

**Ramesh Chand Jain Vs. Delhi Development Authority and ors.**

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**Court :** Delhi

**Decided On :** Oct-27-1998

**Reported in :** 77(1999)DLT460; 1999(48)DRJ578

**Judge :** Vijender Jain, J.

**Acts :** Service Law

**Appeal No. :** CWP No. 583 of 1997

**Appellant :** Ramesh Chand Jain

**Respondent :** Delhi Development Authority and ors.

**Advocate for Def. :** Apurb Lal, Adv.

**Advocate for Pet/Ap. :** Ambrish Kumar, Adv

**Disposition :** Petition allowed

**Judgement :**

**Vijender Jain, J.**

1. The petitioner has filed the present writ petition for issuance of appropriate writ to quash the order dated 16.4.1991 and the order dated 5.9.1991. Petitioner, who was working as Junior Engineer with the respondent-Department, was transferred to the Housing Division No. IV in January'1983. In August'1983 the petitioner was

directed to take charge of construction of 237 MIG Dwelling Units in Pocket KG-1, Vikaspuri, New Delhi from one A.K Chopra, Junior Engineer, who was at the relevant time in-charge of construction work.

2. It is the case of petitioner that the order transferring Mr. A.K. Chopra was issued by the Superintending Engineer in August'1983 and forwarded to one Radakrishan, Asstt. Engineer directing the petitioner to take over charge from A.K. Chopra. Said Radakrishan endorsed the said order only on 26.8.1983. It is contended before me by Mr. Ambrish Kumar, learned counsel appearing for the petitioner, that the petitioner was on sanctioned leave on 26.8.1983 and he did not attend the office on 27.8.1983 as well as on 28.8.1983, two days, i.e.27.8.1983 & 28.8.1983, being Saturday and Sunday were holidays in the respondent-Department. The order of handing/taking over the charge was communicated to the petitioner only on 29.8.1983. The case of the petitioner is that he took over charge on 29.8.1983 subject to verification. The charge against petitioner was as follows | -

'That the said Shri R.C. Jain, Junior Engineer while functioning as J.E., Housing Division No. IV during the year 1983 failed to maintain absolute integrity and devotion to duty inasmuch as pilferage/misappropriation of brass filling comprising of brass valve, brass bib cock, brass slop cock, face of stop cock etc. (valued at approximately Rs.32,000/ =) stored in two locked trunks inside a room of a vacant FF Flat No. 146 at the work site of 237 MIG Houses at Bodella, look place as a result of gross negligence of Shri Jain.Shri R C Jain by his above said acts of commission and omission exhibited lack of integrally and devotion to duly thereby violating Rule 3 of CCS (Conduct) Rules, 1964 as made applicable to D.D.A.'

3. On the basis of aforesaid charge framed against the petitioner, the impugned order dated 16.4.1991 was passed imposing a penalty of compulsory retirement from the service as well as recovery of Rs.32,000/ = from the petitioner.

4. Learned counsel for the petitioner has vehemently challenged the mode and method of conducting the enquiry as well as assailed the finding of the enquiry report, which was the basis on which order of compulsory retirement was passed by the respondent. It has been contended by the learned counsel for the petitioner

that Exhibit 'P-4', the handing/taking over report, was not produced in original before the Enquiry Officer. He has also contended that the petitioner had signed, both the pages of the said handing/taking over report but the photocopy which was produced before the Enquiry Officer, the signatures of the petitioner appeared only on the second page of the handing/taking over report, and the Enquiry Officer took that Exhibit 'P-4' into consideration in spite of the protest of the petitioner. Learned counsel for the petitioner has further contended that the first page of the said handing/taking over report was material for determining the controversy between the parties as the items, which were stolen, appeared at page-1 of the said report. Mr. Kumar took great pain in arguing that the whole approach of the Enquiry Officer was based on surmises and conjectures. The fact that the handing/taking over report was not produced in original nor any attested copy thereof was produced in evidence before the Enquiry Officer, finds mention at page-91 of the paper book in the enquiry report itself.

5. Learned counsel has further assailed the enquiry report on the ground that the Enquiry Officer held that it was for the petitioner to produce the copy of the first page before the Enquiry Officer, although the evidence was on record that the petitioner did not have any copy of the handing/taking over report. As a matter of fact, A K Chopra in his cross-examination had admitted that the signatures of the petitioner did not appear on the first page of Exhibit 'P-4' and three copies of the said report was prepared. The original copy was retained by the petitioner, second carbon copy was signed by the petitioner and was kept by A K Chopra, and the third carbon copy which was not clear petitioner had refused to sign and that copy also remained with A K Chopra. It does not stand to reason that original of the handing/taking over report would be with petitioner as deposited by PW-1. Carbon copies thereof was admittedly retained by A K Chopra, PW-1.

6. Learned counsel for the petitioner has further assailed the finding of the enquiry report on the ground that admittedly in the testimony of PW-1, it was stated that the keys of these two boxes used to remain with Radakrishan, Assistant Engineer, PW-3 when A K Chopra was working as Junior Engineer with him. The testimony of A K Chopra to the fact that process of handing/taking over was started on 25.8.1983, does not inspire any confidence when Radakrishan had endorsed on

the order of transfer of the petitioner only on 26.8.1983, it does not stand to reason as to how the process of handing/taking over had started on 25.8.1983. It is also not disputed by the respondents that the petitioner was not present in office on 26.8.1983 to 28.8.1983. The testimony of PW-2, Shri N R Gupta, Executive Engineer, does not support the case of the respondent-Department. In his cross-examination PW-2 had deposed that there was no mention in the report that process of handing/taking over had started on 25.8.1983 or subsequent date. PW-2 further stated that he was told by Radakrishan that the petitioner had not physically verified the items in the store till 22.12.1983. He had further emphatically denied that he was never told that the keys were handed over to the petitioner on 29.8.1983. Petitioner in his deposition has stated that time and again he had been requesting Radakrishan to hand over the keys of the tin boxes so as to enable him to verify the contents of the boxes. Mr. Kumar has contended that, as a matter of fact, Radakrishan, Assistant Engineer, was also inflicted penalty of reduction of pay by Rs.100/= per month but to the reasons best known to the respondents, he has not paid the penalty.

7. As a matter of fact, said Radakrishan had admitted that order of reduction of Rs. 100/= per month was received. During the course of hearing, I directed the respondents to produce the transfer orders which was endorsed by Radakrishan on 26.8.1983. Mr. Apurb Lal, learned counsel appearing for the respondents, showed his inability to produce the file containing the letter, which was endorsed by said Radakrishan on 26.8.1983, on the instructions that same was not traceable. The reliance by the Enquiry Officer on the statement of testimony of Radakrishan does not inspire any confidence. According to Radakrishan the keys of the tin boxes, which contained the valuable articles, were handed over to the petitioner on 25.8.1983. In support of his contentions the petitioner also produced DW-2, Ranbir Singh who had refuted the allegation that keys were handed over to the petitioner on 25.8.1983. In view of the fact that A K Chopra in his testimony has also stated that keys of the tin boxes remained with Radakrishan, how the Enquiry Officer believed the testimony of Radakrishan that the keys were handed over on 25.8.1983. There was overwhelming evidence before the Enquiry Officer in the shape of testimony of PW-2, the Executive Engineer of the respondents, which has not been considered by the Enquiry Officer. It seems that extraneous

factors were taken into consideration by the Enquiry Officer, which was not supported from the material placed before him to arrive at a finding that the petitioner was negligent and his finding that the pilferage was possible only on account of connivance and negligence of the petitioner.

8. I find considerable force in the argument of the learned counsel for the petitioner that it is a case of mis-carriage of justice and appointing authority as well as the Appellate Authority of the respondent had not taken into consideration the grave discrepancies in the testimony of witnesses before the Enquiry Officer and the report of the Enquiry Officer, which was based on surmises and conjectures.

9. Yet another argument was raised by the learned counsel for the respondents, Mr. Lal, that the writ petition is highly belated as the order of compulsory retirement of the petitioner was passed in the year 1991 whereas the present writ petition has been filed in the year 1997 and Mr. Lal has contended that on the basis of the delay in filing the writ petition, the petition deserves to be dismissed. Mr. Kumar has contended that under a bona fide legal advice of a counsel a civil suit was filed in the District Court for declaration, however, no written statement was filed for almost five years by the respondents and when the petitioner did not have any relief from the civil court, was advised to file writ petition. The petitioner has mentioned in the writ petition that he undertakes to withdraw the civil suit. Mr. Kumar has further contended that the petitioner, who is a lay man., should not be punished on account of mistake in advice by a counsel as some relief, which has been sought in the writ petition regarding violation of Article 14 of the Constitution, could not have been availed of by the petitioner before the civil court. In support of his contentions he has cited the case of *The State of East Bengal v. The Administrator, Howrah Municipality and others etc.* : [1972]2SCR874a in which ii., held | -

'.....But, as pointed out. by the Judicial Committee in *KunwarRajendra Singh v.Rai Rajeshwar Bali* if a party hadacted in a particular manner on a wrong advice given by his Legal Adviser, he cannot be held guilty of negligence so as to disentitle the party toplead sufficient cause under Section 5 of Limitation Act. In fact, the Judicial Committee observes as follows: The advice given by the lawyer

to file applications under Article 227, in our opinion, is also a circumstance to be taken into account in considering whether the appellant has shown sufficient cause.'

10. He has also cited the case of Balbir Singh v. Bogh Singh : AIR 1974 SC650 and Rameshwarlal v. Municipal Council, Tonk and Ors. : (1996)6SCC100 to support his arguments. All these authorities cited by the learned counsel for the petitioner deals with cases where there was inherent lack of jurisdiction in the court before whom the party instituted the proceedings. therefore, in the strict sense, the ratio of these authorities, I am afraid, is not applicable to the case of the petitioner. But the question is what is to be done? In a case where the petitioner at the first instance approached a civil court after spending six years when on account of delay in filing the written statement by the respondent his case could not proceed so as to have justice from the court of law, should this Court again ask the petitioner to go back to civil court after having come to the conclusion that the whole enquiry, decision and the orders passed thereon are vitiated and based on surmises and conjectures, irrelevant material and exclusion of relevant material from the realm of consideration? The answer is in the negative. That will not be in the interest of substantial justice.

11. Another redeeming features in the case before me is that petitioner has bonafiedly mentioned in the writ petition that he had instituted a civil suit but, as a matter of fact, on account of long delay in getting that suit proceeded, he has chosen to file writ petition in order to get speedy justice and the undertaking of petitioner that he will withdraw the suit, also gives credence to his cause. For the first time matter came up for hearing on 11.2.1997 on which date the matter was simply renotified for 4.3.1997. The petitioner withdrew the suit on 27.2.1997. Should this Court having entertained the petition, issued show cause notice, having admitted the matter, again throw the petitioner out only on the ground of delay and laches, in my opinion the Court while issuing notice and admitting the petition for hearing, has condoned the delay in filing the writ petition. Keeping in view the facts and circumstances of this case, I hold that the impugned orders dated 16.4.1991 and 5.9.1991 are mala fide, arbitrary and illegal and cannot stand the scrutiny of law as discussed by me earlier and same are, therefore, quashed.

Petition is allowed. Rule is made absolute.

12. Keeping in view the fact that the petitioner has suffered the agony, torture of being unemployed with a stigma of compulsory retirement and of pilferage which on the basis of the records does not seem to be plausible, should not suffer the loss of salary and emoluments. This Court would not have granted the salary for the period for which the petitioner has not worked with the respondent but in the peculiar facts and circumstances of this case, it seems that respondents were bent upon to punish the petitioner without any sufficient material, smacks arbitrariness on the part of the respondents, therefore, I direct the petitioner be reinstated in services forthwith with all consequential benefits. Petitioner shall also be entitled to cost which I quantify as Rs.5,000/ =.

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