$~R-2

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

\+ **W.P. (C) 3000/2011 & CM No.6387/2011**

Date of decision: 13th December, 2018.

MUNICIPAL CORPORATION OF DELHI & ANR...... Appellants
Through: Mr.Rakesh Kumar, Adv.
Versus

AMAR SINGH SHARMA & ANR. ....Respondents
Through: Mr.Prabhat Kaushik, Adv. for R-1 with Mr.Amar Singh- respondent in person.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

SANJIV KHANNA, J.

The present writ petition filed by the Municipal Corporation of Delhi, now represented by South Delhi Municipal Corporation, impugns the order dated 19.03.2010 passed by the Principal Bench of the Central Administrative Tribunal in OA No. 1434/2009.

2. The impugned order allows the OA preferred by the respondent before us, namely Amar Singh Sharma, and quashes the modified order of punishment passed by the Appellate Authority dated 17.12.2008, for reduction in pay in the time-scale of 3 stages till the date of retirement with cumulative effect. The order of punishment prescribed by the Disciplinary Authority vide order dated 28.11.2006 was stoppage of three increments with cumulative effect. The impugned order also directs that the respondent

would be entitled to all consequential benefits as per law within a period of three months from the date of receipt of that order.

3. The respondent is a retired Head Clerk who worked for the petitioner corporation and had superannuated on 31.12.2007.

4. Prior to his retirement, the respondent was served with memorandum of charge dated 03.07.2003, with the following statement of charge:-

> "Shri Amar Singh, Head Clerk was working as House Tax Inspector in House Tax Deptt. South Zone during the year 2001 committed gross misconduct of the following counts:-
>
> *(i) On 15.03.2001 he visited premises No.E-2, East of Kailash and demanded Rs.10,000/- as bribe/illegal gratification from Shri M.S. Sodhi in consideration for giving a favourable House Tax Report.*
>
> *(ii) When his illegal demand was not fulfilled by Shri Sodhi thus Shri Amar Singh Sharma, House Tax Inspector enhanced/increased the RV of the said property from 1,19,100/- to Rs.4,50,00,000/- with a view to harass Shri M.S. Sodhi as matter of facts there was no charge of status in the said building.*
>
> *He, thereby, contravened Rule 3(1)(i)(ii) of the CCS (Conduct) Rules, 1964 as made applicable to the employees of the MCD".*

5. The aforesaid charge sheet was served upon the respondent pursuant to a written complaint made by one M.S. Sodhi, owner and resident of E-2, East of Kailash, New Delhi. However, M.S. Sodhi did not appear in the enquiry proceedings and accordingly the Inquiry Officer held that Charge

No.1 was not proved. Surprisingly, the Inquiry Officer held that Charge No.2 was proved, notwithstanding the fact that Charge No.2 as per the memorandum of charge itself was based upon illegal gratification demand made by the respondent. There is therefore, incongruity and contradiction in the enquiry report and the orders passed by the Disciplinary Authority and the Appellate Authority. To this extent, we agree with the findings recorded in the impugned order passed by the Tribunal that when the basic charge of demanding money had not been proved, the second part of the charge of enhancement of ratable value with a view to harass the complainant, which was connected with the first charge, cannot be said to have been established.

6. Tribunal has also pointed out several errors in decision making process. Noticeably, the respondent had filed written objections to the enquiry report, but the order of punishment dated 28.11.2006 passed by the Disciplinary Authority was a short one, recording that after considering the response to the show cause notice and on examining the relevant records, the proposed penalty of stoppage of 3 increments with cumulative effect stands confirmed.

7. The appeal order is equally short and states that the Commissioner, MCD being the competent authority, after examining records of the case in entirety was pleased to modify the punishment to that of penalty of stoppage of three increments with cumulative effect in the time-scale till the retirement of the respondent with cumulative effect.

8. Inquiry report observes that the ratable value of the property E-2, East of Kailash, was erroneously enhanced from Rs.1,19,100/- to Rs.4,50,00,000/-. As per the correct calculations, the proposed enhancement

was Rs.4,50,000/-. The plea taken by the respondent was that the house-owner had not permitted inspection of the property, which was being used as a guest house. This fact was not disputed and found to be incorrect. The house-owner had admitted that the property tax was being paid at the commercial rate in respect of basement, ground floor and the first floor, but the second and the third floors were being used for residential purposes. In his proposal, the respondent had stated that the entire property should be taxed at commercial rates as it was being used as a guest house. He had accordingly prepared detailed note and a computation sheet.

9. It is no doubt true that the computation sheet is erroneous and wrong for the figure should have been Rs.4,50,000/- and not Rs.4.50,00,000/-. However, we find it rather strange that senior officers had examined and verified the calculations and had approved the proposal. Only thereafter and consequent to their approval that the notice proposing the enhancement was issued. In fact, the figure calculated by the respondent was not Rs.4,50,00,000/- but Rs.4,14,29,100/-, which was modified and increased by the officers in the hierarchy. Pertinently, senior officers were not charge-sheeted for the same fault though they had also seen, verified and approved the computation made by the respondent.

10. Lastly, we would notice that the ratable value of the property was finally fixed at Rs.1,37,140/-. In other words, there was some enhancement. This was on account of conversion of the property into freehold.

11. Be that as it may, learned counsel for the respondent has stated that the respondent has retired and because of the penalty order was denied pension. Subsequently, the petitioners had paid provisional pension; and

presently full pension as per law is being paid to him. Counsel on instructions from respondent who is present in Court states that the respondent would like to bring the litigation to an end, and would only request that arrears of pension, be paid, within a period of six months from today. He would accept the same even if no interest is paid.

12. Taking the statement made by the counsel for the respondent on record, we dispose of the present writ petition without any order as to costs.

SANJIV KHANNA
(JUDGE)

ANUP JAIRAM BHAMBHANI
(JUDGE)

DECEMBER 13, 2018
neelam