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

Reserved on: 06.03.2019

Pronounced on: 12.04.2019

+ W.P.(C) 10342/2018

SMT. MEENA DAYAL

..... Petitioner

Through Mr. Apurb Lal with Mr. Daleep
Singh, Advs.

versus

DELHI URBAN SHELTER IMPROVEMENT
BOARD AND ANR.

..... Respondents

Through Mr. Parvinder Chauhan, Adv.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. The present petition is being preferred for quashing of order dated 14.05.2018 passed by the disciplinary authority and order dated 13.09.2018 passed by the appellate authority whereby the order of 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.

2. The case of the petitioner is that a notice along with copy of order

dated 08.12.2011 was issued from the court of District Judge (North), Tis Hazari Courts, Delhi and received in the Law Department of the respondents on the same day which was further marked by the petitioner to the clerk for informing the panel lawyer about the court cases. On 03.01.2012, the concerned clerk stated that he visited the Chamber of panel lawyer to handover the copy of the order but nobody was found to receive the same. However, the petitioner informed the panel lawyer over telephone about the court's orders. Therefore, the petitioner did her best to ensure that panel lawyer should appear on the date fixed. However, the petitioner was served with a memo dated 13.09.2012 stating therein that the petitioner, while working as Junior Law Officer (JLO) on ad-hoc basis in the year 2011-12 in DUSIB failed to follow up the court cases assigned to her with department as well as panel lawyers. The petitioner filed reply to the same on 26.11.2012 and denied the allegations made against her. But without considering the reply of the petitioner appointed inquiring officer/presenting officer vide order dated 17.12.2012. Subsequently, on 09.06.2014, another inquiry officer was appointed to look into the charges. The said inquiry officer gave his inquiry report dated 17.01.2018 by holding that charge proved against the petitioner.

3. Learned counsel appearing on behalf of the petitioner submitted that the Law Officer, who was similarly chargesheeted by the respondents in the same transaction, however, the inquiry officer had held that no charges were proved against the Law Officer. Whereas another inquiry officer, in the case of the petitioner has held that the charges are proved. Accordingly, the disciplinary authority imposed penalty and has been confirmed by the appellate authority.

4. Learned counsel further submitted that the appellate authority has rejected the appeal mechanically and without reasons vide order dated 13.09.2018. The penalty orders passed by the disciplinary authority and confirmed by the appellate authority are not sustainable in law and on facts. The respondents have failed to appreciate that the penalty may be imposed on an employee for reduction to a lower stage in time scale of pay for a specified period for misconduct committed or for any other good and sufficient reason. The respondents should have considered the case of the petitioner meticulously and judiciously and should have taken into account the similar situated person has been exonerated. In addition to above, the respondents have failed to appreciate that there is inordinate delay in concluding the inquiry proceedings. The incident occurred in the year 2012

and there is no plausible explanation on the part of the respondents which caused serious prejudice to the petitioner.

5. In case of *Man Singh vs. State of Haryana & Ors.: (2008) 12 SCC 331* whereby the Hon'ble Supreme Court has held that 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.

6. On the other hand, learned counsel appearing on behalf of the respondents submits that Sh. Harjeet Singh was an unauthorised occupant at Slum Property bearing No.10076/XII, Pul Bangash, Delhi-6, accordingly, a demand notice dated 03.04.2002 for the demand of a sum of ₹33,48,183/- was issued. When he failed to deposit the damages, the matter was referred to Estate Officer namely Sh. B.S. Tolia, who passed an order dated 02.06.2005 for the eviction of aforesaid unauthorised occupant. An appeal was filed by Sh. Harjeet Singh before the court of District Judge (North) and during the course of proceedings, in the aforesaid appeal, on 08.12.2011, following order came to be passed:

“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 adjournments 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.”

7. Accordingly, a court notice along with copy of the aforesaid order dated 08.12.2011 was received by the Law Officer on 02.01.2012 who, in turn, marked the same to the petitioner with a direction to pursue with the counsel. Despite, the petitioner failed to take any kind of steps inasmuch as neither she took up the matter with the panel counsel nor the said order was put before the concerned higher officials. Resultantly, even on the next date i.e. 04.01.2012, none was present in the court to take care of the interests of the department. Though vide order dated 11.01.2012, the Court was pleased to dismiss the aforesaid appeal, however, following directions were issued:

“For the absence of any representation on behalf of Respondent MCD despite the fact that the copies of the proceedings dated 08/12/2011 were sent by the court to

the Commissioner, MCD and also its Standing Counsel, this court expects the Commissioner, MCD to get an inquiry conducted and fix responsibility of the concerned. The copy of the judgment be sent to the Commissioner, MCD through Regd. Post as also the ordinary process.”

8. It is further submitted that despite receipt of copy of the order, the petitioner being Junior Law Officer did not take any action for defending the interest of the department in the court. Neither lawyer appeared in court nor LO or JLO appeared in the court on 04.01.2012. The petitioner even did not put up the order of court to higher authorities or forward the copy of the order dated 08.12.2011 to concerned branch for necessary action. Hence, the petitioner committed wilful omission which amounts to misconduct and dereliction of duties. The above acts of the petitioner amounts to grave misconduct, lack of integrity, lack of devotion and dereliction towards her duties in such a manner which is unbecoming of government servant and thereby violates Rule 3(I)(i)(ii)(iii) of CCS (Conduct) Rules 1964 which renders her liable for departmental action.

9. The concerned officials of the concerned department were required to follow up the matter in the court but the petitioner failed to do so. The penalty order is natural consequence of a finding of guilt, unless there is some special mitigating circumstances existing in favour of an employee

who has been found to be guilty.

10. It is further submitted that the petitioner participated in the departmental inquiry and opportunity of being heard was given, thus, there is no violation of natural justice. The punishment order can be interfered only when the punishment is so disproportionate that it shocks the judicial conscious of the court. The petitioner has not come up with any such case.

11. Counsel for the respondents has relied upon the case of ***Chief Executive Officer, Krishna District Cooperative Central Bank Limited and Another vs. K. Hanumantha Rao and Another: JT 2016 (11) SC 548*** whereby it is held that if the punishment imposed was not shockingly disproportionate, no question of remitting the case to the disciplinary authority arises. Thus, the present petition deserves to be dismissed.

12. I have heard learned counsel for the parties and perused the material on record.

13. It is not in dispute that the law department received the order dated 08.12.2011 passed by the District Judge and same day, the petitioner marked it to the clerk for informing the same to the lawyer who was handling the case. Accordingly, the clerk informed the lawyer, but the said lawyer did not attend the case on the next date of hearing.

14. It is not the case of the respondents that they asked the petitioner to attend the case in the court, therefore, she was not supposed to do the same. It is also not the case of the respondents that the clerk has denied the fact that the petitioner did not ask him regarding the order passed by the court to convey the concerned lawyer.

15. Though the lawyer did not appear in court, but the said lawyer has not deposed that he was not informed about the case. Therefore, the main mistake was of the lawyer and not of the petitioner.

16. In addition, the departmental proceedings were initiated against the law officer and junior law officer (petitioner) by appointing different inquiry officers. If any carelessness was done in handling the court case, the law officer and junior law officer (petitioner) were responsible, but by exonerating the law officer, the junior law officer cannot be made the escape goat.

17. The case of the respondents is also not that the law officer deputed the junior law officer to attend the case in the court and despite that, the petitioner did not attend. If that was not the situation, the petitioner has been discriminated.

18. I am conscious of the settled law that the court should not interfere

with the penalty imposed by the disciplinary authority unless it is disproportionate to the conduct committed or shocks to judicial conscious of the court.

19. In the case in hand, law officer and junior law officer were responsible equally, therefore, cannot be discriminated in any manner. However, it is happened in the case of the petitioner which cannot be overlooked.

20. In view of above discussion, I hereby set aside the order dated 14.05.2018 and 13.09.2018 passed by the disciplinary authority and appellate authority respectively.

21. The petition is, accordingly, allowed and disposed of.

(SURESH KUMAR KAIT)
JUDGE

APRIL 12, 2019
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