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

% **Date of decision: 1st March, 2021.**

+ **W.P.(C) 8159/2019 & CM No.33797/2019 (for stay)**

BHOPAL SINGH

..... Petitioner

Through: Mr. Rajesh Aggarwal, Mr. Mridul
Aggarwal and Ms. Deeksha
Aggarwal, Advs.

Versus

DELHI DEVELOPMENT AUTHORITY AND ORS.

..... Respondents

Through: Mr. Arun Birbal, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. The petition impugns the order dated 29th March, 2019 of the Central Administrative Tribunal (CAT), Principal Bench, New Delhi of dismissal of OA No.2227/2016 preferred by the petitioner. The said OA was preferred by the petitioner, impugning (a) the order dated 30th April, 2015 of the Disciplinary Authority of the respondent Delhi Development Authority (DDA), in exercise of powers under Regulation 30(2) of the DDA Conduct, Disciplinary and Appeal Regulations, 1999, of dispensing with the conduct

of enquiry for imposing penalty and of imposing the penalty of dismissal from service with immediate effect, under Regulation 23(j), with no consequential benefits on the petitioner; and, (b) the order dated 14th September, 2015 of the Appellate Authority of the respondent DDA of dismissal of the departmental appeal preferred thereagainst.

2. When this writ petition came up first before this Court on 30th July, 2019, on the contention of the counsel for the petitioner that the petitioner had rendered 32 years of service and the punishment of dismissal from service was disproportionate and had the effect of forfeiture of past service and retirement benefits and that the petitioner was willing to accept the punishment of compulsory retirement instead of the punishment of dismissal from service, notice of the petition was ordered to be issued.

3. The counsel for the respondent DDA, under instructions, states that the respondent DDA, considering the past conduct and behaviour of the petitioner, particularly of involvement in illegal instances, disorderly and indecent behaviour, within the premises of the respondent DDA and also outside such premises, with the senior officers, is not willing to reduce the penalty of dismissal from service, to that of compulsory retirement.

4. Though notice of this petition was issued only on the aforesaid submission of the counsel for the petitioner and not otherwise finding any *prima facie* merit in the petition, but be that as it may, we have heard the counsel for the petitioner and the counsel for the respondent.

5. The reason why the petitioner, without any inquiry was inflicted upon the punishment of dismissal from service, can be culled out from the order dated 14th September, 2015 of the Appellate Authority as under:

"4. Whereas the appellate authority having read the provisions of the above Regulations, consider all these aspects ad seriatim. It has been observed that the Regulation 30 of the said Regulations is the Special Procedure in certain cases in which it is not mandatory for the Disciplinary Authority to conduct the inquiry. However, the Disciplinary Authority has to satisfy himself for the reasons to be recorded in writing that it is not reasonably practicable to hold an inquiry in the manner provided in the Regulations. Since the penalty has been imposed by invoking this provision, all the facts leading to such decision of the Disciplinary Authority have been perused which are recorded by the Disciplinary Authority and which are available in record.

5. It has been observed that Director (Hort) NW vide his note dated 23.04.2015 marked to EM/VC has stated the details of the incidents and the criminal activities committed by the official in the past and present to the effect that he was threatened to kill by Shri Bhopal Singh and was mishandled and misbehaved as Sh. Bhopal Singh entered in his vehicle no.DL 3C AY 1986 alongwith other criminals on 18.04.2015 at 11.00 am at District Park, Harsh Vihar, Director (Hort) NW has further recorded in his note that the criminal activities of Sh. Bhopal Singh was reported through WhatsApp to LG's office and VC office on 18.04.2015. Not only this, Security Guard is also involved in eight civil and criminal cases and various FIRs lodged against him about his previous involvement in criminal action. Shri Bhopal Singh was also suspended earlier in 2001 and FIR no. 309 was lodged on 01.08.2000 u/s 323/506 IPC. It has also been stated that

earlier on several occasions he has also attacked his senior officers.

6. Records further reveal that on 12.02.2015, Shri Bhopal Singh, Security Guard had also attacked his senior Shri Fulwar Singh, AD (Hort), along with 8-10 persons and severely injured him at his office premises. Consequently an FIR was lodged with police station u/s 323/341/34 IPC. Shri Fulwar Singh, AD (Hort) was also admitted to the DDU hospital and MLC was also conducted. A non bailable warrant was also issued against Shri Bhopal Singh, Security Guard by the competent court and this event / criminal activities committed by him were also published in the leading newspapers and copies of other complaints about Shri Bhopal Singh, Security Guard on different occasions earlier by the different senior officers are also available in record.

7. Dir (Hort), NW, worthy VC, DDA has also recorded "It appears that due to criminal background, Shri Bhopal Singh, Security Guard, it has become very difficult to hold enquiry against the official under the provisions of DDA Conduct, Disciplinary & Appeal Regulations, 1999". Under the circumstances, the VC, DDA ordered to take suitable disciplinary action as deemed appropriate against the official under Regulation 30 (2) of DDA Conduct, Disciplinary / competent and Appeal Regulations 1999.'

8. A D.O. letter of the Vice Chairman, DDA dated 13.05.2015 addressed to Commissioner of police, Delhi police is also in record. In this letter it has been requested to issue instructions for taking action against Shri Bhopal Singh under the relevant provisions of law and to provide police protection to Shri Brij Lai, Dir (Hort) North, DDA office at 15th floor, Vikas Minar, New Delhi residing at B-6/140, Sector 3, Rohini, Delhi as Shri Bhopal Singh aggrieved with his dismissal

threatened to Shri Brij Lal, Dir (Hort), DDA and his family of life and dire consequences. The complaint of similar nature from other officers namely Shri Chhida Singh, Superintendant, Hort Deptt of DDA is also on record against Shri Bhopal Singh, Security Guard.

9. From the above, it has clearly brought out that the said Shri Bhopal Singh has successful in creating an atmosphere of terror in the organization. The gravity of the terror can be gauged by the fact that no officer in the DDA was willing to hold the preliminary investigations in the case. The officer who was deputed for making preliminary investigation has submitted that due to the criminal background and the threatening attitude of Shri Bhopal Singh, he finds it difficult to hold the preliminary investigation. The other instances are also on record which suggest the presence of threatening atmosphere created by Shri Bhopal Singh. To name all these officers in this order would make them susceptible in the hands of Shri Bhopal Singh. Sometimes, the public interest is also served by not disclosing the names of all those officers who because of the fear of loss to property or life would not speak against the accused. However, all these instances are available on record which lead to the assessment that the inquiry was not practicable.

10. The holding of enquiry is a mandatory provision in the said regulations. However, these regulations also provide for special procedure which explain the circumstances under which an employee can be penalized without holding a formal inquiry. All such circumstances are rare but they do present in the organization. The provisions of not holding an inquiry is also available as special provisions CCS (CCA) Rules, 1965 on which the DDA regulations have been based upon vide its resolution no. 34/99. These rules are statutory in nature and are emanated from Article 309 and 311 of the constitution.

The constitution also provides the circumstances where the Disciplinary authority can impose the penalty of dismissal without holding an inquiry. The relevant provision is reproduced below:

Article 311 (2)(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

Article 311 (3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

6. The counsel for the petitioner has contended, (i) that after the incident dated 12th February, 2015, a preliminary Fact Finding Committee was constituted; (ii) that the said Fact Finding Committee recommended a full fledged inquiry; (iii) that there is thus nothing against the petitioner in the report of the preliminary Fact Finding Committee also; (iv) that the six First Information Reports (FIRs), which *inter alia* formed the basis for the Disciplinary Authority, Appellate Authority and the CAT to conclude that the petitioner has a criminal background and has created an atmosphere of fear in the respondent DDA, resulting in none in the respondent DDA being willing to depose against him or conduct an inquiry against him, were not on the complaints of the respondent DDA or complaints of any of the official of the respondent DDA but relating to disputes in the village to which the petitioner belonged, over land and in which FIRs the petitioner has been acquitted; (v) that on the complaint of the respondent DDA/its official, in the past, only one FIR had been registered against the petitioner and in

which also the petitioner has been acquitted; (vi) that an FIR was also registered with respect to the incident pursuant to which disciplinary action was initiated against the petitioner but in which FIR no chargesheet has been filed as yet; (vii) that without the petitioner having been found guilty, the petitioner cannot be inflicted with the penalty of removal from service; and, (viii) that the petitioner has already attained the age of superannuation and does not want to continue the fight any further and to put the matters to rest, is willing to suffer the penalty of compulsory retirement, so as to be able to earn his pension.

7. Per contra, the counsel for the respondent DDA has drawn our attention to the counter affidavit filed by the respondent DDA before the CAT and in which the respondent DDA pleaded at length as to how the petitioner, though a Chowkidar in the respondent DDA, had assaulted an Assistant Director, by entering the premises of the respondent DDA and the office of the said Assistant Director, by dragging the said Assistant Director to the outside lawns. He has further contended that the petitioner mishandled the official appointed to conduct the fact finding inquiry and which resulted in none in the respondent DDA being willing to hold an inquiry or to even depose against the petitioner. Attention is drawn to the excuses given by each of the personnel who were present in the office where the incident occurred, for not having been witness to the incident.

8. We have however enquired from the counsel for the respondent DDA, whether there is anything adverse in the service record of the petitioner, of 32 years of service which the petitioner claims to have rendered, to show

such behaviour and conduct of the petitioner to be consistent throughout the service.

9. Nothing has been placed on record.

10. Considering the aforesaid fact, we have enquired from the counsel for the respondent DDA, what lesser punishment, if any, can be awarded to the petitioner.

11. The counsel for the respondent DDA states that since the respondent DDA is unable to itself hold the inquiry against the petitioner and which was the reason for dismissing the petitioner without inquiry, the respondent DDA, before CAT also had pleaded that if at all it was felt that an inquiry is necessary, the respondent DDA is willing for inquiry by the Labour Court in the said respect and the petitioner can approach the Labour Court under Section 11A read with Section 10 of the Industrial Disputes Act, 1947 and the respondent DDA would not oppose the same on the ground of the Labour Court not having jurisdiction or owing to laches or waiver.

12. However, the counsel for the petitioner, after taking instructions, states that the petitioner is not willing therefor.

13. The counsel for the petitioner draws our attention to ***Tarsem Singh Vs. State of Punjab*** (2006) 13 SCC 581 and ***Govt. of NCT of Delhi Vs. Ex. Constable Sudesh Pal Rana*** 183 (2011) DLT 387 (DB).

14. In ***Tarsem Singh*** supra, (a) formal inquiry was dispensed with, on the ground that the appellant therein could prevent the aggrieved person as well as witnesses from giving evidence, by threatening and other means; (b) no

material had however been placed or disclosed, to show that the subjective satisfaction arrived at in this regard, by the statutory authority, was based upon objective criteria and the reason for dispensing with the departmental proceedings was not supported by any document. It was in such facts held, that if a preliminary inquiry could be conducted, there was no reason why a formal departmental inquiry could not be initiated. However it is not so in the present case. While **Tarsem Singh**, a police constable, had committed misconduct of forcible entry in the residence of another, of outraging the modesty of a woman and of carnal intercourse and of threatening the victims of complaining against him, qua others (not at his work place and/or not qua his colleagues), and of all of which FIR had been registered against him, the petitioner herein has not conducted misconduct qua outsiders but at his workplace and vis a vis his superiors in his office, viz. of manhandling the Assistant Director, Horticulture, in the office premises and dragging him to the outside lawns. It is this misconduct, which had happened in front of all, during working hours, which formed the reason for all present fearing for their safety, if invited the ire of the petitioner by deposing against him or by conducting inquiry against him and which led the Disciplinary Authority to form an opinion that holding of formal disciplinary inquiry against the petitioner was not practicable. Also, in the present case it is not as if the preliminary fact finding inquiry was held, for it to be said that so could formal departmental inquiry be initiated, as reasoned in **Tarsem Singh** supra. The report of the preliminary inquiry in the present case merely records, that the official assaulted by the petitioner had complained and on basis whereof FIR was registered and medical examination conducted, which had confirmed physical assault with blunt object; that the Inquiry

Officer had refused to conduct inquiry, fearing his own safety but was not relieved; that the offence committed by the petitioner was in the nature of criminal misconduct and very serious in nature and of which FIR had already been registered and was being investigated; that the departmental inquiry should await the finding of the Criminal Court. It is thus evident that in the present case not only did the official entrusted with preliminary inquiry first refused and thereafter not conduct any inquiry, but rather reported that inquiry should not be held. The said facts *res ipsa loquitur* speak of the fear psychosis created by the petitioner and owing where to no fault can be found with the conclusion reached, of departmental inquiry being not practicable. In *Ex. Constable Sudesh Pal Rana* also, the facts were similar to that in *Tarsem Singh* and which have been distinguished hereinabove.

15. Having otherwise considered the matter, we are of the view that the matter having been looked at, not only by the Disciplinary Authority as well as Appellate Authority of the respondent DDA, but also by CAT, no ground for interfering therewith in exercise of power of judicial review is made out. We may in this context mention that nothing tangible has been placed before us, to show that there was any animosity on the part of any official of the respondent DDA, against the petitioner, for harsh step of dismissal from service, without inquiry having been taken against the petitioner. Else, ordinarily the powers under the Regulation 30(2) of the said DDA Conduct, Disciplinary and Appeal Regulations are not often found to have been invoked and we tend to accept the version of the respondent DDA, of the petitioner, by his conduct and behaviour, having created an atmosphere of

fear in the respondent DDA, owing to which the disciplinary proceedings against the petitioner were not practicable. As far as the contention of the counsel for the petitioner, made on the very first date, that the retiral benefits of the petitioner earned over 32 years should not be forfeited for the subject misconduct, considering that the petitioner, employed as a *chowkidar*, instead of protecting the property and personnel of DDA, had himself become a source of danger for them and considering the severity of misconduct, we do not find any merit therein. Moreover, the Rules permit such forfeiture for misconduct at any time prior to superannuation.

16. Dismissed.

RAJIV SAHAI ENDLAW, J.

AMIT BANSAL, J.

MARCH 1, 2021

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