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P.K. Jain Vs. the Commissioner Municipal Corporation of Delhi and ors.

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Court : Delhi

Decided On : Mar-01-1999

Reported in : 1999IIAD(Delhi)317; 79(1999)DLT380

Judge : K. Ramamoorthy, J.

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

Appeal No. : C.W.P. No. 3380/87

Appellant : P.K. Jain

Respondent : The Commissioner Municipal Corporation of Delhi and ors.

Advocate for Def. : Mr. R.D. Jolly, Adv.

Advocate for Pet/Ap. : Mr. Mukul Rohtagi Sr. Advocate and; Mr. Rahul Gupta, Adv

Judgement :

ORDER

K. Ramamoorthy, J.

1. The petitioner, who was Junior Engineer, in the M.C.D., has filed this writ petition. A charge memo was issued to him on 25.4.1984. The statement of allegations against the petitioner is :-

'Shri P.K. Jain, was posted as Junior Engineer in the Building Department, City Zone in the year 1982 and ward No. II, including Katra Lachu Singh, was under his charge. Huge unauthorised construction of a commercial nature was carried out in premises No. 19997/II, Katra Lachu Singh. He booked the unauthorised construction of 8 shops in the said premises on 16.10.1982 vide file No. 361/II/CZ dated 16.10.1982 but served the show cause notice upon the builder only on 19.10.1982 i.e. after a delay of 3 days. Inquiries in the said case were made by the ADC/City Zone and the Executive Engineer (Co-od) and Shri P.K. Jain had been found responsible for the following lapses/irregularities:-

1. That he served the show cause notice dated 16.10.1982 on 19.10.1982 after a delay of 3 days.

2. That the said unauthorised construction file No. 361/II/CZ dated 16.10.1982 remained with him and the Zonal Engineer from 26.10.82 to 17.11.1982 but he failed to process the case further to obtain demolition orders. Ultimately, the party obtained stay order from the court of law on 8.11.1982 against the show cause notice. He, thus, helped the builder and failed to take proper action on the said file.

3. That the unauthorised construction of 8 shops with passage at Ground Floor, 6 shops with passage at First Floor, 2 rooms, one kitchen and bath and 2 shops at II floors and 3 rooms with kitchen and bath at 3rd floor were found being construction on 23.11.1982 by the Zonal Engineer (B). Thus, the unauthorised construction continued from 16.10.1982 to 23.11.1982 but he failed to launch regular prosecutions. He prosecuted the party 5 times during this period, though the work remained in progress. Despite the instructions issued on the subject by the SE-IV, vide No. 54/c dated 22.9.1982, no regular prosecutions were done under the various sections of the DMC Act, 1957.

4. That Shri Jain, failed to take the photographs of the said huge unauthorised construction and the existing building to find out the factual position as per the orders of the Commissioner, M.C.D. issued under No. PSC/5804/82 dated 20.10.1982. He, thus, failed to comply with the said instructions.

5. That he did not initiate the case for obtaining counter stay against the occupancy and use of the premises which should have been done by him when the party had obtained stay on 8.11.1982.

From the foregoing, it is evident that Shri P.K. Jain caused unnecessary delay in dealing with the said case and did not obtain demolition orders from the Zonal Engineer (B) after issuing show cause notice on 19.10.1982 and failed to take proper and timely action, besides, being negligent.

Shri P.K. Jain, thus, committed gross misconduct and failed to maintain devotion to duty and absolute integrity and, thereby, contravened Rule 3 of the CCS (Conduct) Rules, 1964 as amended from time to time and made applicable to the employees of the Municipal Corporation of Delhi.'

2. An inquiry was conducted. The Inquiry Officer submitted his report on 11.4.1986. On the basis of the report, the Disciplinary Authority passed an order removing the petitioner from service on 21.10.1986. The petitioner preferred an appeal to the Appellate Authority and the Appellate Authority rejected the appeal by order dated 28.9.1987. The petitioner has challenged those orders.

3. The learned senior counsel for the petitioner Mr. Mukul Rohtagi submitted that on the basis of the materials available before the Inquiry Officer there was no evidence against him and the findings rendered by the Inquiry Officer are based on no evidence. The Disciplinary Authority and the Appellate Authority had concurred with the view taken by the Inquiry Officer and they had not analysed the correctness of the reasons given by the Inquiry Officer. The learned senior counsel submitted that having regard to the clean service record of the petitioner, assuming that the respondents were justified in coming to the findings, the punishment imposed is out of all proportion to the nature of the charges leveled against the petitioners and the respondents should have imposed a minor punishment and the extreme penalty of removal is a very harsh one, especially when the petitioner was only 32 years old at the time when the order of removal was passed in 1986.

4. So far as the first charge that there was a delay of three days for issuing show cause notice to the person who was alleged to have indulged in unauthorised construction, the Inquiry Officer held that no negligence or misconduct has been established against the petitioner.

5. The second charge against the petitioner was:-

'That the said unauthorised construction file No. 361/II/CZ dated 16.10.1982 remained with him and the Zonal Engineer from 26.10.82 to 17.11.1982 but he failed to process the case further to obtain demolition orders. Ultimately, the party obtained stay order from the court of law on 8.11.1982 against the show cause notice. He, thus, helped the builder and failed to take proper action on the said file.'

6. It is accepted by the Inquiry Officer that the file was with the Zonal Engineer. On 2.12.1982 a note was prepared in the office of the Commissioner. In that against the functioning of H.C. Shangal, who was the Zonal Engineer, it is noted :-

'The file has almost remained with him from 26.10.1982 to 17.11.1982 but he did not get the case prepared to pass demolition order and the same cannot be without his connivance.'

7. It is not disputed that the Zonal Engineer was the superior authority to the Junior Engineer and he was retaining the file and the petitioner, who was a Junior Engineer, cannot be found guilty of any act of omission or commission. And the superior authorities should have taken action against the person who was proceeding with unauthorised construction and the records do not disclose any supervision having been made by the superior authorities.

8. The third charge against the petitioner was:-

That the unauthorised construction of 8 shops with passage at Ground Floor, 6 shops with passage at First Floor, 2 rooms, one kitchen and bath and 2 shops at II floors and 3 rooms with kitchen and bath at 3rd floor was found being construction on 23.11.1982 by the Zonal Engineer (B). Thus, the unauthorised construction continued from 16.10.1982 to 23.11.1982 but he failed to launch regular

prosecutions. He prosecuted the party 5 times during this period, though the work remained in progress. Despite the instructions issued on the subject by the SE-IV, vide No. 54/c dated 22.9.1982, no regular prosecutions were done under the various sections of the DMC Act, 1957.'

9. The Inquiry Officer had considered this matter and he observed :-

'The third count of the charge is that u/a construction of 8 shops in the passage at GF, 6 shops with passage at FF, 2 rooms, one kitchen and bath and 2 shops at 2nd floor & 3 rooms with kitchen & bath at 3rd floor were found being constructed on 23.11.1982. by the ZE(B). It is thus alleged that unauthorised construction continued from 16.10.1982 to 23.11.1982 but he failed to launch regular prosecutions. The respondent has not disputed that the unauthorised construction as stated above came up. The charge sheet admits that 5 times the party was prosecuted. The respondent has pleaded that prosecution could be launched only when construction was soon in progress. The magnitude of unauthorised construction has been enormous and it must have continued ceaselessly from 16.10.1982 to 23.11.1982 and it does not inspire confidence that he took regular rounds of the area and found the unauthorised construction only on 5 occasion. What is borne out from evidence is that the respondent did not go to the site and take action to stop the u/a construction.'

10. When a responsibility is sought to be fixed on the Junior Engineer the rule Rule or Regulation or instruction with reference to fixing the responsibility should have been produced. It is not disputed that the Zonal Engineer was the person who was to get work from the Junior Engineer. It is stated by the learned senior counsel for the petitioner that the Zonal Engineer retired before the completion of the disciplinary proceedings. The Zonal Engineer (B) in his note dated 26.11.1982 had informed the ADC/CZ, as could be seen from the note :-

'Discussed.

I have inspected the above said property on 23.11.82. The owner/builder have completed 8 shops along with passage at F.F. 6 shops Along with passage at F.F. Two rooms, and one kitchen, bath, two shops at IIInd Floor and three rooms Along

with kitchen, bath at IIIrd Floor. The property are still unoccupied ZLA are being perused to obtain stay against occupancy.'

11. therefore, it was the Zonal Engineer who could be attributed with any act of omission or commission. The Inquiry Officer had observed that the act of the petitioner did not inspire confidence. The charge against him is entirely different. It is not disputed that the petitioner prosecuted the party five times, that is he issued challans to the person who was going on with the construction. therefore, the petitioner as Junior Engineer had discharged his duties. The charge against the petitioner is totally unjustified and as a matter of routine the MCD had taken action against the Zonal Engineer and also the petitioner without applying its mind about the scope of the functions of the Junior Engineer.

12. The 4th charge against the petitioner was:-

'That Shri Jain, failed to take the photographs of the said huge unauthorised construction and the existing building to find out the factual position as per the orders of the Commissioner, M.C.D. issued under No. PSC/5804/82 dated 20.10.1982. He, thus, failed to comply with the said instructions'.

13. It is admitted on behalf of the respondents that the Commissioner, MCD issued instructions with reference to taking out photographs during the progress of unauthorised construction on 20.10.1982. There is absolutely nothing on record to show that the petitioner was informed about it before the actual completion of the work. therefore, this charge also is not proved against the petitioner.

14. The 5th charge against the petitioner was:-

'That he did not initiate the case for obtaining counter stay against the occupancy and use of the premises which should have been done by him when the party had obtained stay on 8.11.1982.'

15. The petitioner has given his Explanationn to all the charges. The duty of initiating action against a person, who is proceeding with construction unauthorisedly, is on the officer on the higher echelon of the Department. The Zonal Engineer was know of the things. If there have been an order by Court, it is

for the Zonal Engineer to forward the file to the legal department and file appropriate proceedings for vacating stay. In the charge, it is stated that Junior Engineer did not initiate any action. If it is established that it is the Junior Engineer to approach the legal department one can understand. That is not the case.

16. The Disciplinary Authority passed the order in toto concurring with the view taken by the Inquiry Officer. The order reads as under:-

'In the case of departmental inquiry against Shri P.K. Jain, Jr. Engineer, with reference to charge sheet No. 1/8/83/SVI(CS)Vig./CPC/219 dated 25.4.1984, in which case the inquiry was conducted by the Director of Inquiries, I, in the capacity of Disciplinary Authority, after considering the reply to the show cause notice and giving him a personal hearing, have confirmed the proposed penalty of 'removal from service' on Shri P.K. Jain, respondent vide my orders dt. 10.10.1986, reproduced below:-

'Heard Sh. P.K. Jain, JE in the presence of DOI today. He has stated that the file relating to the unauthorised construction in question remained with ZE(B) from 26.10.1982 to 17.11.1982 and thus he is not responsible for the delay. He has further stated that he sent a note on 26.10.1982 to his ZE indicating that the time allowed for show cause notice was over. While it is true that the file did not remain with Sh. P.K. Jain during the aforesaid period he should have tried to get it back quickly as it was he who had to take further action on the file. He failed miserably in doing this with the result that the party obtained a stay order on 8.11.1982. Shri Jain could not give any satisfactory Explanationn for having prosecuted the builder only five times despite the fact that the unauthorised construction had been going on from 16.10.1982 to 23.11.1982. Evidently, he did not go to the site frequently as was expected of him nor did he take steps to stop the unauthorised construction that was being carried out after the stay order. Shri Jain did not have any Explanationn for not having taken photographs of the unauthorised construction that was carried out subsequent to the stay order. Shri P.K.Jain said that he could not initiate action for obtaining counter stay against use and occupancy of the premises as the original file was not made available to him. I am not inclined to agree with this as it was his duty to have got back the file and

besides he could also take action on the basis of duplicate file that was kept in the office.

Having carefully considered the points put forth by Sh. Jain and the relevant papers on record, I feel that Shri Jain helped the builder by his various inactions like failure to launch prosecutions repeatedly and to stop the unauthorised construction, failure to process the case for getting counter stay and to get photographs of the unauthorised constructions and not taking interest in getting back the file to process the case further for a very long time even though he was aware that the builder was carrying out further unauthorised construction. In view of this I confirm the 'penalty of removal from service on Shri P.K. Jain, JE.'

This is notified for information and necessary action by all concerned.'

17. The Appellate Authority did not apply its mind and it also concurred with the view taken by the Disciplinary Authority. The order reads as under:

'This is a case of departmental inquiry against Shri P.K. Jain, Jr. Engineer, with reference to chargesheet No. 1/8/83/SVI(CS)/Vig./CPC/219 dated 25.4.1984, in which case the inquiry was conducted by the Director of Inquiries, and the Dy. Commissioner (E) as Disciplinary Authority inflicted upon him the penalty of 'removal from service' vide his orders dated 10.10.1986.

Aggrieved by the said orders of the Disciplinary Authority, the delinquent official filed an appeal. The Commissioner as Appellate Authority, after considering the contents of the appeal/relevant record, has rejected his appeal vide his orders dated 19.9.1987, reproduced below:-

'That is an appeal filed by Shri P.K. Jain, JE against the orders of the Disciplinary Authority imposing upon him the penalty of removal from service. I have very carefully gone through the entire record of this case, the report of the Inquiry Officer and the orders passed by the Disciplinary Authority. I have also heard Shri P.K. Jain in person.

During the course of the personal hearing, Shri Jain produced photo copies of some of the nothings from the zonal file with a view to proving that he had taken

timely action and submitted the case to the ZE(B) and that it was mainly due to non-receipt of orders from the ZE(B) that he could not take timely action against the unauthorised constructions. On a perusal of the file, I find that the photo copies of the said nothings had also been produced by Shri Jain before the Disciplinary Authority and had also enclosed them with his representation, addressed to the Commissioner, appealing against the orders of the Disciplinary Authority.

I find that Shri Jain did not produce any defense evidence before the Inquiry Officer and closed down his defense by simply denying the charge.

It cannot be denied that the main responsibility for ensuring that unauthorised constructions are not allowed to come up in the area vests with the Junior Engineer who is expected to make all necessary efforts to prevent the construction of unauthorised buildings within the area of his jurisdiction. While ZE(B) as the supervisory authority is equally responsible for ensuring timely action against such activities and to provide all the necessary backing and support to the JE in this regard, the later cannot absolve himself of the responsibility by sending notes to the ZE from time to time without taking follow up action and reporting to higher authorities if he finds that his immediate superior officer i.e. ZE(B) is failing to respond to his request for giving necessary orders under the DMC Act and/or is apparently colluding with the builders of such unauthorised constructions against the interest of the Corporation. Even if it is not possible for the JE to complain against his superior officer formally to the higher authorities, such blatant violation or inaction on the part of the ZE can certainly be brought to the notice of the higher authorities informally if the JE is conscientious in the discharge of his functions under the DMC Act. Shri Jain seems to have rested content by reporting the matter to this ZE(B) without ensuring timely follow up action in obtaining his orders and taking action against unauthorised construction. His failure to take photographs of the unauthorised construction at various stages brings out his complicity in the matter. His contention that he was unaware of the instructions on the subject is not tenable. Taking of photographs of unauthorised constructions is an accepted procedure and every JE is expected to be aware of it. Similarly, both Sh. Jain and ZE(B) Shri Singhal must share the blame for not obtaining counter stay against the occupancy and use of the premises constructed unauthorisedly. It

has been clearly established in the report of the Inquiry Officer that there was undue delay in taking action against unauthorised construction of huge commercial building and the lapse has to be shared by both the JE and the ZE(B); more by the former who was mainly responsible for initiating action against such unauthorised construction. From the evidence brought on record, I also cannot rule out the possibility of positive connivance by both the officers in the construction of the unauthorised building.

From the discussion above, I feel that the Disciplinary Authority has rightly taken a serious view in this matter and has rightly imposed the penalty of removal from service on Shri P.K. Jain, JE. I find no cogent grounds to interfere with this decision of the Disciplinary Authority. I, therefore, reject the appeal of Shri P.K. Jain against the orders of the Disciplinary Authority imposing upon the penalty of removal from service.'

This is notified for information and necessary action by all concerned.'

18. In law, in a proceeding against a government servant, the Department is expected to state the charges clearly in the light of the duties and responsibilities in a matter like this and then produce the record showing the same and then fix the responsibility and then to find out whether the delinquent officer had transgressed to the limit and had failed to act in accordance with the duties and responsibilities assigned to him. The materials placed before the Inquiry Officer against the petitioner do not show anything against the petitioner and the MCD had proceeded against the Zonal Engineer and the petitioner as I had pointed out above in a routine administrative manner and had assumed that the duties and responsibilities of a Junior Engineer and the Zonal Engineer are the same and they would be jointly and severally liable as it were which is not correct in law. No person properly instructed in law would act in the manner in which the MCD had acted in this case.

19. The learned counsel for the MCD Mr. Jolly submitted that the jurisdiction of this Court to interfere in disciplinary proceedings is very much limited when the employee concerned had been given enough and sufficient opportunity to defend himself. He referred to the judgment of the Supreme Court in K.L. Shinde Vs .

State of Mysore : [1976]3SCR913 and B.C. Chaturvedi Vs . Union of India and Others, : (1996)ILLJ 1231 SC . The learned counsel referred to paragraph 7(2) of the counter to show that proceedings were taken against the petitioner earlier and he was imposed with punishment of censure and, therefore, this time the penalty of removal had been imposed.

20. The MCD has not produced the relevant files relating to the earlier punishments and the nature of the charges against the petitioner. The Disciplinary Authority has not referred to those punishments in the order impugned. If on the basis of evidence punishment had been imposed by the Disciplinary Authority then the fact that the petitioner was visited with punishment earlier would be a relevant factor but in this case having regard to the nature of the charges, I am of the view that the MCD has not proved the charges against the petitioner and it is a case of no evidence against the petitioner.

21. The learned senior counsel for the petitioner submitted that if there is no evidence this Court can always interfere and set aside the order passed by the Disciplinary Authority. The learned senior counsel for the petitioner relied upon the judgment of the Supreme Court in Union of India and another v. B.C. Chaturvedi (1995) 6 S.C.C. 750.

22. therefore, I am not inclined to agree with Mr. Jolly that discretion of this Court cannot be exercised in favor of the petitioner. I am of the view that the charges have not been proved against the petitioner and, therefore, the petitioner is entitled to succeed. The petitioner had approached this Court in 1987 and the matter was pending in this Court. The petitioner, as I had noticed above, was 32 years old at the time of dismissal. Now he is 44. The petitioner has still got the long period to go.

23. Having regard to the facts and circumstances and in view of the punishment earlier given to the petitioner, the petitioner would not be entitled to back wages. The petitioner is entitled to reinstatement and his earlier service is to be reckoned for other purposes in future. The petitioner shall be taken back in duty on or before 31.3.1999.

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

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