

R.C. Kaushal Vs. Dda

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Court : Delhi

Decided On : Mar-19-2007

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Judge : S. Ravindra Bhat, J.

Acts : Delhi Development Authority (Validation of Disciplinary Powers) Act, 1998; [Delhi Development Act, 1957](#) - Sections 3, 4(2), 52 and 57; [General Clauses Act, 1897](#) - Sections 21; Delhi Development Authority (Salaries, Allowances and Conditions of Service) Rules - Rule 18; Delhi Development Authority (Salaries, Allowances and Conditions of Service) Regulations, 1961 - Regulations 2(4), 14, 15, 15(1), 16, 17, 18, 55(2) and 57; [Constitution of India](#) - Articles 226, 311 and 311(1)

Appeal No. : WP (C)120/1989

Appellant : R.C. Kaushal

Respondent : Dda

Advocate for Def. : Reetesh Singh, Adv.

Advocate for Pet/Ap. : G.D. Gupta, Sr. Adv. and; Alok Singh, Adv

Judgement :

S. Ravindra Bhat, J.

1. In these proceedings under Article 226 of the [Constitution of India](#), three questions have been raised by the Petitioner, in respect of a disciplinary enquiry initiated into his conduct. During pendency of these proceedings, the Court had granted an interim order, restraining the order of removal.

2. The Petitioner, working as an Assistant Engineer with the DDA, was charge-sheeted, on 13th August, 1981 on allegations of misconduct. He had been earlier suspended, by order dated 23-5-1981. A joint enquiry was ordered and held. The other employees who faced departmental proceedings were S.C. Gupta, a Superintending Engineer, and Shri S.C. Jain, Assistant Engineer.

3. The inquiry officer submitted his report, inter alia, exonerating the Petitioner. Apparently, the DDA referred the matter to the Central Vigilance Commission (CVC) eliciting its comments. The CVC considered the entire issue, and returned the reference with its advice. The DDA, thereafter issued a 'Disagreement memo' to the Petitioner, and also a show-cause notice, dated 6-5-1987 asking him to reply in respect of the proposed penalty. The disagreement memo, which is a part of the record in these writ proceedings, runs into eight pages, and discloses why, in the opinion of DDA, the findings of the enquiry officer, were unacceptable. The Petitioner engaged in correspondence with the DDA, seeking a copy of the report, before he could reply to the show cause notice and disagreement memo.

4. The DDA took the position, in its letter dated 28-12-1987 that report of the CVC was confidential in nature, and could not be supplied to the Petitioner. It also proceeded to issue the impugned order, dated 5-1-1989 to him, stating that since he had not replied to the show-cause notice, and the disagreement memo, it was presumed that he had nothing to say, and that the penalty of removal was accordingly being imposed. The Petitioner approached this Court at that stage.

5. By an interim order dated 16-1-1989 this Court directed that no final order sought to be issued in the disciplinary proceeding. The interim order was subsequently confirmed; it subsists even today.

6. Mr. GC Gupta, learned senior counsel for the Petitioner made two fold submissions in support of the writ Petition. It was firstly submitted that though the

inquiry officer, a technically qualified person, exonerated the Petitioner, nevertheless, the disciplinary authority was competent to arrive at a different conclusion. While doing so, however, the reasons for such an independent conclusion had to be disclosed, issuing suitable notice to the employee, giving him due opportunity to respond in that regard. Where the conclusions of the enquiry officer are sent for expert evaluation by another agency such as the CVC, the further requirement of natural justice would be to supply the recommendations of such agency, along with the 'second' show cause notice. It is not sufficient in such cases to merely issue and supply a disagreement memo. Counsel relied upon two decisions of the Supreme Court in *Mohammed Quramuddin-us -State of A. P. : (1994)5SCC118* and *State Bank of India-us D.C. Agarwal : (1993)ILLJ244SC* in support of this submission.

7. The second submission was that the inquiry having been ordered under Rule 18 of the DDA (Salaries, Allowances & Conditions of Service) Regulations, 1961, (hereafter referred to as the 'Regulations'), the initiation of the proceedings itself were illegal, as the charge sheet was issued by an authority incompetent to do so. In this case the charge sheet was issued by the Vice-Chairman, DDA, on 13.8.1981; the order directing holding of joint enquiry was issued on 11.2.1983. More importantly the ground taken is that the entire proceedings were vitiated and the final order dated 5.1.1989, rendered void and a nullity because the appropriate or competent disciplinary authority was not the Vice-Chairman, DDA but the Central Government.

8. Learned senior counsel submitted that by virtue of Rule 18 of the Regulations, in the case of a joint enquiry disciplinary authority would be the official or authority highest in rank in the hierarchy amongst all the disciplinary authorities to whom the enquiry pertained to. In this case, on a proper application of the Regulations, the Central Government was the Disciplinary Authority as Shri S.C. Gupta, Executive Engineer, who became Superintending Engineer would be subject to exclusive disciplinary control of the Central Government.

9. Learned senior counsel for the petitioner relied upon the decision of this Court reported as *R.P. Sharma v. DDA 1994 (2) SLR 95* and submitted that in regard to

the disciplinary matters, in this case was the Central Government and not any other lower authority, certainly not the Vice-Chairman. Counsel submitted that the true test is not as to who appointed the highest ranking official facing the enquiry, i.e. Shri S.G. Gupta but who according to the Regulations and the Schedule appended to it was constituted as the Disciplinary Authority. In the Regulations of 1961 the Disciplinary Authority in case of all Class I posts is undeniably the Central Government. The DDA had, it was submitted, relied upon two Notifications issued on 4.9.1976 and 22.11.1979, to say that in respect of Class I posts, carrying maximum pay scale of Rs. 1600-2000 P.M., the Vice Chairman was the Disciplinary Authority. The Court had however, held that such Regulation or Notification, was inapplicable and that the Disciplinary Authority in all such cases continued to be as was prescribed in the original, 1961 Regulations.

10. Learned senior counsel submitted that the decision in R.P. Sharma's case was affirmed and applied in Union of India v. Dalip Singh CW No. 128/2001 decided on 22.1.2002) by another Division Bench. Consequently, it is not any longer open to the DDA to contend that the Disciplinary Authority in such cases is any one or body lower than the Central Government.

11. Counsel for the respondent-DDA submitted that at the relevant time the question of supplying of materials or the recommendations of CVC to the petitioner did not arise. During the pendency of the present writ proceedings, a copy of the recommendations was furnished to the petitioner, along with the counter affidavit. Counsel contended that the allegations against the petitioner pertained to his role in the construction of an over-head tank at Hatsal which collapsed on 28.3.1981. Counsel contended that due to the mishap, a child was killed and a number of other persons sustained injuries. The accident had caused disquiet leading to constitution of a four member committee which eventually resulted in disciplinary proceedings. The CVC had been asked about its advice regarding initiating major penalty proceedings which led to issuance of charge sheet on 13.8.1981, to the petitioner. It was contended that the Inquiry Officer who conducted the joint proceedings exonerated the petitioner; but the disciplinary authority i.e. the Vice Chairman did not agree with its findings - he referred the matter to the CVC for second stage advice along with the Inquiry Report. The CVC advise, dated

1.8.1986 was that materials existed pointed to the complicity and guilt of the petitioner, and others, who had accepted sub-standard material, resulting collapse of the tank within one and half months of its commissioning, leading to the unfortunate accident. Under these circumstances a show cause notice was issued and subsequently the impugned orders were issued.

12. Learned Counsel contended that the petitioner received disagreement note which contained cogent reasons and on a plain reading, made no reference to the advise of the CVC. Hence there was no question of his being aggrieved by the non-furnishing of the CVC recommendations, which were confidential in nature.

13. Learned Counsel submitted that the contention about the Vice-Chairman DDA not possessing power to issue the orders of dismissal, in respect of Shri S.C. Gupta was not correct. He submitted that the Vice Chairman, DDA, as per the delegation of powers to him had authority in respect of Shri S.C. Gupta. A consideration of the appointment letter of Shri Gupta would show that he was appointed as Superintendent Engineer by the Vice Chairman, DDA and not by the Chairman, DDA. According to the notification dated 22.11.1979 the Vice Chairman, DDA, is competent to issue order for inquiry proceedings and there is no legal infirmity in issuing the order to the effect that common proceedings should be taken against all the three officers. No prejudice has been pointed out by the petitioner which might have been caused to him.

14. Learned Counsel contended that even, otherwise, during the pendency of the present petition, the Delhi Development Authority (Validation of Disciplinary Powers) Act, 1998 was enacted and brought into force on 8.1.1999. As per Section 3, all disciplinary action taken, such as issuance of charge sheet etc. initiated between 22.11.1979 (i.e date of the Notification under Section 52) and 1st March, 1994, were deemed to have been validly and effectively exercised or taken by the Vice-Chairman or such other officer as if the other officer had been specified in that behalf.

15. Learned senior counsel for the petitioner submitted during the hearing, in response to the contentions regarding the Act that its validity is under challenge and is pending before the Division Bench in a batch of petitions namely, WP(C)

No. 2574/91; 2579/91, 1023/91, 5347/93, 5598/93 and 1012/91. Apparently during the pendency of all those petitions, upon coming into force of the enactment, the Court had permitted amendments to be carried out, to the petitioners to enable them to challenge its provisions.

16. For appreciating the arguments, the relevant provisions of the Regulations may be usefully described, and extracted below:

2. Definitions. -

(1) ...

(2) ...

(3) ...

(4) 'Disciplinary Authority' in relation to the imposition of a penalty on a member of the service, means the authority competent under these regulations to impose on him that penalty.

Regulation 14 lists out the nature of penalties; Regulation 15 outlines as to who are disciplinary authorities, which find mention in the Schedule. Regulation 16 provides for procedure to impose major penalties.

Regulation 15 (1) reads as follows:

15. Disciplinary authorities : (1) subject to the provisions of Sub-regulation (2) and of Regulation 16, and to the condition that no officer or employee may be removed or dismissed or reduced in rank by an authority subordinate to that by which he was appointed, the authorities specified in the Schedule may impose the penalties specified in that Schedule upon officers and employees of the Authority included in that Schedule. Regulation 18, which deals with joint enquiries, reads as follows:

18. Joint Inquiry-(1) Where two or more officers or employees of the Authority are concerned in any case, the authority competent to impose the penalty of dismissal from service on all such officers and servants may make an order directing that disciplinary action against all of them may be taken in a common proceedings.

(2) Any such order shall specify--

(i) the authority which may function as the disciplinary authority for the purpose of such common proceeding;

(ii) the penalties specified in Regulation 14 which such disciplinary authority shall be competent to impose; and

(iii) whether the procedure prescribed in Regulation 16 or Regulation 17 may be followed in the proceeding.

17. The above narration shows that three questions arise for consideration, in the present case:

1. Whether the departmental proceedings were validly instituted;

2. Whether the impugned order was vitiated as the Petitioner was not furnished with a copy of the CVC recommendations; along with disagreement memo; and

3. Whether the impugned order is un-sustainable as not having been issued by an incompetent authority.

Reg. Question No. 1

18. In *State of U.P. v. Chandrapal Singh* : (2003)11LLJ744SC , the Supreme Court explained the legal position as whether initiation of departmental proceedings have to necessarily be by the disciplinary authority so mentioned, in the regulations, or rules, or by anyone else, in the following terms:

5. This Court in *State of M.P. v. Shardul Singh* : [1970]3SCR302 has held that Article 311(1) provides that no person who is a member of the civil service of the Union or State shall be dismissed or removed by an authority subordinate to that by which he was appointed. However, that article does not in terms require that the authority empowered under that provision to dismiss or remove an official should itself initiate or conduct enquiry proceeding.

6. In the case of P.V. Srinivasa Sastry and Ors. v. Comptroller and Auditor General : (1993)ILLJ824SC referring to the judgment of this Court in Shardul Singh the position is reiterated.

7. In Registrar of Corporation Societies v. Fernando : (1994)ILLJ819SC referring to the two aforementioned decisions of this Court, the position is made clear thus in para 16: (SCC pp. 750-51)

16. It was on the basis of this GO, on 20-3-1989 the Registrar issued the charge memo. In this connection, it is worthwhile to refer to a recent decision of this Court reported in P.V. Srinivasa Sastry v. Comptroller and Auditor General : (1993)ILLJ824SC . The relevant observations at pp. 1323-24 are as under: (SCC pp. 422-23, paras 4-5 and 6):

But Article 311(1) does not say that even the departmental proceeding must be initiated only by the appointing authority. However, it is open to Union of India or a State Government to make any rule prescribing that even the proceeding against any delinquent officer shall be initiated by an officer not subordinate to the appointing authority. Any such rule shall not be inconsistent with Article 311 of the Constitution because it will amount to providing an additional safeguard or protection to the holder of a civil post. But in absence of any such rule, this right or guarantee does not flow from Article 311 of the Constitution. It need not be pointed out that initiation of a departmental proceeding per se does not visit the officer concerned with any evil consequences, and the framers of the Constitution did not consider it necessary to guarantee even that to holders of civil posts under the Union of India or under the State Government. At the same time, this will not give right to authorities having the same rank as that of the officer against whom proceeding is to be initiated to take a decision whether any such proceeding should be initiated. In absence of a rule, any superior authority who can be held to be the controlling authority, can initiate such proceeding. In the case of State of M.P. v. Shardul Singh : [1970]3SCR302 the departmental enquiry had been initiated against the Sub-Inspector of Police by the Superintendent of Police, who sent his inquiry report to the Inspector General, who was the appointing authority. The Inspector General of Police dismissed the officer concerned from the service

of the State Government. That order was challenged on the ground that the initiation of the departmental enquiry by the Superintendent of Police was against the mandate of Article 311(1) of the Constitution. This contention was accepted by the High Court. But this Court said: (SCC p. 112, para 10)

We are unable to agree with the High Court that the guarantee given under Article 311(1) includes within itself a further guarantee that the disciplinary proceedings resulting in dismissal or removal of a civil servant should also be initiated and conducted by the authorities mentioned in that article.

* * *

Although Article 311 of the Constitution does not speak as to who shall initiate the disciplinary proceedings but, as already stated above, that can be provided and prescribed by the rules. But if no rules have been framed, saying as to who shall initiate the departmental proceedings, then on the basis of Article 311 of the Constitution it cannot be urged that it is only the appointing authority and no officer subordinate to such authority can initiate the departmental proceeding. In the present case, it was not brought to our notice that any rule prescribes that the Accountant General, who is the appointing authority, alone could have initiated a departmental proceeding.

19. In view of the above, it must be taken that the law is not that a disciplinary authority, so nominated under the rule, must in all cases, have initiated the proceedings; if an official or authority higher in rank than the officer facing enquiry initiates it, the legal requirement is deemed to have been satisfied. In this case, the charge sheet was undeniably issued by an authority higher in rank than the petitioner. Hence, no infirmity on that score can be found.

Reg. Question No. 2

21. It has been held in judgments of the Supreme Court that when a disciplinary authority disagrees with the recommendations of the enquiry officer, exonerating the official charged, on the merits, he is under an obligation to record a disagreement note, and issue a show cause notice on the points of disagreement,

to enable the officer to meet with such aspects, in an appropriate representation. (Ref. Punjab National Bank v. Kunj Behari Misra : (1998)ILLJ809SC ; Yoginath D. Bagde v. State of Maharastra : AIR 1999 SC3734). As to what are the materials to be supplied with the disagreement memo, were precisely considered in State Bank of India v. D.C. Aggarwal : (1993)ILLJ244SC . In that case, the disciplinary authority disagreed with the findings in inquiry; it referred the matter to the Central Vigilance Commission. The Commission gave its reasons why the findings in inquiry ought not to be accepted. The disciplinary authority gave its own reasons. The recommendations of the Commission were not supplied to the officer charged; he alleged that this constituted failure of principles of natural justice. The defense of the employer was that the order was premised upon an independent exercise of power, for reasons indicated. The court repelled the submissions, holding as follows:

May be that the disciplinary authority has recorded its own findings and it may be coincidental that reasoning and basis of returning the finding of guilt are same as in the CVC report but it being a material obtained behind back of the respondent without his knowledge or supplying of any copy to him the High Court in our opinion did not commit any error in quashing the order. Non-supply of the Vigilance report was one of the grounds taken in appeal. But that was so because the respondent prior to service of the order passed by the disciplinary authority did not have any occasion to know that CVC had submitted some report against him. The submission of the learned Additional Solicitor General that CVC recommendations are confidential, copy of which, could not be supplied cannot be accepted. Recommendations of Vigilance prior to initiation of proceedings are different than CVC recommendation which was the basis of the order passed by the disciplinary authority.

On an application of the above reasoning, the conclusion is inevitable; the denial of CVC recommendations to the petitioner resulted in failure by the DDA to adhere to principles of natural justice.

Reg. Question No. 3

22. The question to be decided here is whether the order of removal impugned in these proceedings, suffers from the vice of being issued by an authority, not competent to do so, and is rendered a nullity. Before 22-11-1979, the Schedule to the Regulations constituted the Central Government as the disciplinary authority in case of all Class I posts. The position was sought to be altered, slightly, when in 1976, a notification was issued under Section 52, [Delhi Development Act, 1957](#), enabling other authorities to act as disciplinary authority. Factually, the existence of the subsequent notification of 1979, under which refuge has been sought by the DDA, to say that the impugned order was validly issued by the competent authority, has not been denied. It would be necessary at this stage to notice the petitioner's precise grievance in this regard; it is not that the impugned order was issued by an authority per se incompetent to do so, but that since a joint enquiry was held under Regulation 18, the highest disciplinary official or authority in hierarchy, to the senior-most official was the only competent authority to do so.

23. The petitioner's arguments in this regard may be usefully extracted from the written submissions, which are part of the record:

(ii) it may be clarified, as already stated above, in the present case, a joint inquiry was held and the order of joint inquiry was passed on 11.2.1983 (Annexure P2 to the Rejoinder at pages 138 & 139). The said order was passed under Regulation 18 of the Delhi Development Authority (Salaries, Allowances & Conditions of Service) Regulations, 1961 (hereinafter referred to as Regulations of 1961) as having been passed under Section 57 of the Act, 1957 (hereinafter referred to as the Act). The said regulation says that, where two or more officers or employees are concerned in any case the authority competent to impose penalty of dismissal from service on such officers and servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding. A copy of the said Regulation 18 is already annexed as P1 to the Rejoinder at pages 113. Since in the present case, Sh. S.C. Gupta was also held under the joint enquiry, the competent authority was central government, as at the relevant time, he was substantive holder of the post of Executive Engineer, though he was holding the post of SE on ad hoc basis. It may be stated that the post of Executive Engineer has been a grade A/ Class I post and therefore, as per the Schedule

attached to the Regulations of 1961, the Central Government was competent to impose all the penalties including major penalty, therefore, the order under Regulation 18 was required to be passed by the Central Government and not by the Vice Chairman, who in fact passed the order dated 11.02.1983 (at page 183).

(iii) It may be stated that in the beginning there could have been some confusion as to who was the competent authority of an Executive Engineer, whether the Central Government or even lower authority like the Vice Chairman or the 'authority', but ultimately, the position stood crystallized by a judgment of the Division Bench of this Hon'ble Court in the case of R.P. Sharma v. DDA reported as 1994 (2) SLR 95. It may be stated that in the said case, R.P. Sharma was an Executive Engineer and this Hon'ble Court held saying that the competent authority in regard to disciplinary authority in regard to Executive Engineer was the Central Government and not any other lower authority much less the Vice Chairman.

(iv) It may be stated that though in the Writ petition various authorities like Chairman or 'authority' which is the house, as defined in Section 3 of the Act, have been mentioned as the authority competent to pass the order under Regulation 18 in the present case, but the same should be taken as wrongly stated in view of the judgment of the Division Bench of this Hon'ble court in the Case of R.P. Sharma (supra). It is not relevant as to who appointed S.C. Gupta as either Executive Engineer or Superintending Engineer, but what is relevant is that as per Schedule to the post Superintending Engineer being Group A / Class I post, the competent authority/ disciplinary authority is the Central Government. This exactly what has been held in the judgment of the Division Bench of this Hon'ble Court in the case of Sh. R.P. Sharma. It may be clarified that as per Schedule to the Regulations of 1961, a copy of which is annexed herewith as Annexure 'III', the Disciplinary Authority imposing all the penalties including major penalty in regard to class I post with a maximum of Rs. 850 has been the Central Government. The same includes the post of Executive Engineer and this is what has been held in the Division Bench Judgment (supra). However for class II post, the authority to impose all the penalties including major penalty has been the 'authority' as defined in Section 3 of the Act and for class III and IV posts, the competent authority to

impose all the penalties has been the Vice Chairman. The Lt. Governor, in his capacity as Chairman of DDA, has been the Appellate Authority in case of class III and IV posts. If reference to authority or chairman have come in the Writ Petition, contrary to the position as laid down in the Division Bench Judgment of this Hon'ble Court that may be taken as wrongly stated.

(v) So far as DDA is concerned, vide its Counter Affidavit, it relied upon the notification dated 22.11.1979 (Annexure R-3 to the Counter Affidavit at Page 111). A perusal thereof would show that thereby the DDA sought to delegate its powers to such members/officers as mentioned in the schedule to the said notification under 52(i) of the Act. It may be clarified that Section 52 deals with the powers to delegate. It may be mentioned that the notification dated 22.11.1979 deals with delegation of powers of DDA (that is the authority) under Sub-section (i) of Section 52, which states that the authority may direct that any power exercisable by it under the Act, except the powers to make Regulations, may be exercised by such officers or local authority as may be mentioned therein. The submission is that under Sub-section (ii) of Section 52, the authority can delegate such powers, which it has. The said authority does not have any power in regard to Executive Engineer, in regard to whom the disciplinary authority is the Central government not the authority. Moreover, the Schedule attached to the said notification, which seeks to give power to the vice chairman in regard to class I post cannot be treated as a part of delegation, as the authority does not have the said power and even the amendment to the schedule can be passed only under Section 57 of the Act, as Section 57 deals with power to make Regulations and amendments thereto and Sub-section (i) of Section 52 of the Act. This is what has exactly been held by the Division Bench of this Hon'ble Court in case of Sh. R.P. Sharma. Kindly see para 5 of the said judgment. The said para 5 of deals with the said very notification of 1979 and the schedule attached therewith.

That being so, the reliance on notification dated 12.11.1979 has been wrongly placed and it does not help DDA. The result is that order passed under Regulation 18 was illegal, having been passed by an incompetent authority and therefore, the very charge sheet and subsequent proceedings stood vitiated in law and become liable to be set aside....

It is, thus clear, that the petitioner's grievance about the competent disciplinary authority is premised upon the appropriate authority, in respect of Shri S.C.Gupta, the senior most official facing joint enquiry.

24. Before proceeding further with the discussion, it would be useful to extract the relevant portions of the judgment in R.P. Sharma v. Delhi Development Authority : 1993IVAD(Delhi)39 , which is as follows:

(8) The petitioner is presently in the pay scale of Rs. 3,000-4,500, and as on 1 July 1959 the scale of pay of the Executive Engineer was Rs. 700-1,250. On this analogy if we go back to the date when Regulations of 1961 were brought into force, petitioner will certainly be holding a Class I post with a maximum of over Rs. 850.00 and thus the competent authority in this case would be the Central Government. Mr. Gupta also referred to the definition of disciplinary authority as appearing in Regulation 2(4) of the Regulations of 1961. This provides that 'disciplinary authority' in relation to the imposition of a penalty on member of the service, means the authority competent under these regulations to impose on him that penalty. He said the expression 'under these regulations' clearly I meant Regulations of 1961. and not to any alleged amendment thereto by means of delegation of powers as notified in 1979 on the authority of Section 52 of the Act. Mr.Gupta also referred to Section 21 of the [General Clauses Act, 1897](#), to contend that the Regulations of 1961 could be amended only with the prior approval of the Central Government. This Section 21 is as under:

21. Power to issue, to include power to add to, amend, vary or rescind, notifications, orders, rules or bye-laws.-Where, by any Central Act or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any notification, orders, rule or bye-laws so issued. We are of the opinion that Mr. Gupta is right in his submissions. When a law - requires a thing to be done in a particular manner it cannot be done in any other manner. Any amendment to the Regulations has to be done with the prior approval of the Central Government. This is Regulation 57. D.D.A. could not assume power under Section 52 of the Act to amend the

regulations. It could have done so only if Section 57 of the Act provided otherwise and specific power was with the D.D.A. for the purpose. Mr. Jaitley, however, said that under Sub-section (2) of Section 4 of the Act the Executive Engineer would be one of the employees of the D.D.A. and it would be D.D.A. who is authorised to appoint him with a necessary consequence to take action against him. Though it may be true that posts are to be created by the authority under Sub-section (2) of Section 4 of the Act. But the argument of Mr. Jaitley misses the point that the salaries, allowances and conditions of service of these employees are to be governed by regulations framed under Section 57 of the Act with the prior approval of the Central Government.

(9) In view of our discussion above, the Vice Chairman, D.D.A., was not competent to impose this penalty on Mr. R.P. Sharma, the petitioner. It was submitted before us that in case we took the view that Vice Chairman, D.D.A., had no power to impose any penalty on employees holding Class I post as provided in the Regulations, then many such orders in other cases will fall. This is hardly a consideration for us not to interpret the law as it stands.

(10) In this view of the matter the petition is allowed. The order imposing the penalty on the petitioner by the Vice Chairman, D.D.A., as per order dated 13 February 1991 is quashed. It is held that the Delhi Development Authority (Salaries, Allowances and Conditions of Service) Regulations, 1961 are applicable in the case of the petitioner, and the amendment to these regulations made by Sub-section (1) of Section 52 of the Act under which the D.D.A. delegated such of its powers to such of its members, officers as mentioned in the scheduled attached thereto has no effect. However, our order should not be understood to have debarred the D.D.A. from taking action against the petitioner on account of charges levied against him culminating in the impugned order, if permissible under the law. There will be no order as to costs. Rule is made absolute.

25. The court there, apparently, was concerned with the case of a Class-I officer, whose disciplinary authority was held to be the Central Government, despite the notification dated 22-12-1979. Here, however, such is not the case: Yet, the petitioner insists that the Central Government is the competent disciplinary

authority for him, because of the joint enquiry. The material part of Rule 18 provides that where two or more officers or employees of the Authority are concerned in any case, the authority competent to impose the penalty of dismissal from service on all such officers and servants may make an order directing that disciplinary action against all of them may be taken in one proceeding. Such an order is also required to specify:

(i) the authority which may function as the disciplinary authority for the purpose of such common proceeding;

(ii) the penalties specified in Regulation 14 which such disciplinary authority shall be competent to impose; and

(iii) whether the procedure prescribed in Regulation 16 or Regulation 17 may be followed in the proceeding.

26. The order under Rule 18 was issued, in this case, on 11-2-1983. It discloses, ex-facie, that the Vice-Chairman was constituted as the disciplinary authority. But for the controversy about whether Vice Chairman is disciplinary authority for Shri S.C. Gupta, on the strength of the decision in R.P. Sharma, the petitioner can have no grievance that such authority has no competence, as he was an Assistant Engineer, by his showing, at the time of initiation of the enquiry. The entire grievance made out is that the Vice Chairman could not have issued the order since he was not competent to act as disciplinary authority of Shri Gupta, and consequently, could not have issued an order against the petitioner.

27. In the decision reported as S. Vijaya Kumar case : (1991)1ILLJ122SC , the Supreme Court held as follows:

So far as the right of protection guaranteed under Article 311 of the Constitution is concerned, it applies to members of the Civil Service of the Union or an All India Service or a Civil Service of a State or who holds a civil post under the Union of a State. Admittedly the employees of the State Bank do not fall under any one of these categories and they cannot seek any protection under Article 311(1) of the Constitution. The employees of the State Bank can only claim such rights which

have been conferred under Regulation 55(2)(a) of the General Regulations. The only right conferred under the said provision is that the officers or employees of the State Bank cannot be dismissed by an authority lower than the appointing authority. With the risk of repetition it may be stated that on the date when the order of dismissal has been passed, Chief General Manager had already become the appointing authority and as such the order of dismissal has not been passed by an authority lower than the appointing authority.

Here too, officers of DDA are protected, in terms of Regulation 15(1) (supra) to the extent that they cannot be dismissed by any authority lower in rank than their appointing authority. If this were to be kept in mind, the futility of the contention raised by the petitioner would become apparent. The question raised in R.P. Sharma's case, in this context was different - the officer was far above the rank of Asst. Engineer. Also, no order under Regulation 18 was made. The order of 11-2-1983 admittedly nominated the Vice Chairman as the disciplinary authority; the petitioner could have no grievance in that regard, because he is the highest authority in DDA, and was so, at the relevant time. Indeed, the Vice-Chairman would not fall within the 'prohibited' category as per Regulation 15(1). thereforee, the question of the dismissal order being a nullity, or being issued by an incompetent officer, so far as the petitioner is concerned could not have arisen. As held in *Balbir Chand v. Food Corporation of India* : (1997)2LLJ879SC , a disciplinary enquiry should not be equated with prosecution for an offence in a criminal court where the delinquents are arrayed as co-accused. In disciplinary proceedings, the concept of co-accused does not arise. Hence, the question of the impugned order being a nullity on that ground does not arise.

28. The question to be addressed by courts, whenever issues as to validity of departmental proceedings are raised, are whether the employee has being given reasonable opportunity of hearing, according to rules, and whether the conduct of such proceedings has caused prejudice to him. In *State Bank of Patiala v. S.K. Sharma* : (1996)IILLJ296SC , it was held that in the case of violation of a procedural provision, the position is that procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation

of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under - 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment.

29. Viewed from the above standpoint, it is clear that the issuance of the impugned order by the Vice Chairman, the nominated official, as per Regulation 18, and regarding whom the petitioner does not project any grievance, except that he could not have been the competent authority in respect of Shri Gupta, could not be said to have prejudiced the petitioner. Interestingly, the substantive provision, viz. Regulation 15(1) was not considered in R.P. Sharma's case. This aspect is significant, because as held by the Supreme Court, the protection to public servants not governed by Article 311 of the Constitution is satisfied if the authority or official issuing the order is not lower in rank than the appointing authority. I thereforee, see no force in the submission on this question. I, thereforee, see no force in the submission on this question. It is however made clear that the observations are not deemed to affect the rights and contentions of Shri Gupta, if his petition is pending in Court.

30. As a result of the findings on questions 1 and 3, the contentions have to fail. The Question No. 2, however, has to be answered in favor of the petitioner. At this stage, it may be useful to note the Constitution Bench decision in Managing Director ECIL v. B. Karunakar : (1994)ILLJ162SC , where the Supreme Court had indicated the correct approach to be adopted where a facet of natural justice was held to be violated:

The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their

reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report.

31. For the above reasons, the impugned order is set aside. However, the petitioner is granted liberty to represent against the disagreement note in the light of the recommendations of the CVC, which are a part of the record, within four weeks. The DDA shall thereafter, consider the said reply/representation and issue fresh orders, within eight weeks. In view of the circumstance that the interim order had enured in favor of the petitioner all this while, effectively interdicting the order of removal, there shall be no consequential order.

32. The writ petition is allowed to the extent, indicated in the preceding paragraph, without any order as to costs.

CCP No. 217/1991

In view of the judgment and order pronounced in WP (C) No. 120/1989, nothing survives for consideration.

The contempt petition is disposed off in terms of the said judgment.

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