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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 25th April, 2022*+ **W.P.(C) 20/2020 & CM APPL. 57/2020, CM APPL. 58/2020****DELHI DEVELOPMENT AUTHORITY** PetitionerThrough: **Mr. Arun Birbal and Mr Sanjay
Singh, Advocates**

versus

SURENDER PAL SINGH RAWAL RespondentThrough: **Mr. R.A. Sharma, Advocate****CORAM:****HON'BLE MR. JUSTICE NAJMI WAZIRI****HON'BLE MR. JUSTICE MANOJ KUMAR OHRI****NAJMI WAZIRI, J. (ORAL)**

The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. DDA has assailed the impugned decision dated 06.02.2019 passed in O.A. No. 3006/2017 the learned Central Administrative Tribunal directing refund of amount deducted from the respondent's salary.
2. On 22.09.2017, DDA's order directed that 5 per cent be cut for five years from the respondent's pension as penalty. This was on account of the petitioner having found to be guilty in disciplinary proceedings. A charge sheet issued against him on 11.09.2006 alleged in 1993, while that he was working as a Junior Engineer in the Enforcement Branch of DDA, Vikas Sadan and he failed to inspect the premises of Bhairon Mandir Samiti and thereby allowed Sh. Dharamvir Khattar to misuse the



premises of Bhairon Mandir Samiti as a hotel. The said Article of Charge are reproduced as under:-

“....

Sh. SPS Rawal while functioning as JE during the year 1993 in Enforcement Branch of DDA, Vikas Sadan, New Delhi failed to inspect the premises of Bhairon Mandir Samiti and thereby allowed Sh. Dharamvir Khattar to misuse the premises of Bhairon Mandir Samiti as hotel.

By his above act Sh.SPS Rawal, JE (now AE) exhibited lack absolute devotion to duty, lack of absolute Integrity and acted in a manner unbecoming of a Government Servant thereby contravened rule 4 1 (I) (II) (III) of DDA Conduct, Disciplinary and Appeals Regulations 1999...”

3. The statement of Imputation of misconduct against Sh. SPS Rawal JE,(Now AE) DDA is as under:-

“...

Sh.SPS Rawal while functioning as J.E., during the year 1993 in Enforcement Branch of DDA, Vikas Sadan, New Delhi failed to inspect the premises of .Bhairon Mandir Samiti and' thereby allowed Sh.Dharamvir Khattar to misuse the premises of Bhairon Maridir Samiti as hotel.

On 03.10.1993, Sh.SPS Rawal received reference for Inspection of Plot No.1, Prasad Nagar (Bhairon, Mandir) as the same was alleged to be misused.

Sh. SPS Rawal did not inspect the said premises and neither he handed over the said reference to his successor at the time of his relieving from Enforcement Branch on 15.12.1993.

By his above act Sh.SPS Rawal, JE (now AE) exhibited lack absolute devotion to duty, lack of absolute Integrity and acted in a manner



unbecoming of a Government Servant, thereby contravened rule 4 1 (I) (II) (III) of DDA Conduct, Disciplinary and Appeals Regulations 1999...”

4. The Presiding Officer who conducted the inquiry concluded as under:-

“ ...

i) The prosecution has failed to prove that the alleged reference was ever delivered to the C.O. or that the C.O. had actually received/acknowledged the said reference.

ii) Once the main allegation did not stand proved, the remaining allegations also stand not proved. Once the alleged reference was not received by the C.O., he could not have handed over the same to his successor while handing over his charge about 1.5 months later.

iii) The charge of violation of Regulation 4 1 (i) (ii) (iii) of the DDA conduct Disciplinary & Appeal Regulations 1999 also does not stand proved.

iv) Due to the abnormal delay & laches firstly in issuing the charge sheet and thereafter, in the conclusion of the D.E., great prejudice has resulted to the C.O. He could not put up a proper and effective defence. Reasonable opportunity has been denied to him due to the long delay. He retired on 31.10.2009 on his superannuation, since then, all his retiral dues stand withheld by the DDA. He is getting only a 'provisional pension'. Thus the C.O. has suffered a huge, financial loss in the form of interest on his retiral dues which he would have earned had the D.E. been completed before his retirement.

As the charges have not been proved, it is, therefore, most respectfully prayed that he be exonerated of all the charges.

And for this the C.O. shall remain as ever, duty bound.”

5. The notice dated 16.01.2017 issued by the Vigilance Branch



reads as under:-

“WHEREAS Disciplinary Proceedings under Regulation 25 of DDA Conduct, Disciplinary & Appeal Regulations, 1999 were initiated against S.P.S, Rawal, JE (Now AE,. Retired vide Memo No.F25(08)03/Vig./ACB/8258-63 dated 11.9.2006.

AND WHEREAS Sh. R.C. Kinger, CE (Retd.) was appointed as Inquiry Officer vide order No. 54A/Vig./2016/2371 to 2373 dated 14.3.2015 to enquire into the charges framed against S.P.S. Rawal, JE (Now AE, Retired).

AND WHEREAS the IO submitted his findings vide letter dated 14.7.2016 and has held the charge as proved.

A copy of inquiry report is enclosed. The undersigned being the Disciplinary Authority will take appropriate decision after considering the report and facts on record. If he wishes to make any representation or submission against the findings of IO, he may do so in writing to the Disciplinary Authority within 15 days of the receipt of the Notice.

In case no representation is received within the stipulated period it will be presumed that the Charged Officer has nothing to say in the matter and the case will be processed accordingly....”

6. The said penalty was challenged and has been set aside by the aforementioned impugned order. The rationale for doing so is that; i) the five questions put by the Inquiry Officer showed that the Officer had a pre-conceived notion at the stage of questions being put to the Charged Officer; ii) an inquiry is to be conducted with the objective of having a neutral and unbiased view apropos the allegations against the employee; iii) that the very purpose of the inquiry was defeated on account of the



Inquiry Officer not being neutral and iv) the parties were not able to prove the charges as required under law.

7. The five questions put to the charged officer were:-

“...

"Ques 1:- Is it correct that the premises of Bhairon Mandir Samiti was being used as Hotel?"

Ans 1 :- I have no knowledge.

Ques 2:- Is it correct that during your stay in enforcement branch Bharon Mandir Samiti Premises was under your jurisdiction?"

Ans 2:- Yes.

Ques 3:- At what frequency you were visiting areas under your jurisdiction?"

Ans 3:- Since area under me was heavily misused so there were lot of complaints and only complaints were attended in the heavily misused areas.

Ques 4:- The answer of above question means that you were not visiting areas under jurisdiction unless and otherwise, complaints were received by your office?"

Ans 4:- Yes, because no time was left after attending the complaints and the court cases.

Ques 5:- During your stay in the enforcement branch between Dec 1990 to Dec 1993, did you notice any unauthorized activities like running a hotel in premises at Bhairon Mandir in name of Athithi Guest House?"

Ans 5:- No..."

8. The need for putting the questions to the charged officer was because he did not examine himself. Regulation 25 (18) of DDA (Conduct, Disciplinary and Appeal) Regulations, 1999 lays down the procedure for imposing major penalties, it *inter alia* reads as under:-



“...

25(18). The inquiring authority may, after the employee closes his case, and shall, if the employee has not examined himself, generally question him on the circumstance appearing against him in the evidence for the purpose of enabling the employee to explain any circumstance appearing in the evidence against him..."

9. Since the charged officer had not examined himself, it was incumbent upon the Inquiry Officer to put the questions that he did.
10. The impugned order has opined that question nos. 3, 4 and 5 disclosed a pre-conceived notion, which the Inquiry Officer carried and that the view was not neutral or unbiased. Question no. 3 related to the frequency of visits of the Officer to the area under his jurisdiction. This needed to be examined in view of the reference of 03.11.1993, whether the Officer inspected Plot No. 1, Prasad Nagar (Bhairon Mandir) and whether he handed over the said reference to his successor at the time of his relieving from the Enforcement Branch on 15.12.1993. Question no. 3 is a sequitur of question no. 2 which was whether the Bhairon Mandir Samiti was under jurisdiction of the Charged Officer during his stay in the Enforcement Branch. The answer was in affirmative. The question was whether he visited the areas under his jurisdiction. It relates directly to the intimation/reference received by him on 03.11.1993, the answer being in response to the said question was that he attended to only the heavily misused areas. Question no. 4 was a corollary question i.e. that



he was not visiting areas under his jurisdiction unless complaints were received by the Charged Officer's Office. To this, the answer was in the affirmative. The question was whether during his posting in the Enforcement Branch between December, 1990 to December, 1993, he noticed any unauthorized activity like running a hotel in premises of the Bhairon Mandir in the name of Athithi Guest House. To which the answer was in the negative. Each of these questions were logical sequitur to question no. 2, which went to the core of the matter i.e. whether the Officer acted on the basis of the reference received to him or whether he ever visited any of the sites under his jurisdiction while in the Enforcement Branch. In so far as the queries relate to the heart of the issue, not asking the said questions would have led to a futile exercise of the inquiry itself. Therefore, the questions were necessary and cannot be considered to show any pre-disposition or bias or question the neutrality of the Inquiring Officer.

11. The impugned order has concluded that the Department was not able to prove the charge as required under law. However, the Inquiry Report which concluded otherwise, has not been discussed in the order. Reasons constitute the very sole of any decision-making process. In the absence of an intelligible rationale or reason for order or decision, would be considered arbitrary, whimsical and unsustainable in law. Such adjudication or decision-making process can never inspire confidence in the authority or the institution. This has been elucidated by the Supreme Court in *Victoria Memorial Hall v. Howrah*



Ganatantrik Nagrik Samity and Others, (2010) 3 SCC 72

wherein it has been held as under:

“ ...

40. *It is a settled legal proposition that not only an administrative but also a judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the court to record reasons while disposing of the case. The hallmark of an order and exercise of judicial power by a judicial forum is to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of justice-delivery system, to make known that there had been proper and due application of mind to the issue before the court and also as an essential requisite of the principles of natural justice. “The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind.” (Vide State of Orissa v. Dhaniram Luhar and State of Rajasthan v. Sohan Lal)*

41. *Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectivity by objectivity. Absence of reasons renders the order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. (Vide Raj Kishore Jha v. State of Bihar, SCC p. 527, para 19; Vishnu Dev Sharma v. State of U.P., SAIL v. STO, State of Uttaranchal v. Sunil*



Kumar Singh Negi; U.P. SRTC v. Jagdish Prasad Gupta, Ram Phal v. State of Haryana, Mohd. Yusuf v. Faij Mohammad and State of H.P. v. Sada Ram.)

42. *Thus, it is evident that the recording of reasons is a principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected may know, as to why his application has been rejected...*"

12. Insofar as the conclusion of the learned CAT is not supported by any reasons, it is erroneous and cannot be sustained.
13. The impugned order is set aside and the petition is disposed-off in the above terms.

NAJMI WAZIRI, J

MANOJ KUMAR OHRI, J

APRIL 25, 2022/zp