

Murli Singh Vs. Delhi Development Authority and ors.

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Court : Delhi

Decided On : Feb-17-1999

Reported in : 1999IIAD(Delhi)133; 78(1999)DLT223

Judge : K. Ramamoorthy, J.

Acts : [Constitution of India, 1950](#) - Article 226

Appeal No. : C.W.P. No. 2810/90

Appellant : Murli Singh

Respondent : Delhi Development Authority and ors.

Advocate for Def. : Mr. Jayant Bhushan Adv.

Advocate for Pet/Ap. : Mr. C.L. Narsimhan Adv

Judgement :

ORDER

K. Ramamoorthy, J.

1. The petitioner has challenged in this writ petition the order of removal passed by the Vice Chairman of the D.D.A. removing the petitioner from service under Regulation 19 of D.D.A. (Salaries, Allowances and Conditions of Service) Regulations, 1961.

2. Before I deal with the point that has arisen for consideration, the facts that are necessary can be noticed very briefly. The petitioner was enrolled as a clerk in Army Ordinance at AOC Centre, Sikandrabad, AP-15 on or about 6th Jan., 1964. He was transferred to 17 Vehicle Battalion Delhi Cant. 10 on or about 25th September, 1965. On 15.7.1967 he was appointed as Store Clerk and posted at Chakrotra Dehradun. Sometime later, he was posted in 26 Infantry Division Ordinance, Field Dark Nagrota, Jammu. He was discharged from army service on 28.2.1971. He had been having good record of service in Army. On 22.2.1972 the petitioner was offered a temporary post of Patwari in D.D.A. By order dated 13.4.1978 the petitioner and other employees similarly situated were declared as quasi permanent. On 7.8.1980 the petitioner along with others was appointed officiator Kannongo. On 21.4.1986 the petitioner along with other employees similarly situated appointed to officiate as Naib Tehsildar. On 5.8.1989 the impugned order was passed. On 5.10.1989 the petitioner preferred an appeal to the Appel-late Authority. On 13.5.1990 the Appellate Authority dismissed the appeal. On 23.7.1990 the writ petition was presented in this Court.

3. That the case of the petitioner is that Regulation 19 is void in law and it is ultra-vires and it infringes the fundamental rights of the petitioner and Articles 14 and 16 of the Constitution of India. The second point raised by the petitioner is that no notice was given before the order was passed and the finding is not supported by any evidence on record and, therefore, the order is vitiated.

4. Regulation 19 of DDA (Salaries, Allowances and Conditions of Service) Regulation 1961, reads as under :-

'Special procedure in certain cases. Notwithstanding anything contained in regulation 16, 17 and 18.

(i) Where a penalty is imposed on an officer or employee on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) Where the disciplinary authority is satisfied for reasons to be recorded in writing that it is not reasonably practicable to follow the procedure prescribed in the said rules, the discipli- nary authority may consider the circumstances of the case and

pass such orders thereon as it deems fit.'

It is not necessary to go into the first point relating the validity to the rule.

5. The power may be given to the Vice-Chairman under Regulation 19 but in exercising the power the Vice-Chairman ought to have given notice to the petitioner and the Regulation does not say that the order of removal could be made without giving any notice to the petitioner. The order passed by the Vice-Chairman on 5.8.1989 reads as under :-

'Whereas large scale encroachment on DDA's land existed in revenue estate of Village Jashola which was demolished on 14th July, 1989 and again on 17th July, 1989. This area form part of the South East Zone for which Shri Murli Singh, Naib Tehsildar was incharge. During the course of demolition it was found that these encroachments on DDA land in this village had taken place in complicity of Shri Murli Singh, Naib Tehsildar.

And Whereas, I, K.S. Bains, Vice-Chairman, DDA am satisfied that action for imposition of one of the penalties specified under Regulation 14 of DDA (Salaries, Allowances, and Conditions of Service) Regulation 1961 be taken against Shri Murli Singh, Naib Tehsildar.

And Whereas, I, K.S. Bains, Vice-Chairman, am satisfied that it would not be reliable to conduct enquiry against Shri Murli Singh, Naib Tehsildar under Regulation 16, 17 and 18 of the DDA (Salaries, Allowances and Conditions of Service) Regulation, 1961 as the persons whose structure have been demolished will not be available for deposition in writing and during the course of inquiry against Shri Murli Singh, Naib Tehsildar, as they have gone to different places after operation of demolition.

And Whereas, I, K.S. Bains, Vice-Chairman, DDA being the compe- tent authority have gone to the definite conclusion that proce- dure as laid down under Regulation 19(2) of DDA (Salaries, Allowances, & Conditions of Service) Regulation 1961 be invoked in this case in the public interest.

therefore, I, K.S. Bains, Vice Chairman, DDA do hereby order for removal of Shri Murli Singh, Naib Tehsildar, from service of DDA with immediate effect.'

6. In my view, having regard to the well settled principles on the principles of natural justice, the order cannot at all be sustained. The order is liable to be set aside.

7. When a public authority like the DDA is to deal with encroachments necessary records have to be maintained and the fact of encroachment or the removal thereof cannot depend upon the act of omission or commission on the part of officials like the petitioner who is almost in the lowest rungs of the ladder of service. In the impugned order it is stated that the encroachments on land had taken place in complicity of the petitioner. There is absolutely nothing on record to substantiate its finding. The petitioner was not given any notice to explain the situation. In the counter, it is stated :-

'In reply to para 2, it may be stated that it is admitted that normally before imposing a major penalty, an enquiry must be held. However, where the disciplinary authority is satisfied for reasons to be recorded in writing, that it is not reasonably practicable to follow the procedure prescribed in the said rules, the disciplinary authority may consider the circumstances of the case and pass such orders as it deems fit. In this instant case, since the persons who had made the complaint that the unauthorised construction/ encroachment were being made with the connivance of Shri Murli Singh after the demolition of their structure had gone to different places and were not traceable and it was not possible for them to give evidence in writing or orally, therefore, it was decided by the disciplinary authority to invoke Regulation 19(2) of the DDA (Salaries, Allowances and Conditions of Service) Regulation, 1961 and Shri Murli Singh was removed from the services of the Authority by order dated 5.8.1989.'

8. It is well settled that a statutory authority while exercising power under Regulation 19 cannot seek to sustain the order by giving reason in the counter affidavit. The factum laid down by the Supreme Court in Mohinder Singh Gill & Another Vs . Chief Election Commissioner, New Delhi & Others, : [1978]2SCR272 on this aspect is very clear. The order cannot at all be sustained. Accordingly, it is

set aside. The petitioner shall be reinstated in service with back wages and consequential benefits.

9. The writ petition stands allowed. There shall be no order as to costs.

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