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

+ **W.P.(C) 11401/2016 & C.M. APPL. 44672/2016**

DELHI URBAN SHELTER IMPROVEMENT BOARD..... Petitioner
Through: Mr.Parvinder Chauhan, Standing
Counsel.

versus

S.N. SHARMA Respondent
Through: Ms. Aditi Gupta, LAC with Ms.
Amita Singh Kalka, Advocate and
Respondent in person.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
28.11.2019

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Talwant Singh, J.

1. The Petitioner has challenged the order dated 7th October, 2009 passed by the Central Administrative Tribunal ('CAT') in T.A.No. 287/2005 which was filed by the present Respondent and order dated 12th October, 2015 passed by the CAT in review application No. 170/2014 and M.A.No. 2808/2014. This case has got a chequered history.

2. In brief the facts are that the Respondent had joined services of Municipal Corporation of Delhi (MCD) initially on the post of Section Officer on 11th May, 1964. He was posted in the Building Department of MCD. In January, 1968 he was transferred to Slum and JJ Department of MCD and thereafter the said Department was transferred to DDA. However, the Responent opted

not to join his services with JJ Department of DDA and as per his request he was transferred back to MCD on 23rd December, 1971. On 28th March, 1972, the Respondent was placed under suspension and was proceeded against vide charge-sheet dated 21st April, 1972 proposing major penalty as he had demolished roof and wall of the house of one Dr. Abbas Mullick without approval of the competent authority. A departmental enquiry was conducted which was followed by imposition of penalty of reduction by five stages in the grade of Junior Engineer. On 4th February, 1983 an order was issued imposing the said punishment. The Respondent preferred an appeal with the Commissioner, but due to frequent transfer of Slum Wing from MCD to DDA and vice-versa and due to removal of Respondent from service in another proceeding, the appeal stood abated vide order dated 2nd May, 1988.

3. Another charge-sheet was issued to Respondent on 2nd June, 1972 on charges pertaining to misappropriation of certain material by way of making fictitious entries in the stock book without any authentication. It was followed by departmental enquiry; the IO submitted his report on 4th April, 1975 which was considered by the Disciplinary Authority alongwith previous record of the Respondent and confirm the penalty of removal of service on 4th August, 1976. Notice was issued to the Respondent proposing penalty of removal from service. In response thereto Respondent submitted his representation on 30th May, 1975. As per the Petitioner, after considering the representation of the Respondent, the Disciplinary Authority confirmed the penalty of removal from service against the Respondent on 4th August, 1976. On 29th July, 1977, the case of Respondent was again placed before

the Disciplinary Authority but it was observed by the Disciplinary Authority that there was no necessity of giving a personal hearing to the Respondent at that stage as the matter was subjudice and in view of the order dated 4th August, 1976, no action was called for and Respondent was ordered to be intimated that he may prefer an appeal to the Appellate authority i.e. the Commissioner of MCD. Third charge-sheet was issued to the Respondent on 29th October, 1982. It pertained to Respondent allowing illegal possession of tenements without any allotment orders and that he had also managed to get one tenement allotted in the name of his father Sh. T.R.Sharma and he had been collecting the rent for the same. No reply was filed by the Respondent. Since, the Respondent was already removed from service, so even this inquiry was not taken to its logical conclusion. In 1992 Respondent filed CWP No.2054/1992, which was disposed of vide order dated 11th February, 1993 directing the Petitioner to take a final decision regarding the Respondent within one month. On 9th March, 1993 the penalty order passed on 4th August, 1976 was served on the Respondent, which was challenged by filing an appeal by the Respondent before the Appellate Authority but appeal was rejected on 10th February, 1994. Respondent filed CWP No. 4645/1994 before this Court challenging the above act of the Petitioner. This writ was transferred to CAT where it was registered as T.A. No. 287/2009. It was disposed of on 7th October, 2009 vide impugned judgment wherein CAT had directed that Respondent shall be reinstated and period during dismissal and reinstatement shall be treated as period spent on duty for all purposes.

4. Being aggrieved from the order passed by the CAT, the Petitioner

approached this Court by filing W.P.(C) 6167/2010 which was disposed of vide order dated 13th September, 2010 with liberty to Petitioner to file review petition before CAT as there was a confusion regarding the charge-sheet that was subject matter of the challenge. In the meantime, (Delhi Urban Shelter Improvement Board (DUSIB) was constituted pursuant to enactment of the Act in 2010 and the Slum and JJ Wing of MCD was taken over by the Board. In view of the order of this Court the review application was filed before CAT on 31st March, 2011 but the same was not entertained by the Registry of CAT on the ground that DUSIB was not under its jurisdiction. The Petitioner again approached this Court by filing W.P.(C) No. 594/2013 which was disposed of by this Court on 1st February, 2013 observing as under:-

“1. After some arguments learned counsel seeks leave to withdraw the writ petition stating that the writ petition has been ill advised to be filed for the reason review filed before the Tribunal cannot be refused to be listed before a Bench of the Tribunal by a clerk of the Tribunal in the Registry. The review application has to be listed before the Tribunal and it is for the appropriate Bench to take a decision thereon.

2. The writ petition is dismissed as not pressed.”

5. Review application was again filed before the CAT which was registered as R.A.No.170/2014 and the same was dismissed on 12th October, 2015 by the CAT on the ground of delay hence by filing the present writ petition the original order of CAT dated 7th October, 2009 in T.A.No.287/2009 as well as the last order dated 12th October, 2015 in R.A.No.170/2014 and accompanying M.A.No. 2808/2014 have been challenged by the Petitioner.

6. The present writ petition was filed on 7th October, 2016 and refiled on 29th November, 2016 and was taken up for hearing on 2nd December, 2016, when the following order was passed:-

“CM No. 44673/2016

1. Exemption allowed subject to all just exceptions.
2. The applications stands disposed of.

W.P.(C111401/2016 and CM No. 44672/2016 (Stay)

1. Learned counsel for the petitioner has submitted that the respondent was served with three chargesheets. The first charge sheet had resulted in punishment of reduction by 05 stages in the grade of Junior Engineer.
2. In the second charge sheet an order of removal from the service was passed on 04.08.1976. This order was not communicated till 09.03.1993. The respondent had continued to work till 09.03.1993. This order was made subject matter of challenge in the Writ Petition No. 4645/1994 which was transferred to Tribunal vide TA No. 287/2009 and has been allowed vide impugned order dated 07.10.2009.
3. Third charge sheet was issued to the respondent on the basis of inquiry and recommendation by the Central Bureau of Investigation (CBI). This charge sheet dated 29.10.1982, did not culminate in the final order, as in the meanwhile the order of the removal dated 04.08.1976 was communicated to the respondent on 09.03.1993.
4. The impugned order of the Tribunal dated 07.10.2009 was first challenged in the Writ Petition No. 6167/2010, which was disposed of vide order dated 13.09.2010 permitting the petitioner to file an application for Review.
5. An application for Review was filed, albeit was not listed before the Bench, compelling the petitioner to file W.P.(C) No. 594/2013, which was disposed of on 01.02.2013 directing that the Review application may be listed before the Bench.

Pursuant to the said order the Review Application was listed and has been dismissed by the second impugned order dated 12.10.2015 on the ground of delay.

6. The respondent who was appointed on 11.05.1964; would have possibly retired, even if he was to continue in service.

7. Learned counsel for the petitioner would obtain instructions as the matter can be possibly resolved and settled at the administrative level.

8. Keeping in view of the aforesaid factual matrix, we issue notice to the respondent returnable on 27.01.2017.

9. Copy of the order be given dasti, as prayed.”

7. On the next date of hearing the Petitioner came back with response that an order of the Court is required to enable the Petitioner to approach the Lieutenant Governor ('LG') for re-examination of the matter as to whether the punishment of the Respondent could be reduced from removal to that of compulsory retirement but on 26th April, 2017, learned counsel for the Respondent, on instructions of the Respondent, states that the Respondent was not agreeable to any such proposal. On the next date of hearing i.e. 21st August, 2017, the following order was passed:-

“The petitioner has stated in the writ petition that the respondent initially joined the Municipal Corporation of Delhi (MCD) in the year 1964 and was posted in the Building Department of the MCD. It is further stated that the respondent was transferred to the Slum Wing and was functioning in the J.J. Department of MCD, wherefrom he was further transferred to the Delhi Development Authority (DDA). The petitioner also states that the respondent opted not to remain with the J.J. Department of MCD and was transferred back to the Slum Department of MCD on 23.12.1971.

This position is disputed by the respondent. Learned counsel for the respondent has tendered in Court a copy of the communication dated 11.10.1974 issued by the Director of Enquiries, MCD, Town Hall, Delhi to the Commissioner, Slum Department, DDA, as per which the respondent had initially opted to be absorbed in the DDA from the MCD. This letter further records that the Director of Enquiries, MCD had no jurisdiction to proceed with the disciplinary proceedings against the respondent. It also states that two files in respect of the respondent "are being sent herewith for necessary action on your part. The aforesaid shows that there is some amount of confusion as to whether, or not, the respondent has finally returned to the MCD or whether he was absorbed in the DDA.

Let the petitioner produce its original records in relation to the respondent as also the record pertaining to the inquiry proceedings initiated against the respondent from time to time. A certified copy of the record before the Tribunal shall also be filed. The same be done within eight weeks.

List on 16.11.2017.”

8. On 16th November, 2017, learned counsel for the Petitioner brought the original record pertaining to the inquiry proceedings initiated against the Respondent. Both the counsel were directed to prepare a statement indicating, *inter alia* the dates on which the charge-sheet was issued to the Respondent, the date on which the inquiry was initiated and was conducted and the places of posting of Respondent at the relevant point of time. The said synopsis have been filed by both the counsel. We have gone through the case file and we have heard learned counsel for the both parties.

9. The list of dates submitted by the learned counsel for the Respondent is a little more detailed and it gives a clear picture of different stages through which the present matter has passed right from the appointment of the Respondent in MCD in 1964-65 to the date on which R.A. was dismissed on

the ground of delay by CAT on 10th December, 2015. The said list of dates is reproduced herein:-

1	1964-65	Appointed as SO in MCD	
2	1968	Transf to slum dept. In MCD	
3	1968	Total slum dept. Trsfr to DDA. He opted for MCD	
4	1971	Released from DDA to join MCD	Pg.375
5	28.03.72	Suspended in contemplation of enquiry	Pg.376
6	21.4.72	1 st Charge sheet (1238)	
7	02.06.72	2 nd Charge sheet (1237)	Pg.66
8	1974	Transfer back to DDA with complete record etc. COMPETENT AUTHORITY thus is DDA	Pg.377
9	19.07.74	Minutes of meeting	Pg.262
10	11.10.74	IO writes with reference to the legal advice that competent authority would be DDA	Pg.261
11	06.11.74	MCD asks DDA to pay sub allow in LIR III/74 disposed on 13.12.78 on statement of MCD TO PAY	Pg.264
12	04.04.75	IO report	Pg.92
13	12.05.75	SCN	Pg.254
14	30.05.75	Reply to SCN	Pg.266,274
15	04.08.76	MAY confirm Removal	Pg.100, 303
16	11.08.76	Hearing noting (obtained under RTI)	
17	06.06.77	Hearing notice	Pg.303
18	1978	Transfer back to MCD	Pg.265
19	1980	ID No. 244/80 (reference i.r.o. suspension). Admit delay and matter at final stage.	Pg.281 @283
20	1980	Transfer back to DDA	
21	25.03.81	MCD responds to DDA letter saying S.N.Sharma has never been terminated by MCD	Pg.305
22	03.11.81	Notice for hearing	
23	29.10.82	3 rd charge-sheet	
24	04.02.83	Punishment of reduction by 5 stages in grade in 1 st Charge sheet	
25	30.05.83	Hearing given	Pg.366
26	30.05.83	After hearing noting to transfer files to Competent Authority i.e. DDA (obtained under RTI)	
27	18.12.84	DDA revokes suspension and reinstated with liberty to take action after enquiry	Pg.284
28	02.05.88	Appeal against reduction penalty abates because of transfer and ultimate alleged removal	
29	1992	Transfer back to MCD	
30	1992	WPC No. 2054 at Hon'ble DHC (for promotion etc.)	
31	Dec.-92	Reply a pg. 293	Pg.289
32	01.02.93	High Court order to decide in one month	Pg.288
33	09.03.93	Removal communicated without any confirmation as is evident from above and transf to DDA	Pg.256
34	07.06.93	Appeal	
35	10.02.94	Appeal rejected	Pg.102
36	1994	WPC No.4645/94 later transf to CAT as TA No. 287/2009	Pg.132 @299
37		Reply	Pg.345
38		Rejoinder	Pg.359
39	07.10.09	TA allowed	Pg.31
40	2010	DUSIB Act	
41	13.09.10	WPC No. 6167/10 FILED AFTER A YEAR-dismissed for filing review at CAT	Pg.104
42	31.03.11	Review petition filed at CAT AFTER 6 months not registered	
43	01.02.13	WPC No. 594/13 filed after 2 years-withdrawn to again go to CAT	Pg.105

44	Jun-14	RA filed at CAT after about one and half year (114)	Pg.106@107
45	12.10.15	RA DISMISSED ON DELAY	Pg.52

10. The chart is reproduced above to give a fair view of the different stages and dates, which will be discussed hereinafter.

11. The list clearly shows that the Petitioner was suspended in contemplation of inquiry for the first time on 28th March, 1972 and the charge-sheet regarding demolition of the roof and walls of a house was issued on 21st April, 1972. It is hereinafter referred to as a 'First Charge-Sheet'. This enquiry concluded in 1981 ex parte. The show-cause notice (SCN) was issued on 2nd June, 1982 to which a reply was filed by the Respondent. The punishment on the first charge-sheet was awarded on 4th February, 1983 i.e. after about eight years from the date when the Respondent was served with the show-cause notice. The appeal filed by the Respondent against the said punishment was never decided on merits rather the stand of the Petitioner is that the said appeal got abated due to removal of the Respondent in another proceedings as noted on 2nd May, 1988. The said decision was noted regarding disposal of the appeal as being abated in 1988 i.e after five years from the date when the punishment of reduction of five stages in the grade was awarded to the Respondent. It is to be noticed that at that time a period of about 16 years had already passed from the date when the Petitioner was suspended in contemplation of the said inquiry on 23rd March, 1972 as the appeal was finally disposed of as being abated in 1988. Even as per the Petitioner, the Respondent is not to be blamed at any stage for inordinate delay of 16 years from the date of furnishing the charge-sheet to its final disposal. The said delay itself is prejudicial to the interest

of the Respondent and Petitioner has shown no sufficient casue to justify the said inordinate delay of 16 years for finalizing the inquiry against the Petitioner in the first charge-sheet. Hence, the punishment order of five stages reduction in the same grade, awarded on 4th February, 1983, the inquiry report dated and the charge-sheet dted 21st April, 1972 are all hereby quashed.

12. As far as the second charge-sheet is concerned, the same was served on the Respondent on 2nd June, 1972. The Departmental Enquiry was conducted, the Respondent duly attended the said inquiry proceedings and he had also produced witnesses in his defence as per the submission of the Petitioner. Enquiry Report pressing eight charges was submitted on 4th April, 1975. The disciplinary authority confirmed the penalty of removal on 4th August, 1976. Suspension of the Petitioner was revoked on 18.12.1984. It is interesting to note that the penalty order removing him from service dated 4th August 1976 was served upon the Respondent only on 9th March, 1993 and that too in response to the directions issued by this Court in CWP No. 2054/1992 dated 11th February, 1993 wherein Petitioner was directed to take a final decision regarding the Respondent within a period of one month. Representation of the Respondent dated 7th June, 1993 was rejected by the Commissioner, MCD on 10th February, 1994.

13. So in a nutshell, a second inquiry was initiated on 2nd June, 1972; the penalty order was passed on 4th August, 1976 which was served upon the Respondent after judicial intervention of 9th March, 1993 i.e. after about 17 years from the date when the said penalty order was passed. At that time

about 21 years had passed from the date when this second inquiry was initiated. There is no explanation whatsoever coming forward from the Petitioner for this extraordinary delay caused in conducting the inquiry and more so for intimating the outcome of the inquiry and serving the so-called order of removal of service on the Respondent after a gap of about 17 years of passing the same. Question was asked from the learned counsel for the Petitioner as to whether any responsibility has been fixed on the person/official who had acted so negligently that an order of removal from service was not served on the Respondent for about 17 years after it was passed on 4th August, 1976.

14. It appears that the Respondent remained suspended continually from 28th March, 1972 till 18th December, 1984, when the Slum and JJ Department of DDA revoked the same and he was reinstated in service with liberty to take action after inquiry. It appears by that time third charge-sheet issued to Respondent regarding illegal allotment of one tenement in the name of his father, which was initiated on 29th October, 1982 was pending, however, both the parties agreed before Court that this inquiry was not taken to its logical conclusion as the Respondent was already stood removed from service. The third charge-sheet is considered non-est after 37 years.

15. As mentioned earlier, the inquiry pursuant to second charge-sheet issued on 2nd June, 1972 ultimately culminating in serving the order of removal from service on the Respondent on 9th March, 1993 and that too in view of the order passed by this Court in the judicial proceedings initiated by the Respondent and no explanation is forthcoming for this long period of 21

years from the date of initiation of inquiry till the service of penalty order in 1993 and specifically for the period from 4th August, 1976 to 9th March, 1993 during which the penalty order was lying prepared in the file of the Respondent but it was not served upon him. This act has caused a grave prejudice to the Respondent who has suffered almost through out his service career because of the negligent and careless acts of the Petitioner and there is no justification in upholding the said order of penalty of removal from service which was served after 17 years on the person concerned who must have undergone a lot of agony and trauma during the said period. Hence, the penalty order dated 4th August, 2016 and the charge-sheet dated 2nd June, 1972 (the second charge-sheet) are hereby quashed.

16. It is pertinent to note that in the meantime the Respondent had reached the superannuation age (58 years) on 30th April, 1995 but the agony and trauma as noted above continued till date. He is still pursuing his legal remedies before the Courts/Forums and he has been made to run from pillar to post to agitate his legitimate rights and to get his legitimate dues but there is no end to his misery.

17. Vide impugned order of the CAT dated 7th October, 2009 it has been rightly observed in para 19 as under:-

“19. Delay defeats justice and with the passage of time, i.e., almost 17 years, now asking the applicant to comment upon the inquiry where on fading of human memory and non-availability of the records, this delay has certainly prejudiced the applicant, as ruled by the Division Bench of Punjab & Haryana High Court in *Agyakar Singh v. Punjab State Electricity Board and others*, 2009 (1) SCT 709 as well as in *Govt. of Andhra Pradesh*

& others v. V Appala Swamy, (2009) 1 SCC (L&S) 440. As such, the inquiry as well as the pursuant orders is vitiated.”

18. It has also been noticed in para 20 by the CAT that the penalty of removal had been determined and later on affirmed without awaiting the representation from the Respondent and the inquiry is vitiated on the said ground also. Moreover, it has been rightly observed while imposing the penalty of removal, the DMC Regulations do not dispense with recording of reasons, but the penalty of removal was implemented mechanically and the Appellate Authority had also passed an order without dealing with the contentions raised by the Respondent, which is violative of the directions of the Hon’ble Supreme Court in the matter of **Roop Singh Negi v. Punjab and National Bank & Ors.** 2009(1) Scale 284 where it was held that in disciplinary proceedings as well as the later proceeding while passing orders reasons have to be recorded. Learned counsel for the Respondent has also relied upon the the case titled as **Prem Nath Bali v. Registrar, High Court of Dehi and Ors.** Dated 16th December, 2015 and of this Court in **Union of India vs. M.R.Diwan and Ors.** decided on 12th March, 2019 in W.P.(C) No. 5653/2018 to the same effect. The final outcome of the proceedings before CAT is reproduced herein:

“24. Resultantly, leaving other grounds open, this TA is allowed. Impugned orders are set aside. Respondents are directed to forthwith reinstate the applicant and the period during which he remained out of service shall be treated as period spent on duty for all purposes, including the wages and payment of subsistence allowance with revised rates. This shall be done within a period of three months from the date of receipt of a copy of this order. No costs.”

19. The order passed by the CAT is to be slightly amended as there was no occasion to reinstate the present Respondent as he had already reached the age of superannuation on 30th April, 1995. The directions given by the CAT are upheld to the extent that impugned orders are set aside, however, the present Petitioner is directed to treat the Respondent on duty till 30th April, 1995 without any break in service and without considering him to be under suspension for such prolonged period and pay his salary, allowances and consequential benefits adjusting the amount of subsistence allowance paid during the period of suspension and salary already paid for the period after suspension was revoked.

20. It is made clear that pension of the Respondent be fixed keeping in view the change in pay-scale on promotion as has been done in the case of other Junior Engineers appointed in his batch or the person next below him and the payments of entire arrears of salary/ pension and the retirement dues be cleared within a period of 12 weeks from today failing which the Petitioner shall pay interest @ 6% per annum on the said dues. Since the Respondent has been harassed for decades by officials of the Petitioner and he has suffered agony and trauma at their hands without any fault on his part, he be compensated by payment of cost of Rs.20,000/- by the Petitioner within twelve weeks. The petition is dismissed with these observations and modification in the impugned order of CAT dated 07.10.2009 in T.A.No.287/2005.

21. As far as the order dated 12th October 2015 of CAT is concerned, this Court does not find any ground to interfere with the same as there is no

sufficient ground for condonation of delay in filing the review petition and the said order of the CAT is hereby upheld. The pending application stand disposed of.

TALWANT SINGH, J

S.MURALIDHAR, J

NOVEMBER 28, 2019

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