



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

% Date of decision: 04 April, 2022

+ W.P.(C) 2866/2021

ATUL VASHISHT

..... Petitioner

Through: Mr. Ankur Chhibber, adv.

versus

DELHI URBAN SHELTER IMPROVEMENT BOARD

..... Respondent

Through: Mr. Anuj Chaturvedi, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

1. This petition has been filed by the petitioner with the following prayers:

“In the premises aforesaid, it is most humbly and respectfully prayed that this Hon’ble Court may be pleased to:

(a) Issue a writ in the nature of certiorari or any other appropriate writ, direction or order quashing the Note of Disagreement dated 02.02.2021 issued by the Member (Admin.) holding the present Petitioner guilty of the charges levied against him along with the proceedings pending against the petitioner;

(b) Direct the Member (Admin.) of DUSIB for revocation of the suspension order of the present petitioner as the present petitioner has been suspended since September, 2014 and has now been exonerated twice by the Inquiry Officer duly appointed by the



Respondent and to direct the Respondent to reinstate as per the due seniority cadre;

(c) Direct the concerned authority of DUSIB to release the remunerations of the present Petitioner which have been held back on account of suspension since September, 2014;

(d) Pass such other and further orders and / or directions as this Hon'ble Court may deem fit and proper in the fact and circumstances of the case."

2. The challenge in this petition is to a Note of Disagreement dated February 2, 2021 whereby the Disciplinary Authority ('DA', for short) tentatively disagreeing with the findings of the Inquiry Officer ('IO', for short) had called upon the petitioner to submit a representation with regard to the same.

3. The facts as noted from the record are that the petitioner who is working as an UDC in the respondent Organization was issued a Memorandum dated December 19, 2014 under Rule 14 of the CCS (CCA) Rules, 1965 ('Rules of 1965', for short) for alleged misconduct stated to have been committed by him. Pursuant thereto, proceedings were held by the IO who in his report dated June 5, 2018 has not found the charges framed against the petitioner as "proved". This resulted in the DA issuing Note of Disagreement dated September 11, 2018 (first note of disagreement) and calling upon the petitioner to make a representation to the same. The petitioner filed a Writ Petition being W.P.(C) 11583/2018 before this Court challenging the Note of Disagreement dated September 11, 2018.



4. A plea was also raised by the petitioner, in those proceedings, that the advice of the CVC has not been furnished to him. This Court disposed of the aforesaid writ petition by upholding the Note of Disagreement, but directing the respondent to supply the copy CVC advice to the petitioner within a week and the petitioner was to file a response to the Note of Disagreement, which had to be decided within four weeks.

5. It is the case of the petitioner that the respondent instead of acting on the Note of Disagreement, had, vide order dated May 22, 2019 decided to hold a *de novo* inquiry against the petitioner. The petitioner vide his notice dated June 25, 2019 registered his opposition the conduct of the *de novo* proceedings being contrary to the order passed by this Court on October 26, 2018. Concedingly, petitioner has not challenged the decision of the respondent issued vide office order dated May 22, 2019 to hold a *de novo* inquiry. The respondent did conduct *de novo* proceedings through the same IO who after conducting the proceedings submitted his report dated July 15, 2020, wherein he again exonerated the petitioner of all the charges. It is on this inquiry report, the impugned Note of Disagreement dated February 2, 2021 (second Note of Disagreement) has been furnished to the petitioner, calling upon him to submit a representation on the same.

6. Counter-affidavit has been filed by the respondent justifying the Note of Disagreement dated February 2, 2021 by relying upon Rule 15 (2) of the Rules of 1965 wherein the DA recorded its own reasons to disagree with the inquiry report dated



July 15, 2020. In other words, impugned action is supported by the Rules of 1965. The respondent has also justified the Note of Disagreement on facts.

7. Mr. Ankur Chhibber, learned counsel appeared for the petitioner, would submit that the impugned Note of Disagreement has no basis, more so when the IO has in his report dated July 15, 2020 exonerated the petitioner of all charges with categorical findings that the charges are not proved. It is his submission that pursuant to the order dated October 26, 2018 of this Court in the earlier writ petition filed by the petitioner, respondent was to supply the CVC report and thereafter render its final findings within a period of four weeks from the date of receipt of the representation of the petitioner. By no stretch of imagination the Court had permitted the initiation of *de novo* proceedings against the petitioner. Even otherwise, since for the last seven years, chargesheet is pending against the petitioner, with a never ending inquiry by the respondent on one pretext or the other. In any case, in the impugned Note of Disagreement, the DA has conclusively held all charges as proved against the petitioner which itself would reveal the pre-conceived and pre-determined mind of the authority to punish the petitioner. He also stated that mere repetition of Article of Charge and repetition of substance of accusation in the impugned Note of Disagreement cannot be the basis of disagreement with the IO report. The Note of Disagreement ought to stand on its own legs so as to showcase the shortcomings of the inquiry report with explanation. Mere mentioning of the fact that



the Presenting Officer had not presented the case properly cannot be a ground to disregard the inquiry report based on detailed appreciation of evidence.

8. Mr. Chibber further stated, there has to be cogent reasons for disagreeing with the findings of the IO. But no such reasons have been spelt out by the DA in the Note of Disagreement, as the essence of law is that every discretionary power should be exercised in just, reasonable and fair way. There is no material before the DA to apply its mind and to call for a representation to be made by the petitioner on the Note of Disagreement. He has relied upon the Judgments of the Supreme Court in the case of *Allahabad Bank and Ors. v. Krishna Narayan Tewari*, MANU/SC/0006/2017 and *UOI & Ors. v. P. Thyagarajan*, 1999 (1) SCC 733 in support of his submission.

9. On the other hand, Mr. Anuj Chaturvedi, learned counsel appearing for the respondent would justify the impugned Note of Disagreement. It is stated that the Note of Disagreement is in accordance with Rule 15 (2) of the Rules of 1965, whereby the DA recorded its own reasons of disagreement with the inquiry report dated July 15, 2020 and tentatively disagreed with the said report which has been served on the petitioner along with first stage advice of the CVC enabling the petitioner to make a representation and the petitioner has preferred a representation on April 1, 2021 against the Note of Disagreement.

10. It is the stand of the respondent that the DA has considered the gross lacunae in the inquiry report dated July 15, 2020 inter alia



including all vital evidence on record, mis-appreciation of evidence and non-discussion of the same and that the conclusion of the said report was neither justifiable nor legally tenable, nor supported by the evidence on record. In fact, a stand has been taken that the inquiry report dated July 15, 2020 shows that the same is largely a verbatim copy of the inquiry report dated June 5, 2018. The same is also silent on material aspects of the case against the petitioner. It does not disclose any reason as to why the evidence does not prove the guilt of the petitioner or is otherwise insufficient in its nature. It is also the stand of the respondent that 10 cases are pending trial in ACB/CBI against the petitioner relating to SUR section regarding fake allotment of JJ relocation plots and grabbing of JJ plots on the basis of fake and fabricated documents.

11. Mr. Chaturvedi stated that the present impugned order does not require any interference and the Court shall allow the DA to take action on the Note of Disagreement in accordance with law. He seeks the dismissal of the writ petition.

12. Having considered the submissions made by the counsel for the parties, the issue which arises for consideration is whether the impugned Note of Disagreement dated February 2, 2021 given by the DA is proper and justified. The submissions of Mr. Chhibber are as follows:

- i. the decision of the DA to initiate *de novo* proceedings is illegal and beyond the Rules of 1965.
- ii. the Note of Disagreement could not have been given when the IO has not proved the charges against the



petitioner. Further there is no evidence on record to prove the charges against the petitioner. Even otherwise, the Note of Disagreement suggests that the DA is going beyond the charges framed to implicate the petitioner.

13. Having noted the broad submissions made by Mr. Chhibber, in so far as his first submission that *de novo* proceedings could not have been held is concerned, suffice to state that the same were held pursuant to an order dated May 22, 2019. Admittedly, the petitioner has not challenged the initiation of such proceedings at the relevant time. No doubt, he made representation against the same, but he having participated in the *de novo* proceedings before the IO, it is too late for the petitioner to challenge the said proceedings. In fact, the petitioner is relying heavily on the report submitted by the IO in the *de novo* proceedings wherein he has been absolved of the charges framed against him. The petitioner has not challenged those proceedings in this petition as well. The challenge is only limited to the Note of Disagreement dated February 2, 2021. So, the plea of Mr. Chhibber is without merit and is rejected.

14. With regard to the submission of Mr. Chhibber that Note of Disagreement could not have been given in the facts of this case is concerned, at the outset I shall refer to Rule 15 (2) of the Rules of 1965 which stipulates as under:

“15. ACTION ON INQUIRY REPORT:

(1) XXX XXX XXX



(2) The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority together with its own tentative reasons for disagreement, if any, with the findings of inquiring authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant.”

15. The said Rule empowers the DA disagreeing with a report of the inquiring authority to record its tentative reasons for disagreement, if any, with the findings of the inquiring authority on any articles of charge and after seeking written representation, pass a final order. The power being there with the DA, the impugned Note of Disagreement dated February 2, 2021 cannot be said to be illegal. Having said that, the plea of Mr. Chhibber that the petitioner having been exonerated on the charges framed against him being without evidence and the Note of Disagreement is untenable, is not appealing. Rather the plea is premature.

16. The DA in its Note of Disagreement has primarily stated as under:

“AND WHEREAS I am of the opinion that the Inquiry Officer has not done due diligence in the case while making Inquiry. The report of the I.O. seems to be vague as despite all the facts available on record the charges have not been proved. It appears that the I.O. has not gone into details of the case. The note dated 20-8-2014 of the C.O. in the concerned file clearly indicates that due verification was not done into details of the case. The note of C.O. itself



clearly indicates that due verification was not done by him as he has himself stated in his note that the present status of aforesaid plots in the name of the present owners / lease holders or buyers can only be given after site verification and verification of documents. He has also mentioned in his note that these allotment cases appears to be case of vasectomy / family planning policy. The factum of handing over sealed plots no. 232 and 233 was very much on record of East Zone along with other plot details. Also, the voluntary disclosure about plot no. 421 of Kalyanpuri which has been claimed to be allotted to someone is mentioned in the same file. The C.O. appears to have incorporated this information to cover up his malafide as this information was neither authentic nor called for at that stage by anyone. Another fact of sealing of the properties No. 232 & 233 in the year 2001 and handing over to JJR / East Zone and again the demolition programme proceedings fixed in the year 2001 were evidence enough to rise a suspicion about recommending the allotment details to Police Authorities making them to believe that these plots were allotted to someone. Moreover, the urgency to send the reply on 21-8-2014 on the query of SHO, Kalyanpuri's letter dated 19-8-2014 shows the malafide on the part of C.O. that he was in a unnecessary haste and did not verify the complete records or may have acted with dishonest intention.

AND THEREOFRE, in the light of the above, it is evident that the findings of the inquiring Authority are not consistent and cogent. Hence, I tentatively disagree with the findings of the inquiring Authority and of view that all the charges are proved against the C.O.”

17. It is not disputed that the petitioner has on April 1, 2021 submitted his representation on the Note of Disagreement of the DA. If that be so, it is for the DA to consider the representation along with the record of the inquiry and pass an order on the same. The plea of Mr. Chhibber that the Note of Disagreement of



the DA goes beyond the charges framed against the petitioner, is also not appealing. If such a plea has been taken by the petitioner in his representation dated April 1, 2021, the DA would surely consider the same while taking a decision on the representation made by the petitioner on the Note of Disagreement.

18. No doubt, petitioner has heavily relied upon the IO's report which exonerates him of all the charges, but Rule 15 of the Rules of 1965 which stipulates the action to be taken on the inquiry report, this Court is of the view that DA must be allowed to take action on the inquiry report. The procedure must not be interdicted. In facts the power of the DA under Rule 15(2) is precisely for a situation like this. If an order is passed against the petitioner, surely liberty would be with the petitioner to seek such remedy as available under the Rules.

19. Mr. Chhibber has placed reliance on the Judgment in the case of *Allahabad Bank (supra)* in support of his submission that in a case where DA records finding, i.e., unsupported by any evidence whatsoever, or a finding on which no reasonable person could have arrived at, then in such an eventuality, the Note of Disagreement needs to be set aside, is not appealing because, the judgment relied upon by Mr. Chhibber is not in a case where the DA has differed from the IO and has given its Note of Disagreement. In that case, proceedings were held which resulted in a penalty imposed on the officer, against which the officer had filed an appeal. In other words, it is the disciplinary proceedings



and the penalty imposed which was challenged by the officer, which is not a case here as the final order is yet to be passed.

20. As stated above, the DA is required to consider the representation made by the petitioner. It may so happen that the DA may agree with the pleas advanced by the petitioner and accept the report and thereby close the proceedings. It can also be otherwise. The challenge being premature, the judgment shall have no applicability in the facts of this case. Similarly, reliance placed by Mr. Chhibber on *P. Thyagarapan (supra)* is concerned, the same also shall have no applicability inasmuch in the said case, the DA had set aside the inquiry on the ground the procedure adopted by the IO was contrary to the relevant Rules and affects the rights of the parties. It is not such a case here. The Supreme Court in the said Judgment held that Rule 27 (c) enables the DA to pass appropriate orders including the order of *de novo* inquiry. In the present case, there is no *de novo* inquiry, but a Note of Disagreement which is permissible under Rule 15(2) of the Rules of 1965, I do not see any reason to interfere with the impugned Note of Disagreement. The petition is dismissed. No costs.

CM APPL. 8642/2021

Dismissed as infructuous.

V. KAMESWAR RAO, J

APRIL 04, 2022/jg