in the writ petitions and the

replies to the show cause notices, inasmuch as the Member (Administration) is not competent to issue show cause notices as the said Authority is below the Appointing Authority. On the submissions made by Mr.Lohia and Mr. Swain that the appointment of the petitioners was in DDA and it is the Vice-Chairman, DDA who is the competent authority to issue show cause notices, Mr. Chauhan would submit, it is a conceded position that on September 1, 1992, the work of the Slum & JJ Department under DDA was transferred to the MCD, and thereafter in the year 2010, an important development has taken place when DUSIB Act, 2010 was enacted whereby under Section 30, the services of the officers and other employees of the Slum & JJ Wing were taken over by the DUSIB and the employees stood absorbed in DUSIB. According to him on such absorption, the petitioners became the employees of DUSIB. Being the employees of DUSIB, they are governed by the Rules and Regulations of DUSIB, or as adopted or decided to be followed by DUSIB. He also draws my attention to the Office Order dated July 28, 2011, whereby the decision of the Board prescribing the Disciplinary / Appellate Authorities of the employees of the DUSIB, which reveals for a Group 'C' employee, a major penalty can be imposed by the Member (Administration). He would rely upon the judgment of the Co-

ordinate Bench of this Court in the case of ***J.S. Sehrawat Vs. Delhi Urban Shelter Improvement Board & Anr., W.P. (C) 1714/2017, decided on February 27, 2017***, wherein the competency of the Member (Administration) to impose a penalty on Group ‘C’ employee was upheld.

6. Mr. Lohia, in rejoinder to the submissions made by Mr. Chauhan would state that CVO of the DUSIB is on record to state that as the petitioners herein have challenged their conviction before this Court, it would be appropriate to await the outcome of the appeal challenging the conviction. Unfortunately, the show cause notices have been issued in violation of the said noting of the CVO.

7. Having heard the learned counsel for the parties, the only issue arises for considerations in these writ petitions, is whether the Member (Admn.) DUSIB is competent to issue the show cause notices to the petitioners. On a reading of the stand of the petitioners in the writ petitions, which has already been reflected above, it is clear that they have stated that the Commissioner, Slum & JJ Wing, (the now CEO, DUSIB) who appointed the petitioners in 1987 & 1989, is the competent authority and not the Member (Administration). Even in the replies to the show cause notices petitioners have stated *“the show cause notice under reply is technically wrong as the*



*judgment dated 28.09.2012 has not been taken into consideration by the Disciplinary Authority*". Mr. Lohia sought to argue that the reference to the 'Disciplinary Authority' is to the Vice-Chairman, DDA. I am unable to agree with the said submission of Mr. Lohia as the reference to word 'Disciplinary Authority' surely meant Member (Administration), as it is the said authority who has issued the show cause notices to the petitioners, which were being replied to by the petitioners. Mr. Chauhan is right in his submission that it is not the case of the petitioners in the writ petitions or in the replies to the show cause notices that they are the employees of the DDA and the Vice-Chairman, DDA is the competent authority. In any case, as Mr. Lohia has raised the issue during arguments, I intend to answer the same.

There is no dispute that on September 1, 1992, the Slum & JJ Department of DDA was transferred to the MCD. The order dated September 1, 1992 stipulated the employees of the Slum & JJ Wings of the DDA, including the petitioners, will continue to work as part of Slum & JJ Departments of MCD till further orders and would be governed by the terms and conditions of service as of DDA. The office order also stated that they will not be merged with any cadres of MCD. In the year 2010, an important

development took place inasmuch as the Delhi Urban Shelter Improvement Board Act was enacted. Section 30 of the said Act, which refers to taking over the services of the officers and employees, stipulates as under:

*“30 In administering the provisions of this Act, the Board may, with the prior approval of the Government, take over the services of the officers and other employees of any existing organization of the Government or any other local authority with such designations as the Board may determine and they shall hold office for the same tenure, and at the same remuneration and on same terms and conditions of service, as they would have held if the Board had not been established and shall continue to do so until such tenure, remuneration and terms and conditions are duly altered by the Board:*

*Provided that the tenure, remuneration and terms and conditions of service of any such officer or employee shall not be altered to his disadvantage without the previous approval of the Government.*

*Provided further that any services rendered by any such officer or employee before the establishment of the Board shall be deemed to be services rendered under the Board:*

*Provided also that the Board may employ any such officer or other employee in the discharge of such functions under this Act as the Board may think proper and every such officer or other employee shall discharge those functions accordingly.”*

8. A reading of the aforesaid Section would reveal that the Board may,

with the prior approval of the Government, take over the services of the officers and other employees of any existing organization of the Government or any other local authority with such designations as the Board may determine and they shall hold office for the same tenure, and the same remuneration and on same terms and conditions of service, as they would have held if the Board had not been established and shall continue to do so until such tenure, remuneration and terms and conditions are duly altered by the Board. The First Proviso to said Section also stipulates that the tenure, remuneration and terms and conditions of service of any such officer or employee shall not be altered to his disadvantage without the previous approval of the Government. The Second Proviso further stipulates that any services rendered by any such officer or employee before the establishment of the Board shall be deemed to be services rendered under the Board. Mr. Lohia has pleaded that no prior approval has been taken from the Government to take over the services of the officers and other employees of the existing organisation of the Government or other local authority. On a specific query whether any such averment has been made in the writ petition or in the reply-affidavits, the answer is in the negative. On a query as to which authority had granted sanction for the prosecution of the petitioners in

Criminal Case, Mr. Lohia states, he has to check up as he was not the counsel for the petitioners in the said case. Be that as it may, it is not disputed that post 2010, the petitioners continued to work in DUSIB. In other words, their employment in DUSIB has not been contested by the petitioners. Hence, the issue raised by Mr. Lohia and Mr. Bishwajeet that the petitioners continued to be the employees of the DDA and the Vice-Chairman, DDA, needs to be rejected.

9. Insofar as the submission of Mr. Lohia and Mr. Swain, relying on page 47 of the reply affidavit filed by the petitioners, which is a communication dated September 24, 2015 to contend the services of the petitioners have been transferred on “as is where is basis” and they continue to be the employees of DDA and the Recruitment Rules of DDA are still applicable to the petitioners is concerned, the same is without merit inasmuch as the document at page 47 has to be read in totality, which reads as under:-

*“It has been represented by the Tehsildar, DUSIB to revised the Grade Pay as DDA has modified its R.Rs for the Post of Tehsildar and as per modified R.Rs the Grade Pay has been modified to Rs.4800/-.*

*It is pertinent to mention that earlier, the said Slum & JJ Department of MCD was transferred from DDA to MCD vide order dated 01.09.1992 on “as is where is basis”. As such, the Board is following the R.Rs of the DDA till formation of its own.*

*As per Section 30 of the Delhi Urban Shelter Improvement Board Act, 2010 the erstwhile Slum & JJ Department of MCD has been taken over by Delhi Urban Shelter Improvement Board on the same tenure & at the same remuneration and on same terms & conditions of service as they would have held if the Board had not been established and shall continue to do so until such tenure, remuneration and terms & conditions are duly altered by the Board.*

*As DUSIB has not formed its own R.Rs for the above posts, it is requested to kindly arrange the copy of the prevailing R.Rs interne and concerned officer (s) may be requested to expedite the same at the earliest”*

10. From the above, it is clear, as DUSIB has not framed its own Recruitment Rules for the posts in question i.e. Tehsildar and Naib-Tehsildar, the Recruitment Rules of DDA have been decided to be followed for Tehsildar/Naib-Tehsildar in DUSIB. It is in that context, the DUSIB has requested the DDA to send the copy of the recruitment rules as prevailing in DDA.

11. The reliance placed by Mr. Lohia on the notification dated May 15, 2015 of the DDA to contend that the Recruitment Rules for the post of Dy. Director (Revenue), Tehsildar, Naib-Tehsildar, Kanoongo and Patwari in the Revenue Dept. of DDA have been amended, is inconsequential for the issue. In any case, even if amendments have been made to the RRs in DDA, the Rules to the extent of amendments shall be followed in DUSIB, if it has not

framed its own Rules.

12. Coming back to the question whether Member (Administration) is competent to issue show cause notices is concerned, from the office order dated July 28, 2011, it is clear that the Member (Administration) is the Disciplinary Authority to impose major penalty to Group 'C' employees i.e., the petitioners herein. The Rule 19 of the CCS (CCA) Rules, 1965 stipulates the Disciplinary Authority as the authority to take action. In other words, it is not the Appointing Authority who can take action under Rule 19 of CCA (CCA) Rules. A distinction exist between Appointing Authority and Disciplinary Authority in the CCS (CCA) Rules. Further, the plea of Mr. Lohia and Mr. Swain relying on the noting of CVO, to await the decision of the appeals filed by the petitioners has not been followed/violated, does not appeal the Court. The noting of the CVO is an expression of his view, but what is important is the decision of the Disciplinary Authority, competent to take a decision.

13. In view of the aforesaid discussion, I do not see any merit in the writ petitions. The same are dismissed.

14. It goes without saying that the replies filed by the petitioners shall be considered by the Disciplinary Authority who shall pass appropriate orders.

**CM No. 19006/2016 in W.P.(C) 4553/2016 (for stay)**

In view of the fact that I have dismissed the writ petition, the present application is also dismissed as infructuous.

**V. KAMESWAR RAO, J**

**JULY 17, 2017/akb**