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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 05.02.2024***

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W.P.(C) 10704/2018

DELHI DEVELOPMENT AUTHORITY

..... Petitioner

Through: Mr.Arun Birbal, Adv.

versus

JAI NARAIN GUPTA

..... Respondent

Through: Mr.G.L.Verma, Adv.

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE RAJNISH BHATNAGAR****REKHA PALLI, J (ORAL)**

1. The present petition under Articles 226 of the Constitution of India seeks to assail the order dated 31.05.2016 passed by the learned Central Administrative Tribunal (Tribunal) in O.A.No.3072/2014, vide which original application preferred by the respondent has been allowed. The petitioner also assails the order dated 16.07.2016 passed by the learned Tribunal in RA No. 129/2016, whereby the review application preferred by the respondent came to be allowed by correcting typographical error.

2. Learned counsel for the petitioner submits that the impugned order, whereby the learned Tribunal has set aside the penalty imposed on the respondent by directing reduction by one stage in the time scale of his pay for a period of one year with cumulative effect, is wholly perverse. He submits that the learned Tribunal has failed to appreciate that the penalty was imposed on the respondent after due departmental proceedings and,



therefore, ought not to have been interfered with. Merely because no action could be taken against the Chief Engineer and the Commissioner (Land), who were also responsible for the incident which led to the imposition of penalty on the respondent, it could not be said that the penalty imposed on the respondent was illegal in any manner. He submits that the learned Tribunal has failed to appreciate that no departmental proceedings could be initiated against the aforesaid two officers due to unavoidable circumstances; while the Chief Engineer already stood superannuated by the time the investigation in respect of the lapse came to be completed, the Commissioner (Land), who was an Indian Administrative Services Officer, stood repatriated to his parent department. He, therefore, prays that impugned order be set aside.

3. On the other hand, learned counsel for the respondent supports the impugned order and submits that the impugned order was not passed only on account of no action being taken against the Chief Engineer and the Commissioner (Land). He submits that the learned Tribunal found that the respondent, being the junior most officer in the hierarchy, had strictly acted as per the written instructions of the Chief Engineer and the Executive Engineer concerned, who in turn, in their note, had stated that the decision was taken on the instructions of the Commissioner (Land). He, therefore, contends that there is no infirmity with the impugned order and prays that the writ petition be dismissed.

4. In order to appreciate the rival submissions of learned counsel for the parties, it would be apposite to first refer to the observations of the learned Tribunal, for which purpose, the relevant extracts of the impugned order are being noted hereinbelow :-



“6. We have considered the arguments of the learned counsel for the parties and have also perused the pleadings and the documents annexed thereto. It is well known that JE is the junior-most functionary in the hierarchy of the officers for execution on any major engineering project. From the perusal of the Annexure A-11 dated 04.08.2003, which is the internal file noting, it is quite clear that the enhanced scope of the work was duly approved by the Chief Engineer (EZ) on 14.08.2013. The note also states that the enhancement of the scope of work has been done as per the direction of the Commissioner (Land). Such being the factual position, we are surprised as to how the applicant has been held guilty for the enhancement of the scope of the work. If any departmental actions were to be taken, it should have been taken against Chief Engineer (EZ) and Commissioner (Land). The applicant was the junior-most functionary, duty bound to follow the instructions of his superiors. By imposition of punishment on him, miscarriage of justice has taken place. Hence, we are convinced that the impugned Annexure A-2 and Annexure A-3 orders deserve to be interfered with.

7. In view of the discussion in the foregoing paras, we quash and set aside the Annexure A-2 order dated 19.03.2012 passed by the AA and Annexure A-3 order dated 10.03.2014 passed by the RA. We also hold that the applicant is not at all guilty of the charge levelled against him and as such his increment of pay should be restored. This shall be done by the respondents within a period of one month from the date of a certified copy of this order.”

5. From a perusal of the aforesaid, it emerges that the learned Tribunal after considering the internal file noting of the Executive Engineer dated 04.08.2003, arrived at a conclusion that the respondent could not be penalised for enhancement of scope of work carried out under the specific directions of his superiors, i.e. the Chief Engineer and Commissioner (Land). It would, therefore, be apposite to refer to these file noting, which



read as under

“No. F1 (69) AE IV/ED 14/02/782 Dated: 04.08.2003

Name of Work:- D/O 16.54. hact of land for District Centre Mayur Place at Mayur Vihar Ph. I.

SH: C/o RCC retaining wall including approach roads for both the approaches connecting 4 lane bridge near Glaxo Apartment for District Centre Mayur Vihar Ph. I.

Agency: M/s N.K. Builders.

Estt. Cost: Rs. 1,12,05,805/-

Tendered Cost: Rs. 1,05,41,663/-

The work mentioned above was awarded to M/s. N.K. Builders vide this Office letter no. P.5 (22)BB/ED-14/DDA/A/2002-03/1132 dated 26.08.2003. The time for completion of the work was six months, but due to various hindrances, the work could not be completed within the stipulated period. The work is still in progress. The initially estimate was prepared for Rs. 1,12,05,805/- based on the drawings and design submitted by the consultant but letter on an additional approach lane has been suggested by the consultant and the design mix has also been deviated from M 20 to M 25 grade. Reinforcement was also changed by the Chief Engineer while approving the design. Due to the reason mentioned above, the work has been deviated up to the tune of Rs. 2.47 crores for which the necessary principle approval has been accorded by the Chief Engineer On 29.04.2003.

Plot No. 01 A has been auctioned and allotted and plot no. 01 B is also under the process of auction Land is likely to be allotted within a short period. The approaches for these plots are not available neither from Gazipur Drain nor from Shahadara Link Drain. The Technical Sanction of two lane bridge over Shahadara Link Drain has also been issued by Suptdg. Engineer, C.C. 10 but the NIT could not be issued



which is likely to be issued within a period Of 15 days. Commissioner (Lands), DDA has also emphasized to provide the approach road to these plots at an earliest which can only be possible if the work of these approach road is also be got executed under the agreement above. It has also been worthwhile to mention here that if the work of these roads is got executed through the same agency mentioned above, the department will be benefitted up to the tune for Rs. 104 lakhs (approx.). It is further pointed out that the rates given to the agency are quite justified and reasonable and below the prevailing market rates, therefore, the department will not have any los if the work is got executed through the same

Keeping in view the facts and circumstances explained above it is requested that the principle approval for deviating the work up to the tune of Rs. 5.510 crores may please be accorded, so that the work may be taken up at an earliest.

*Sd/-
Executive Engineer
Eastern Division No.14*

The matter has been discussed with CE/EZ on 14.08.2003. CE/EZ has suggested to debit the amount of road and retaining wall adjourned to Mayur Place (service land of Hood Department). Accordingly the amount of this road and retaining wall has been calculated which comes out 104 lacs and has been deleted, thus the net amount remains 4.47 crore for which necessary permission for deviation may please be accorded.

6. Having given our thoughtful consideration to the submissions made by learned counsel for the parties and perused the record, even though we are in agreement with learned counsel for the petitioner that merely because action against the superior officers could not be taken on account of unavoidable reasons, does not imply that no action could be taken against



the respondent. However, we find that in the present case, the decision of the learned Tribunal to quash the penalty imposed on the respondent was not based on the premise that since no action was taken against his superior officers, no penalty could be imposed on him. The learned Tribunal has set aside the penalty imposed on the respondent after duly appreciating the effect of the aforesaid noting in the file of the petitioner/department which clearly showed that the respondent was not guilty of any misconduct; he having acted strictly as per the directions issued to him by his superior officers. Having perused the aforesaid noting from which it is evident that the necessary approval for action taken by the respondent were given by the Chief Engineer, we have no hesitation to concur with the view taken by the learned Tribunal.

7. For the aforesaid reasons, we are of the considered view that the respondent being a junior engineer could not be expected to disobey the categorical written instructions of his Chief Engineer and Executive Engineer. The learned Tribunal was, therefore, justified in holding that the very finding qua his purported misconduct was wholly perverse. We, therefore, find absolutely no infirmity with the well reasoned order of the learned Tribunal.

8. The writ petition being meritless is, accordingly, dismissed.

(REKHA PALLI)
JUDGE

(RAJNISH BHATNAGAR)
JUDGE

FEBRUARY 5, 2024
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