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

+ **W.P. (C) 616/2017**

% **Judgment dated: 27th February, 2017**

NORTH DELHI MUNICIPAL CORPORATION

..... Petitioner

Through : Ms.Mini Pushkarna, Standing Counsel
with Ms.Namrata Mukim and
Ms.Anushruti, Advs.

versus

QAISER JAVED & ANR.

..... Respondents

Through : Mr.Salar M. Khan, Adv. with
Mr.Waziq Khan & Ms.Shruti Rathore,
Advs. for respondent no. 1
Mr.Sharat Kapoor, Adv. with Mr.C.B.
Tiwari and Ms.Tanvi Kalra, Advs. for
respondent no. 2

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI
HON'BLE MR. JUSTICE VINOD GOEL

G.S.SISTANI, J.

CM. APPL 2797/2017 (Exemption)

1. Exemption allowed, subject to all just exceptions. The application stands disposed of.

CM. APPL 2798/2017 (Condonation of Delay in Re-filing)

2. For the reasons stated in the application, delay of 17 days in re-filing of the petition is condoned. The application stands disposed of.

CM. APPL 2796/2017 (under Order XLI Rule 27 for Additional Documents)

3. This is an application seeking to place additional documents on record. Let the additional documents be taken on record. The application is

disposed of.

Caveat No. 67/2017

4. Counsel for the caveator/Qaiser Javed enters appearance. Accordingly, the caveat petition is disposed of.

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5. Challenge in this writ petition is to the order dated 26.07.2016 passed by the Central Administrative Tribunal (for short the '*Tribunal*') in O.A. 4228/2014, by which the application filed by the respondent no.1 herein has been allowed. By the said order, the order dated 16.06.2014 imposing penalty on the respondent no.1 of reduction in rank as also the order dated 21.10.2014 rejecting the appeal of the respondent no. 1 against the order of penalty by the competent appellate authority have been quashed.
6. Learned counsel for the petitioner submits that the Tribunal has failed to appreciate that the unauthorized construction was in fact carried out at property No. 5079, Rui Mandi, Sadar Bazar, Delhi, which was admittedly under the jurisdiction of the respondent no.1. Counsel further contends that the building in question collapsed, leading to untimely death of seven persons. She submits that the conduct of the officials of the Building Department right from Junior Engineer (Building) to Executive Engineer (Building) has been highly irresponsible and shows callous attitude towards their statutory duties. Counsel contends that it was the duty of Building Department to keep a strict vigil and watch on any unauthorized construction going on especially in the Walled City, where buildings consist of very old construction and some of the buildings are close to 100 years old. It is the case of the petitioner that the respondent cannot shirk his responsibility by stating that his duty was only supervisory in nature

and he cannot be exonerated on the ground that he had a trivial role in checking the unauthorised construction.

7. Ms. Pushkarna contends that in fact the whole team comprising of Junior Engineer (Building) ['JE(B)'], Assistant Engineer (Building) ['AW(B)'] and Executive Engineer (Building) ['EE(B)'] are responsible for keeping the vigil and check on unauthorised construction in their area. Not being able to check the unauthorised construction and not stopping the same is a serious misconduct, which has been completely ignored by the Tribunal.
8. Learned counsel contends that the Tribunal failed to take into account that the inquiry officer had exonerated the respondent primarily on the ground that the Junior Engineer (Building) had been exonerated of the charges completely. Ms. Pushkarna submits that after the advice of Lt. Governor in his capacity as the Appellate Authority, the case of the JE(B) has been reopened by the DDA. It is, thus, contended that the observations of the Lt. Governor as Appellate Authority was brought to the notice of the DDA, which has been ignored by the Tribunal. Counsel contends that the Tribunal erred in holding that disagreement by the Disciplinary Authority from the report of the inquiry officer was solely on the basis of police complaint dated 10.04.2004. It is contended that the Building Department does not wait for any police complaint to take action against unauthorized construction. Therefore, the fact that the police complaint dated 10.04.2004 pertained to other properties is totally irrelevant, even though the police complaint was infact in respect of other properties. Counsel has drawn the attention of the court to the statement of the Junior Engineer (Building) recorded on 04.05.2004:

“Status/inspection report of property no. 5079, Rui Mandi,

Sadar Bazar, Delhi.

I have inspected the aforesaid property on receipt of information through the department today i.e. 04.05.2004. The property in reference consisting of GF, Mezzanine Floor, FF is an old one as per the record of Department. The o/b was trying to raise the unauthorized construction in the property i.e. 2nd and 3rd Floor during the holidays by employing maximum labour and that too in odd hours which has been collapsed due to raising the u/c. in a hurry in order to construct the u/c within the holidays i.e. w.e.f. 1.5.2004 to 4.5.2004. Besides this the property in question is not visible from the main road because the same is situated in interior lane and the individuals cannot detect/take action immediately and remove the u/c was carried out during the holidays as stated above.”

(Emphasis Supplied)

9. She contends that the said statement is a clear pointer that on receipt of complaint dated 10.04.2004, the JE(B) had also inspected the property on 19.04.2004 along with the other properties and the JE(B) had stated that the owner was carrying out some repair work, which was not actionable. The JE(B) again inspected the building on 26.04.2004 before the collapse of the building in question on 03.05.2004. It is, thus, contended by the counsel for the petitioner by relying on the Ground “F” that the Junior Engineer in question was fully aware of the unauthorized construction but he did not provide the details and photographs of the repair work and construction activities being carried out at the site in question. Counsel further submits that Tribunal has erred in holding that the respondent is not the person, who is entrusted with the site inspection personally. It is submitted that merely because no site inspection is carried out by the Executive Engineer, this does not mean that he would not be responsible for the conduct of the Junior Engineer and the Assistant Engineer. It is contended that had timely

action been taken, the building would not have collapsed.

10. We have heard the counsel for the petitioner and carefully examined the order of the Tribunal.
11. Pithily stated, the factual matrix to be noticed as borne from the record is that the respondent no. 1 at the relevant point of time was working as an 'Executive Engineer (Building)' with the erstwhile MCD. While working in such capacity, a property bearing No. 5079, Rui Mandi, Sadar Bazar falling in his jurisdiction collapsed on 03.05.2004 leading to the death of seven persons. Disciplinary proceedings were initiated against the respondent no. 1 as well as his immediate juniors being Sh. K.K. Arora, Junior Engineer (Building) and Sh. Jagdish Chander, Assistant Engineer (Building). A charge-sheet was issued on 21.07.2005 alleging that the respondent no. 1 had failed to maintain devotion to duty and gross misconduct owing to his failure to check unauthorised construction on the abovementioned property ultimately leading to its collapse. Since, Sh. Arora was on deputation from DDA, disciplinary proceedings were conducted against him under the ambit of DDA; while combined enquiry proceedings were initiated against Sh. Chander, AE (B) and the respondent no. 1.
12. The enquiry officer submitted his report on 21.06.2012 exonerating both the charged officers on two counts being that the JE (B) having failed to inform of unauthorised construction, the senior officers were not in a position to pass any orders and second, as Sh. Arora, JE (B) had been exonerated of all charges no guilt could come upon the seniors. The relevant portion of the inquiry report reads as under:

“In the instant case the statement of Shri K. K. Arora, the then JE(B)/SP Zone is important. During the course of investigation the statement of Shri K. K. Arora (Ex.S-5) was recorded on 7.6.2004 wherein he has narrated all the facts related to this

case. In his statement Shri Arora has stated with regard to P.No.5079-80, Rui Mandi, Sadar Bazar that he had not booked any u/c in the said property for the evident reason that no u/c in the said property had been carried out nor any ongoing construction was noticed by him. He further stated that a complaint bearing No.975-80/SHO/Sadar Bazar/Delhi dated 10.4.04 in r/o property No.5084, 5085 & 5086, Rui Mandi was received in SP Zone on 12.4.04 and marked to him by AE(B) on 15.4.04 for inspection of the said property. In compliance thereof he inspected the said properties on 19.4.04 as 17.4.04 & 18.4.04 were holidays being Saturday & Sunday and during inspection no construction work was found in progress in P.No.5085 & 5086 but in P.No.5084 some renovation work was being carried out at FF which was not actionable and the same was covered under the BBL 6.4.1. In regard to P.No.5079-80 it was found by him that the owner was carrying out some repair work at GF & FF which was not actionable. Shri Arora brought these facts to the notice of AE(B) who directed him to keep a strict watch for taking action if any u/c is carried out. According to Shri Arora, he inspected the area lastly on 26.4.04 and thereafter he was busy on 27, 28, 29 & 30.4.04 in demolition programme, court cases and other important assignments. Further 1.5.04 & 2.5.04 were holidays being Saturday and Sunday and 3.5.04 was a gazetted holiday on account of birthday of Hazrat Saheb and the incident of collapse of the said building took place on 3.5.04. Shri Arora further stated that as he had not seen any u/c in the property in question he did not book the said building for u/c. Shri Arora further stated that the said property is situated in a very narrow land at the dead end of the street and it is not visible from outside main road.

...

In this case as per the established procedure and instructions on the subject as brought on record the JE(B) concerned viz. Shri K.K. Arora was duty bound to detect any u/c going on in his area, prepare FIR for the u/c and to obtain orders of AE(B) for taking appropriate action as per the provisions of the DMC Act. However, in this case as per the evidence on record the JE(B) concerned did not bring to the notice of AE(B)/EE(B) any u/c in the impugned property or any violation of the provisions of the DMC Act by the owner/builder of the said property and as such the AE(B)/EE(B) were not in a position

to give any direction/order on violation of the DMC Act in respect of the impugned property. As discussed above the JE(B) concerned Shri K.K. Arora, JE(B) who was charged for alleged failure on various counts as the other Cos in the instant inquiry, has already been completely exonerated of the charges by the competent Disciplinary Authority. The Disciplinary Authority of DDA in r/o Shri K.K.Arora, JE(B) exonerated him on the ground that u/c as well as its collapse took place during the holidays and as such the CO did not have any opportunity to detect u/c at the ongoing stage and also did not have any opportunity to detect u/c at the ongoing stage and also did not have the opportunity of taking timely action against the u/c. In view of complete exoneration of Shri K.K.Arora, JE(B) who was the main accused in this case and primarily responsible for detecting u/c in the impugned property or any other violation of the provisions of the DMC Act the other Cos in this case viz. AE(B) and EE(B), cannot be held responsible for the alleged failure to get stopped/demolished the u/c or to book/seal the u/c in the impugned property under various provisions of the DMC Act. Hence, the charges No.1, 2 and 3 against both the Cos viz. S/Shri Jagdish Chander, AE and M.Q.Javed, EE are held as not proved. Regarding the charge No.4 relating to lack of supervision it is pointed out that since Shri K.K.Arora, JE(B) has been completely exonerated of all the charges No.1, 2 & 3 by the competent Disciplinary authority, the COs in this case cannot be held responsible for failure to exercise proper supervision and control over the functioning of their subordinate staff viz Shri K.K.Arora, JE(B)."

(Emphasis Supplied)

13. The inquiry report did not find favour with the disciplinary authority, which recorded a disagreement note dated 10.05.2013. The relevant portion of which reads as under:

" I have carefully gone through the Inquiry Report as also the allied record of the case. It is revealed from the file that a complaint was received in the zonal office on 12/04/2004 from SHO, Sadar Bazar regarding unauthorized construction in the above said property. The property was inspected by Shri Jagdish Chander, AE and Shri K.K. Arora,

JE on 19/04/2004 and found no actionable construction at site. The JE was directed by the AE to keep watch over the property. Except this no steps were taken to prevent the construction. The JE also did not bother to check the property in odd hours or on holidays as per the directions. The department should have informed the police with reference to the complaint received from them that no actionable construction was found at site on the day of inspection and the police should have been told to keep watch over the property so that preventive action could have been taken. But the complaint received from the police was not taken seriously and the owner/builder was allowed to carry out the construction which caused death of seven persons at site. The JE, AE and EE all acted in a very careless manner. The Inquiry Report of the Inquiry Officer in DDA was also not acceptable and the department should have filed appeal against the orders of the Disciplinary Authority of the DDA. When there were directions to the JE to keep watch on the property, the said directions are applicable even for holidays and no protection should have been given to the C.O. on this ground. It has been mentioned that when the property was inspected by the AE & JE on 19/04/2004 no actionable u/c was found. Then what actually was happening at site has not been mentioned. The complaint received from the police does not appear to be false because unauthorized construction did take place at site which took as many as seven lives. The AE & EE totally failed to exercise effective control over the JE and did not take report from him on daily basis. Such major incident took place even though there was alarm from the police. Neither the JE took the directions of the AE seriously to keep watch over the property nor the AE & EE who were in supervisory position ensured that the said directions were acted upon properly. Lastly the property was inspected by the JE on 26/04/2004 and thereafter no inspection was made by him on the ground that he was busy in demolition programme from 27/4/2004 to 30/4/2004. Then what was the impact of issuing such directions.

In view of the above, I disagree with the findings of the Inquiry Officer and find that both the COs S/Shri M.Q.Zaved, EE and Jagdish Chander, AE are responsible for the unauthorized construction and hold that all the charges

levelled against them are proved. A copy of this disagreement note be served upon the COs as required under the rules for making representation, if any, within the stipulated time. Since there is a CVC reference in this case, appropriate action be also taken as per the guidelines on the subject.”

(Emphasis Supplied)

14. It is patent that the basic premise of the disagreement note was a police complaint dated 10.04.2004 received by in the office of the petitioners on 12.04.2004. The police complaint reads as under:

“Subject: Unauthorized Construction in Property No.5085, 5084 & 5086, Rui Mandi, Sadar Bazar

Sir,

I am to inform you that unauthorized construction is being carried out in the above said premises. You are requested to take necessary action at your end. Details of Property/Building Owner is given below:

- 1. Place of Construction: 5084, 5085 & 5086 Rui Mandi Sadar Bazar*
- 2. Name of the Land Lord: S. Bakshish Singh, Hari Ram*
- 3. Name of contractor: Umar*
- 4. Type of construction:*
 - (a) Area of construction: 20'x20'*
 - (b) Repair or new construction: New construction*
 - (c) Residential accommodation converted to commercial purpose: Commercial*
 - (d) Construction is small/big/glaring and blatant violation: Big”*

15. A perusal of the complaint would show that the building in question which collapsed was not part of the police complaint. The property which collapsed was bearing no. 5079, while the complaint was of some construction in properties bearing no. 5084-5086.
16. On the basis of the disagreement note dated 10.05.2013, a show cause memo was issued on 22.11.2013, which was replied to on 10.12.2013. The disciplinary authority rejected the reply and imposed a penalty of

reduction in rank by order dated 23.05.2014.

17. Thereafter, the respondent no. 1 preferred an appeal before the competent authority. Before the same was decided, the respondent no.1 approached the Tribunal by filing O.A. No. 2104/2014, which was disposed of on 14.07.2014 with a direction to the petitioners herein to decide the appeal within two months.
18. Accordingly, the appellate authority, vide its order dated 21.10.2014, rejected the appeal. The relevant portion of the order reads as under:

“8) *I have gone through the contentions of the appellant in his appeal, his representation to the Disciplinary Authority, the impugned penalty order and relevant records of the case. In the instant case, from records it is confirmed that the appellant's claim that the Disciplinary Authority disagreement was based on the police report dated 10.4.2004 of SHO, PS Sadar Bazar, Delhi, which was received in the Zonal Office on 12.4.2004, and was regarding unauthorized construction of property nos. 5084, 5085 & 5086, Rui Mandi, Sadar Bazar, and not pertained to the impugned property no. 5079, Rui Mandi, Sadar Bazar, Delhi. However, I am of the view that this oversight of the Disciplinary Authority would not amount to be a mitigating factor to grant the relief sought by the appellant, because, evidently unauthorized construction was carried out in the impugned property no. 5079, which happened to be in their area of jurisdiction and the building had collapsed leading to untimely death of seven persons. The Inquiry officer had held the charges as not proved based on the outcome of the case against the Junior Engineer, who was co-Charged Officer in this case. However, it cannot be denied that the appellant is also a responsible officer in prevention of unauthorized construction in his area of jurisdiction. Therefore, it was wrong on the part of the Inquiry Authority to lay the entire responsibility in the matter upon the Junior Engineer. The Inquiry Officer is called upon to give its findings based on the evidence and records produced before him and not on extraneous factors. The corporation has provided an hierarchy of officers in the Building Department for administration only to ensure that in the event of one level fails in its duty, the next level above it checks the omission in*

time to prevent any violation. In this case the entire hierarchy of Building Department had failed in its duty and none can escape the consequences. Hence, the claim based on the exoneration of Junior Engineer the appellant merits to be exonerated is not a valid argument. Hence, I am of the view that finding in the Inquiry Report merits to be disagreed upon.

9) *Keeping in view all facts and circumstances of the case, I see no reason to interfere with the impugned order dated 28.02.2011, notifying the penalty imposed by Commissioner, MCD, as the Disciplinary Authority. The appeal is hereby rejected.*

(Emphasis Supplied)

19. Aggrieved by the order of the disciplinary authority and the appellate authority, the respondent no.1 approached the Tribunal by filing O.A. No.4228/2014, which has been allowed by the impugned order dated 26.07.2016. The Tribunal had allowed the OA on four counts: first, that the police complaint dated 10.04.2004 was in respect of different properties; second, the exoneration of the JE (B); third, reliance upon extraneous material by the disciplinary authority; and fourth, the duty to physically inspect the site was upon the JE (B) and not the respondent no.1.
20. Ms.Pushkarna has laboured hard to convince us that since case of Sh. Arora, JE(B) has been reopened and that it was the responsibility of the respondent no.1 to check unauthorised construction within his jurisdiction, therefore, the order of the Tribunal cannot be sustained and is liable to be set-aside.
21. We are unable to accept the contention of the learned counsel for the petitioner as upon going through the disagreement note dated 10.05.2013, extracted in paragraph 13 foregoing, shows that the entire foundation for the same was the complaint dated 10.04.2004. We also note that in the initial chargesheet dated 21.07.2005, the List of

Documents relied upon does not mention the complaint. The disciplinary authority while relying upon the complaint has innocuously stated that the complaint “*revealed from the file.*” This certainly is not permissible in law as the disciplinary authority could not rely upon extraneous material to come to its conclusion. Though the disciplinary authority may disagree with the findings of the inquiry officer and may record its own reasons under Rule 15 (2), the same must be based on the same evidence before the inquiry officer and nothing fresh or alien to the proceedings. In such circumstances, the courts may intervene to grant relief to the charged officer.

22. In ***State of Andhra Pradesh v. Sree Rama Rao***, AIR 1963 SC 1723, a Full Bench of the Apex Court has observed as under:

“10. ...The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based the adequacy or reliability of that evidence is not matter which can be permitted to be canvassed before the High Court in a proceeding for writ under Art. 226 of the Constitution.”

(Emphasis Supplied)

23. We may also note the following observations of Justice V.R. Krishna Iyer in ***State of Haryana & Anr. v. Rattan Singh***, (1977) 2 SCC 491:

“4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act

may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. ... The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence — not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. ...”

(Emphasis Supplied)

24. It is settled law that the High Courts or the Tribunal do not sit in appeal over the disciplinary proceedings and may intervene in limited circumstances. The Supreme Court in ***Union of India v. P. Gunasekaran***, (2015) 2 SCC 610 has summarized the law as under:

“12. ... In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

(a) the enquiry is held by a competent authority;

- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- (i) the finding of fact is based on no evidence.*

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) reappreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*
- (v) interfere, if there be some legal evidence on which findings can be based.*
- (vi) correct the error of fact however grave it may appear to be;*
- (vii) go into the proportionality of punishment unless it shocks its conscience.”*

(Emphasis Supplied)

25. In the present case, it is clear that reliance upon the police complaint dated 10.04.2004 by the disciplinary authority was misplaced as the same was not listed along with the chargesheet as the documents relied upon. The disciplinary authority had misled itself as having being influenced by extraneous material to the inquiry. Thus, the Tribunal has rightly held that the disagreement note shows complete non-

application of mind. Even otherwise, the disagreement note failed to show any nexus between the properties mentioned in the complaint and the one in question, i.e. property no. 5079. Further it is essential for the disciplinary authority to record proper reasons while disagreeing with the report of the inquiry officer, otherwise, the words “*with its own tentative reasons for disagreement*” used in Rule 15 of the CCS (CCA) Rules may become redundant. We may notice the observations of a coordinate bench of this Court in ***Sudhanshu Ojha v. The Director General CRPF & Ors.***, 213 (2014) DLT 135:

“24. In a nutshell, the decision brings out that to be called a speaking and reasoned order, the same must show that the authority concerned has come to grips with the issue raised in the response by the charged officer and with reference to the evidence on record proceeds to consider the same and records an application while reaching the conclusion. If the contentions urged by the delinquent have been dealt with by the Inquiry Officer and the disciplinary authority agrees with the same, the disciplinary authority may not give elaborate reasons and may embody the reasons given by the inquiry officer, but where the inquiry officer has not noted a contention urged with respect to the evidence led at the inquiry, it would be the duty of the disciplinary authority to consider the same and deal with it giving reasons. Only then can it be said that the order passed by the disciplinary authority is a reasoned order.”

(Emphasis Supplied)

26. Thus, the Tribunal rightly held that the disagreement note shows complete non-application of mind and had further relied upon extraneous material to come to its conclusion.
27. Coming to the order of the Appellate Authority dated 21.10.2014, extracted in paragraph 17 foregoing, the same also cannot be sustained in law. The only reason stated therein is that the respondent no.1 had failed to exercise proper supervision and control over his subordinates.

28. It would be useful to reproduce the statement made by the JE(B) before the enquiry officer on 07.08.2004:

“ On further inquiry regarding property no. 5079-80, Rui Mandi, Sadar Bazar, Delhi, it is submitted that I had not booked any u/c in the said property for the evident reason that no u/c in the said property had been carried out or was seen by me going on. It is further submitted that a complaint bearing No.975-80/SHO/Sadar Bazar/Delhi dated 10-4-04 was received in the SP Zone on 12/4/04 and it was marked to me by AE (B) on 15/4/04 for inspection of the said properties. The said complaint of the police authority is in r/o property No.5084, 5085 and 5086 Rui Mandi, Delhi. In compliance of the order of the AE(B) dt. 15/4/04 I inspected the said properties on 19.4.04 as 17/4 and 18/4 were holiday, a/c of Saturday and Sunday.

During the inspection on 19.04.04 I did not find any work in property No.5085 and 5086. As regard property No.5085 some renovation work was being carried out at FF which was not actionable and was covered under the B.B.L. 6.4.1.

The said report was seen by the AE (B) Sh.Jagdish Kumar on 19/4/04 and he directed me to keep a strict watch on the property and for taking action if any u/c was raised.

On further query by SVI it is stated I again inspected the said site on 26/4/04 as per the directions of AE(B). During inspection on 26/4/04 on work was found in property No.5085-86.

As regard property No.5081-84, only some renovation work was seen in progress which was not actionable.

As regard property no.5079-80, it was found that the owner was carrying out some repair work at G.F. and F.F. and it being only a repair work it was not actionable. The said facts can be seen and confirmed from by report dt. 26.04.04. The said report was given to AE(B) who again directed me on 26/4/04 for keep a strict watch that property and for taking action if any u/c is carried out.

My last inspection of the site/area was on 26/4/04. Evidently I was busy in demolition programme on 28/4/04 and again on 30/4/04. On other days i.e. on 27/4 and 29/4 I was busy in court cases and other important arrangements.

Further 1/5/04 & 2/5/04 were holidays on a/c of

Saturday and Sunday. 3/5/2004 was a gazetted holiday on a/c of birth of Hazrat Sahab.

The said unfortunate incident of collapse of the said building took place on 3/5/2004.

On further query it is stated that I had not seen any u/c in property No.5079-5080 and accordingly did not book any u/c.

It is further clarified that the property No.5079-80 Rui Mandi is situated in a very narrow lane and at the dead end of the street and does not visible from the outside. I cannot say whether the police authorities had stopped/checked or had taken any action against u/c of the any of the properties as stated above.

It is further submitted that no complaint from police authorities in r/o property No.5079-80 till 3.05.04 (i.e. the date of collapse)."

29. As per the aforequoted statement as well as the statement recorded after the collapse of the building on 04.05.2004 extracted in paragraph 7 aforegoing, when the JE(B) had inspected the property in question only repair work was being carried out on the ground floor and first floor which is not actionable. Therefore, he did not report it to his superiors and there was no occasion for the respondent no.1, EE(B) to take any action thereon.
30. During the course of hearing, it is not being disputed before us that the Executive Engineer ordinarily does not inspect the properties in a routine manner and in the present case as per the report of the Junior Engineer when he inspected the property only some repair work was going on. There seems to be no material to show any reason for the EE(B) to personally inspect the property in question or to keep a strict vigil upon it. Further, admittedly, the police complaint was in respect of some other properties, which are unrelated to the property in question. Therefore, it cannot be the reason for warranting special vigil over the property in question.

31. It is settled law that the Courts should be hesitant in interfering with a finding of facts, but at the same time are duty-bound to interfere in cases of ‘no evidence’, i.e. where there is no evidence to sustain the findings or the findings are such that no man acting reasonably and with objectivity could have arrived at that finding. We may take note of the following observation of the Supreme Court in ***Bank of India & Anr. v. Degala Suryanarayana***, (1999) 5 SCC 762:

“11. Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The Court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of malafides or perversity i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that findings. The Court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.”

(Emphasis Supplied)

32. In order to avoid prolixity, we may only mention ***Rattan Singh*** (Supra); ***B.C. Chaturvedi v. Union of India and Ors.***, (1995) 6 SCC 749 (paragraphs 12 and 13); ***Kuldeep Singh v. The Commissioner of Police and Ors.***, (1999) 2 SCC 10 (paragraphs 8 and 9); ***Sher Bahadur v. Union of India and others***, (2002) 7 SCC 142 (paragraph 7); ***Government of A.P. and Ors. v. Mohd. Nasrullah Khan***, (2006) 2 SCC 373 (paragraph 12); ***State Bank of Bikaner and Jaipur v. Nemi***

Chand Nalwaya, (2011) 4 SCC 584 (paragraph 6); and **P. Gunasekaran (Supra)**. We may also take note of the following observations of the Supreme Court recently in **Allahabad Bank and Ors. v. Krishna Narayan Tewari, 2017 SCC OnLine 2** decided on 02.01.2017:

“7. We have given our anxious consideration to the submissions at the bar. It is true that a writ court is very slow in interfering with the findings of facts recorded by a Departmental Authority on the basis of evidence available on record. But it is equally true that in a case where the Disciplinary Authority records a finding that is unsupported by any evidence whatsoever or a finding which no reasonable person could have arrived at, the writ court would be justified if not duty bound to examine the matter and grant relief in appropriate cases. The writ court will certainly interfere with disciplinary enquiry or the resultant orders passed by the competent authority on that basis if the enquiry itself was vitiated on account of violation of principles of natural justice, as is alleged to be the position in the present case. Non-application of mind by the Enquiry Officer or the Disciplinary Authority, non-recording of reasons in support of the conclusion arrived at by them are also grounds on which the writ courts are justified in interfering with the orders of punishment. ...”

(Emphasis Supplied)

33. Applying the foregoing principles to the present case, we are of the view that the present case is also a case of ‘no evidence’. There is nothing on record or urged before us, which would show that there was any lapse on the part of the respondent no.1, EE(B) to sustain an order of penalty.
34. In view of the foregoing discussion, it is clear that re-opening of proceedings against Sh. K.K. Arora, JE(B) would have no bearing on the present case as other reasons given by the Tribunal cannot be faulted with.

35. Resultantly, we do not find any infirmity in the orders passed by the Tribunal which would require us to interfere in the proceedings under Article 226 of the Constitution of India. No ground is made out to entertain this petition.
36. We may add that no doubt the incident of collapse of the building leading to loss of seven lives is a serious matter and all responsible officers should be brought to book by the authorities; but the same does not allow the department to go on a witch-hunt to apportion blame where there is none.
37. The writ petition is dismissed. No costs.

CM. APPL 2795/2017 (Stay of Impugned Order)

38. This is an application seeking stay of the impugned order dated 26.07.2016. In view of the order in the writ petition, no further orders are required to be passed. Therefore, application is disposed of.

G.S.SISTANI, J.

VINOD GOEL, J.

FEBRUARY 27, 2017

// 'sk'