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

\+ W.P.(C) 7303/2015

DELHI DEVELOPMENT AUTHORITY ..... Petitioner

Through Mr. Rajiv Bansal, Sr. Standing Counsel with Mr. Dhanesh Relan, Ms. Uma Lohray and Mr. Anurag Tripathi, Advocates

versus

S.S. GAHLOT ..... Respondent

Through Mr. Varun Nagrath, Advocate

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

O R D E R

% 11.01.2017

The order under challenge dated 12.09.2014 passed in OA No. 2556/2013 filed by S. S. Gahlot-the respondent before us, holds and directs:-

> "20. We, therefore, conclude that the disciplinary proceeding has resulted in discrimination between the cases decided by the respondents in the matter of Shri Raj Kumar Jain and Shri Subhash Chandra Garg (sic.). In view of the judgment of the Tribunal in OA No. 3774/2011 in the case of Subhash Chand Garg, the applicant deserves similar treatment.
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> 21. We accordingly quash the impugned order of the

appellate authority and direct that the case of the applicant in this OA be considered in the light of the decision taken in the cases of Shri Raj Kumar Jain and Shri Subhash Chand Garg and a decision [be] (sic.) taken within a period of eight weeks from the date of receipt of a copy of this order. A copy of the speaking order passed by the Appellate Authority shall be communicated to the applicant within the aforenoted period.

22. OA is allowed with the aforenoted directions. No orders as to costs."

2. The petitioner- Delhi Development Authority, is also aggrieved and challenges the order dated 01.05.2015 whereby R.A. No.100/2015 and M. A. No. 1464/2015 for condonation of delay of Review Application were dismissed, observing that there was unconscionable delay and no ground to justify review was made.

3. Having heard learned counsel for the petitioner and respondent we are inclined to uphold the impugned order with a slight modification.

4. The respondent who had worked as the Senior Accounts Officer, was charge sheeted on 14.02.2007 along with R. K. Jain and D.K. Goel (both Executive Engineers) and S. C. Garg and Krishan Pal (both Assistant Accounts Officers) on the following Articles of Charge:-

"<u>Article-I</u>

(i) That the said Sh. S. S. Gahlot while functioning as Sr. A.O./CAU/SWZ failed to ensure that A/A & E/S or

ARMO is available before issue of budget slips for above works.

(ii) That the said Sh. S. S. Gahlot, while functioning as Sr. A. O./CAU/SWZ failed to ensure that revised budget slip/moving budget slip is issued for the above referred work though the amount of final bill has exceeded the amount for which budget slip was issued.

Article-2

That the said Sh. S. S., Gahlot, while functioning as Sr. A.O./CAU/SWZ failed to ensure that the applications for issue of tender documents has been scrutinized before issue of tender document and that all the applications are placed in file.

That the said Sh. S.S. Gahlot, Sr. A.O., by his above act exhibited lack of devotion to duty and conduct unbecoming of an employee of the Authority thereby violating sub-rule (i) & 1 (iii) of Regulation 4 of the DDA Conduct, Disciplinary and Appeal Regulations, 1999."

5. The respondent contested the charges in the disciplinary proceedings. The Inquiry report held that Article-2 was un-proved and Article-I was proved except for work at Sl. No.6. The respondent contested the inquiry report by filing reply/representation dated 29.12.2009. The disciplinary authority i.e. Vice Chairman, DDA vide order dated 31.03.2010,imposed penalty of 10% cut in pension for the two years.

6. Appeal preferred by the respondent before the Lieutenant Governor, Delhi was disposed of on 19.07.2012 as not maintainable under Regulation 32 of DDA (Conduct, Disciplinary and Appeal) Regulations, 1999.

7. The respondent then preferred OA No. 2556/2013 before the Tribunal raising a number of contentions. The primary contentions were denial of the right and opportunity to cross examine the witnesses and that other charge-sheeted officers had been exonerated.

8. The Tribunal noticing the contentions, referred to the order dated 12.02.2013 passed in OA No. 3774/2011 in the case of Subhash Chand Garg,, AAO, Store Division, DDA. Subhash Chand Garg, in turn had relied on the exoneration order in the case of Raj Kumar Jain. Order of the Tribunal dated 12.030.2013, in the case of Subhash Chand Garg records:-

> "5. I have gone through appellants representations submitted before the disciplinary authority, contentions in the appeal, submission made during the personal hearing, impugned penalty order and relevant of the case. I find that the lapses committed were procedural and no malafide were established against him. The excess expenditure incurred over initial estimates (viz. Rs.34.40 lacs against Rs. 22.98 lacs)has been explained principally on account of the quantitative deviations. It is also noted that his overall service record has been ranged from very good to outstanding and but for this case he had an unblemished record. Therefore, I take lenient view in this case and accept the plea of the appellant.
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> 6. In view of the above facts and circumstances, I order that the penalty imposed by the Disciplinary Authority, V. C., DDA, vide order dated 14.06.2010 be set aside and exonerate the appellate of the charge in this case."

9. Thereafter the petitioner, i.e. the Delhi Development Authority,

vide order dated 28.05.2013 exonerated Subhash Chand Garg on the basis that the charges levelled against him were similar and he and Raj Kumar Jain should be equally treated.

10. The petitioner, pursuant to the direction given by the High Court, has placed on record the order dated 2.06.2011 passed by the Lieutenant Governor, Delhi in the case of Raj Kumar Jain, Executive Engineer. The Lieutenant Governor, after going through the order of the Disciplinary Authority and contentions raised opined and held that the lapses committed by the officer were procedural, without malafides. 'Excess Expenditure' incurred over initial estimates, had been explained as on account of quantitative deviations. Reference was made to the overall unblemished service record of Raj Kumar Jain.

11. Raj Kumar Jain was an Executive Engineer, i.e. a superior officer.

12. The respondent's case, pursuant to the impugned order, was placed before the Lieutenant Governor as the Appellate Authority. The Lieutenant Governor in his noting dated 11.09.2015, has observed:-

> "The appeal petition against the cut in pension imposed by Disciplinary Authority is not maintainable, as per DDA (Conduct, Discliplinary and Appeal) Regulations 1999, as the Disciplinary Authority i.e. VC/DDA had passed the impugned order in exercise of powers delegated by the ' Authority' vide gazette notification dated 1.11.2007. Therefore, the orders of cut in pension passed by VC/DDA in terms of delegation of powers as mentioned above are the orders passed by the 'Authority', which is not appealable, besides, there is no

> provision for filing an appeal under Rule 9 of CCS (Pension) Rules 1972 under which the impunged penalty has been imposed on Shri S.S. Gahlot".

13. Thereafter, the petitioner, i.e., the Delhi Development Authority had filed Review Application No. 100/2015 before the Tribunal, which has been rejected. Thereafter, the present writ petition has been filed.

14. Noting the factual matrix, we do not think that the impugned orders passed by the Tribunal requires and mandates interference. The effect of the orders passed in the case of Raj Kumar Jain and Subhash Chand Garg have to be considered and examined. The respondent submits that on the findings recorded, the said respondent should be exonerated. Plea of parity is also raised. Thus, the Tribunal was justified in passing an order of remand.

15. However, one modification and clarification is required is in view of the noting of the Lieutenant Governor dated 11.09.2015. The Lieutenant Governor is not the Appellate Authority and, therefore, cannot examine the aspects noticed above. The matter will be examined afresh by the Vice-Chairman, i.e. the Disciplinary Authority, and not by the Lieutenant Governor.

16. The impugned orders record that the observations of the Tribunal would not be treated as final and binding. The Vice Chairman will decide the matter, including the contention based on parity and equality with reference to the case of Raj Kumar Jain and Subhash Chand Garg, uninfluenced by the earlier order, the order of the Tribunal and the High Court. Merits are left open to be considered

and examined by the Vice Chairman.

17. With the aforesaid clarification and modification, the writ petition is disposed of.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

JANUARY 11, 2017
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