

\$~39

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of Judgment: 21.05.2019**

+ LPA 359/2019

DELHI URBAN SHELTER IMPORVEMENT BOARD

..... Appellant

Through: Mr. Parvinder Chauhan, Advocate

versus

MEENA DAYAL

..... Respondent

Through: Mr. Apurb Lal & Mr. Daleep Singh,
Advocates

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

CAV 555/2019

Since the respondent has entered appearance, the caveat stands discharged.

CM APPL. 24447/2019

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

LPA 359/2019 & CM APPL. 24448/2019

1. The present appeal has been filed by the appellant impugning the judgment dated 12.04.2019 passed by the learned Single Judge whereby the writ petition filed by the respondent herein has been allowed and the order of the Disciplinary Authority dated 14.05.2018 imposing a penalty of reduction in time scale of pay by two stages for one year with further direction that the petitioner will not earn increment of pay during the period of such reduction

and on expiry of such period, the reduction will not have the effect of postponing the further increment of pay, and the Appellate Authority dated 13.09.2018 has been set aside.

2. The brief and relevant facts necessary to adjudicate the present appeal are that the respondent herein had joined the services of the appellant herein as a Legal Assistant on 14.02.2000 after being selected through the DSSSB. On 22.05.2009, she was promoted to the post of Junior Law Officer (hereinafter referred to as 'JLO') on ad hoc basis.

3. One Shri Harjit Singh was an unauthorized occupant of a slum property bearing No. 10076/XII, Pul Bangash, Delhi-6. A demand notice dated 03.04.2002 for a sum of Rs. 33,48,183/- was issued to him and when he failed to deposit the damages, the case was referred to the Estate Officer. Vide order dated 2.6.2005, an eviction order was passed and against which an appeal was filed by Shri Harjit Singh in the court of District Judge. During the course of proceedings in the aforesaid appeal, following order came to be passed on 08.12.2011:

“Today once again adjournment is sought. Interestingly, a proxy counsel has turned up for the respondent today, but only to join hands with the appellant for seeking further adjournment on the premise that the counsel is suffering from Viral fever. Counsel for the appellant is stated to have not recovered from his illness, on which ground he has sought repeated adjournment earlier.

In the larger interest of justice, one more opportunity is granted to the parties to address arguments making it clear that no further indulgence on any account whatsoever, shall be granted. Should, any of the counsel be not in a position to appear and address arguments, the parties should make their alternative arrangements. Copies of the proceedings be sent to Commissioner/Standing Counsel, MCD.

Put up for final arguments on 04.01.2012.”

4. A court notice along with a copy of the said order was received by the Law Officer on 02.01.2012, who in turn marked the same to the respondent with a direction to pursue the same with the panel counsel.
5. As per the pleadings in the writ petition, the respondent marked the said notice to the clerk for informing the panel lawyer about the development in the case. On 03.01.2012, as per the respondent, the clerk informed her that he visited the chamber of the panel lawyer to handover the copy of the order but there was nobody to receive the same. She then informed the lawyer over the telephone and did all that she could to ensure that he appears on the date fixed.
6. However, the respondent was served with a memorandum of charges on 13.09.2012 wherein the allegations were that while working as a JLO, she failed to follow up the court cases assigned to her with the department as well as the panel lawyer. Relevant portion of the chargesheet is extracted hereinbelow:

“Article-I

Despite receipt of the copy of the order dated 8.12.2011 of the court, Smt. Meena Dayal, JLO did not take any action for safeguard of the interest of the department in the court. Neither Lawyer appeared in the court nor Law Officer nor did JLO appear in court on 04/01/2012. She did not put up the order of court to higher authorities or forward the copy of the order dated 8.12.2011 to concerned branch for necessary action. As a result, the private party was getting benefited at the cost of DUSIB. Hence she committed willful omission which amount to misconduct and dereliction of duties.

The above acts of Smt. Meena Dayal, Jr. Law Officer amounts to grave misconduct, lack of integrity, lack of devotion and dereliction towards her duties in such a manner which is unbecoming of Govt. servant and thereby violates Rule 3(1)(i)(ii)(iii) of CCS (Conduct) Rules, 1964 which

render her liable for departmental action.”

7. On 26.11.2012, the respondent filed a detailed reply to the charges and stated that no case of misconduct was made out and disclosed in detail the steps taken by her to ensure that the court order was followed. However, on 17.12.2012, the appellant appointed the enquiry officer and the presenting officer. On 09.06.2014, another enquiry officer was appointed, who gave his report on 17.01.2018 and held that the charges were proved against the respondent. The respondent submitted her representation on 07.03.2018, against the enquiry report but the disciplinary authority vide order dated 14.05.2018 imposed penalty on the respondent of “reduction in the time scale of pay by two stages for one year with further direction that the petitioner will not earn increment of pay during the period of such reduction and on expiry of such period, the reduction will not have the effect of postponing the future increments of pay”.

8. Aggrieved by the order of the Disciplinary Authority, the respondent filed a statutory appeal dated 22.05.2018 before the appellate authority. The appeal was rejected vide order dated 13.09.2018. The respondent then filed writ petition being W.P.(C)10342/2018 before a Single Judge of this Court seeking to set aside the order of the Disciplinary Authority as well as the Appellate Authority.

9. The learned Single Judge allowed the writ petition and set aside both the orders. The learned Single Judge took note of the fact that departmental proceedings were initiated both against the Law Officer and the respondent, of course both being conducted by different enquiry officers. The carelessness, if any, according to the learned Single Judge was also on the part of the Law Officer in handling the court case, but if the law officer has

been exonerated, there was no reason why the respondent who was a Junior Law Officer should be made a scapegoat. The learned Single Judge also took note of the fact that it was not the case of the appellant that the respondent was directed to attend the court or that the clerk had ever denied the fact that the respondent had not asked him to convey the court order to the concerned lawyer. In fact, the lawyer has also never taken a stand that he was not informed about the case and therefore, the mistake if at all was that of the lawyer and not of the respondent.

10. Learned counsel for the appellant contends that the respondent has not impugned the inquiry report in the writ petition. The charge stood proved and penalty order was only a natural consequence of a finding of guilt. It is further contended that the respondent never pleaded any special circumstances for mitigation either before the Disciplinary Authority or the Appellate Authority. It is also contended that quantum of punishment lies in the domain of the Disciplinary Authority and cannot be interfered with till it is so disproportionate that it shocks the judicial conscious of the court and which is not so in the present case. The learned counsel has also argued that the case of the respondent was not similar to that of the law officer as the Law Officer stood exonerated by the Inquiry Officer while in the case of the respondent, the inquiry officer has held the charge to be 'proved'. It is also contended that as a Junior Law Officer, it was the responsibility of the respondent not only to ensure the presence of the counsel but also to remain present in the court herself and in not doing so, she has failed to discharge her duties.

11. Per Contra, learned counsel for the respondent has argued that the Law Officer was chargesheeted for a similar charge and for the same transaction. However, the Law Officer has been exonerated and this is a clear violation

of Article 14 of the Constitution of India. In support reliance is placed on the judgment of the Apex Court in the case of *Man Singh vs. State of Haryana & Ors. (2008) 12 SCC 331*.

12. Learned counsel has further contended that it was not the duty of the respondent to be present in the Court and in fact, in 2011, an office order was passed clearly mandating that no officer should be deputed to be present in the Court unless specifically asked in writing by the counsel. He has also argued that on receipt of the court order, the respondent had deputed the clerk/dealing assistant to contact the panel lawyer on 03.01.2012. Additionally, she had also informed the lawyer of the order over the telephone and the lawyer had assured that he would appear in the court. He further argued that the respondent had also contacted the Assistant Director (Property Branch) on 2.1.2012 and 3.1.2012 informing him of the court order as well as the urgency of the matter. Reliance is also placed on a letter dated 06.01.2012, which was received by the Law Office from the lawyer where he had requested for certain documents to prepare for the final arguments in the matter. It is, thus, the argument of the respondent that every step possible was taken by her to convey the order to the concerned Branch and to the lawyer and no fault can be found in her conduct.

13. We have examined the rival submissions of the parties.

14. The respondent has challenged the final order of penalty imposed by the Disciplinary Authority as well as the order of the Appellate Authority in the writ petition. The chargesheet and the inquiry report have culminated and merged into the final order of penalty. Therefore, in our opinion, not challenging the inquiry report is not so fatal so as to disentitle the respondent to a relief and dismiss the writ petition. This argument of the appellant, therefore, has no merit and is rejected.

15. Insofar as the argument that imposition of punishment is the domain of the Disciplinary Authority is concerned, there cannot be any quarrel with this proposition of law. It is equally well settled that courts should not interfere in the quantum of punishment till it is so disproportionate that it shocks the conscience of the court. However, in our view, this is not even the issue involved in the present appeal. The case of the respondent was that she had taken every possible step that was required of her as per her charter of duties and thus there was no misconduct on her part, at all. She had thus questioned the levying of the penalty. We thus feel that proportionality of punishment is an issue which should not detain us in this appeal.

16. We also do not find any merit in the contention of the appellant that the case of the respondent was different from the case of the Law Officer only because in the case of the latter, the inquiry officer had held that the charge was 'not proved'. What we have to concern ourselves with is what is the charge against the Law Officer and the respondent herein. There is no dispute that an order was passed by the Trial Court on 08.12.2011, which we have extracted above. The order noticed the fact that the counsel for the respondent i.e. the DUSIB was seeking adjournment and the court vide this order made it clear that if on the next date, which was 04.01.2012, the counsel would not appear, the parties would make alternative arrangements. However, on 04.01.2012, the lawyer did not appear on behalf of the appellant. The appeal was, however, dismissed in favour of the Department. The crux of the allegations against the respondent was that despite having received the court notice marked to her by the Law Officer, the respondent did not take any action to safeguard the interest of the department. Neither did the lawyer appear in the court on 04.01.2012 nor the respondent appear herself. She did not even put the order to the higher authorities for necessary

action. We find that a reading of the statement of imputation in respect of the Article of Charge itself shows that the court notice was initially marked to the Law Officer on 02.01.2012. It is mentioned in the statement of imputation that the Law Officer also did not appear in the court on 04.01.2012. Thus in the perception of the appellant itself, both were guilty of the negligence, if any. However, the Law Officer has been admittedly exonerated. The respondent is thus right in her contention that the Law Officer and the respondent were similarly placed and in penalizing the respondent, there has been a clear violation of Article 14 of the Constitution of India. The Apex Court in the case of Man Singh (supra) clearly held that:

“20. We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair-minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equals have to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of “fair play” and reasonableness.

21. We have, therefore, examined the case of the appellant in the light of the established doctrine of equality and fair play. The principle is the same, namely, that there should be no discrimination between the appellant and HC Vijay Pal as regards the criteria of punishment of similar nature in departmental proceedings. The appellant and HC Vijay Pal

were both similarly situated, in fact, HC Vijay Pal was the real culprit who, besides departmental proceedings, was an accused in the excise case filed against him by the excise staff of Andhra Pradesh for violating the excise prohibition orders operating in the State. The appellate authority exonerated HC Vijay Pal mainly on the ground of his acquittal by the criminal court in the excise case and after exoneration, he has been promoted to the higher post, whereas the appeal and the revision filed by the appellant against the order of punishment have been rejected on technical ground that he has not exercised proper and effective control over HC Vijay Pal at the time of commission of the excise offence by him in the State of Andhra Pradesh..... “

Thus, in our view, the learned Single Judge has rightly held that the respondent could not have been a scapegoat and cannot be discriminated vis-à-vis the Law Officer.

17. We also agree with the findings of the learned Single Judge that it was not the case of the appellants that they had asked the respondent to attend the Court on 04.01.2012. It is also not the case of the appellant that the clerk ever denied that the respondent had asked him to follow up the case with the concerned panel lawyer. The learned Single Judge is also right in observing that though the lawyer did not appear in the Court but he never deposed or wrote any letter that he had not been informed of the date of hearing.

18. Another factor that weighs with us in agreeing with the learned Single Judge is that the respondent, in her detailed reply to the chargesheet as well as in her appeal, had consistently stated that there was an office order issued on 19.05.2011 by which it was directed that no officer will be deputed to attend the court unless specifically asked by the panel lawyer. She had also stated consistently that she had personally informed the lawyer over

telephone on 02.01.2012 as well as on 03.01.2012 about the court order and was assured by the lawyer that he will attend the hearing. She even claimed that she had contacted the Assistant Director (Property Branch) on 02.01.2012 and 03.01.2012 intimating him about the court order, as well as the urgency in the matter. We find that neither the inquiry officer nor the Disciplinary Authority and the Appellate Authority has taken any cognizance of this consistent stand of the respondent.

19. A perusal of the reply to the chargesheet also shows that the respondent had clearly stated that the copy of the order had directly gone to the Estate Officer, who had then sent the copy to the Deputy Director (Property) as well as another copy was sent to the Law Office. In fact, these were the concerned departments who should have taken the action and there was no lapse on the part of the respondent. We find that even this stand of the respondent was un rebutted.

20. We are thus of the view that there is no infirmity in the order of the learned Single Judge.

21. The appeal has no merit and is dismissed with no order as to costs.

न्यायमेव जयते

JYOTI SINGH, J

G.S.SISTANI, J

MAY 21, 2019/rd