

N.K. Aggarwal Vs. Delhi Development Authority (Through Its Vice-chairman) Vikas Sadan, Ina Market New Delhi and Others

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Court : Central Administrative Tribunal CAT Delhi

Decided On : Jan-30-2012

Judge : The Honourable Mr. M.L. Chauhan, Member (J) & the Honourable Mrs. Manjulika Gautam, Member (a)

Appeal No. : O.A.No.2381 of 2010

Appellant : N.K. Aggarwal

Respondent : Delhi Development Authority (Through Its Vice-chairman) Vikas Sadan, Ina Market New Delhi and Others

Advocate for Pet/Ap. : For the Applicant: Sidharth Joshi, Advocate. For the Respondents: Karunesh Tandon, Advocate.

Judgement :

ORAL:

M.L. Chauhan:

1. The applicant has filed this OA, thereby praying, inter alia, for quashing the impugned order dated 8.4.2009 (Annexure A-12) whereby penalty of reduction of pay by 3% of basic pay + grade pay (one increment for one year) in the time scale of pay was imposed upon the applicant. It was also directed in the impugned order

that the applicant will not earn the increment of his pay during the period of reduction and after expiry of penalty period reduction will have the effect of postponing his future increment of pay. The appeal preferred by the applicant was also dismissed by the appellate authority vide order dated 17.11.2009 (Annexure A-1) upholding the punishment imposed by the disciplinary authority. It is these orders, which are under challenge in this OA.

2. Briefly stated, facts of the case are that the disciplinary proceedings were initiated against the applicant under DDA Conduct, Disciplinary and Appeal Regulation 1999 whereby the charges leveled against the applicant were that he while functioning in Building Department, Shahdara Zone, MCD (on deputation from DDA w.e.f. 20.2.2003 to 13.5.2003 and 2.6.2003 to 5.6.2003) failed to detect necessary effective steps to stop misuse in property No.1/11865, New No.1, Panchsheel Garden, Naveen Shahdara, Delhi in the shape of running Shanti Nursing Home. During the course of inquiry proceedings, charges against the applicant stood proved, which resulted into imposition of aforesaid penalty by the disciplinary authority.

3. The grievance raised by the applicant is that the order passed by the appellate authority is non-speaking and un-reasoned and has been passed without application of mind and the appellate authority has failed to appreciate the fact that there was no lapse on the part of the applicant. According to the applicant, the action was to be taken against erring officials, who remained in the field area for more than 3 months but failed to detect and take necessary effective steps against defaulter and as per the order of the High Court of Delhi, the impugned memorandum of charge sheet was not supposed to be issued to the applicant, as the order of the High Court is quite specific and clear that the memorandum of charge sheet should have been issued against the Junior Engineers, who had remained in the field for more than 3 months.

4. Notice of this application was given to the respondents, who have filed their reply affidavit, thereby justifying their action.

5. We have heard the learned counsel for the parties and perused the impugned order passed by the appellate authority (Annexure A-1), which is a cryptic order

and does not deal with the aforesaid contentions raised by the applicant in appeal. At this stage, it will be useful to quote relevant portion of the impugned order, which thus reads:-

“and whereas Sh.N.K.Aggarwal, JE made an appeal vide letter dated 04.05.2009 to the Appellate Authority i.e. E.M., DDA against the penalty order dated 08.04.2009 issued by the Disciplinary Authority.

Now, therefore in exercise of the powers conferred by Regulation 32 (C) and E (2) of DDA Conduct, Disciplinary and Appeal Regulations, 1999 and after having gone through the charges against Sh.N.K.Aggarwal, JE, the orders of the disciplinary authority, the contents of the appeal and the facts of the case on record, no new facts has been brought out by him in the present appeal. After careful consideration I see no reasons to interfere with the orders of disciplinary authority. The penalty imposed stands. Hence the appeal of Sh. N.K.Aggarwal, JE is rejected.”

6. We have given due consideration to the submissions made by the learned counsel for applicant and we are of the view that the applicant has made out a case for remitting the OA back to the appellate authority to decide the appeal of the applicant afresh, as the appellate authority has not given any finding on the aforesaid aspects as well as whether there is violation of principles of natural justice, which have resulted into the failure of the justice and whether the findings of the disciplinary authority were warranted by the evidence on record.

7. In similar circumstances, this Tribunal in Shri Banarassi Prasad v. Union of India and others (OA-1318/2011) decided on 17.1.2012 has made the following observations in paragraphs 7 to 10, which thus read:-

“7. We have given due consideration to the submissions made by the learned counsel for applicant and we are of the view that the applicant has made out a case for remitting the OA to the appellate authority to decide the appeal of the applicant afresh, as admittedly the appellate authority has not decided the appeal in terms of the provisions contained in Rule 27 (2) of the Rules 1964. At this stage, it will be useful to quote the relevant portion of Rule 27 (2) of the Rules 1964,

which thus reads:-

“27 (2) In the case of an appeal against an order imposing any of the penalties specified in Rule 11 or enhancing any penalty imposed under the said rules, the Appellate Authority shall consider-

(a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the Disciplinary Authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;

and pass orders-

(i) conforming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of these cases.”

8. In view of this, the appellate authority while disposing of the appeal is required to apply his mind with regard to the factor enumerated in sub-Rule 2 of Rule 27 of the Rules 1964. There is no indication in the impugned order dated 8.10.2010 that the appellate authority was satisfied as to whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice or whether the findings are justified in the light of the contentions raised by the applicant whereby he has stated that the disciplinary authority has taken into consideration the document, which was not part of the listed documents while imposing the punishment.

9. As already stated above, it seems that the appellate authority only applied his mind to the requirement of clause (c) of Rule 27 (2) of the Rules 1964, viz.

whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe.

10. In the facts and circumstances of the present case, there being no compliance of Rule 27 (2) of the Rules 1964 the impugned order passed by the appellate authority dated 8.10.2010 is liable to be quashed, which is accordingly quashed and set aside. Matter is remitted to the appellate authority to pass fresh order keeping in view the mandate of Rule 27 (2) of CCS (CCA) Rules, 1964 and the contentions raised by the applicant in his appeal and pass a reasoned and speaking order within a period of three months from the date of receipt of a copy of this order.”

8. The ratio, as laid down by this Tribunal in the aforesaid case, relevant portion of which has been reproduced hereinabove, is squarely attracted in the present case, although in this OA the disciplinary proceedings were initiated under DDA Conduct, Disciplinary and Appeal Regulation, 1999 and not under CCS (CCA) Rules, 1964 but the principle, as enumerated in the CCS (CCA) Rules, 1964, is attracted in the facts and circumstances of this case, especially when it is not disputed before us that provisions of CCS (CCA) Rules, 1964 have also been made applicable to the employees of DDA in case there are no specific provisions to that effect in DDA Conduct, Disciplinary and Appeal Regulation, 1999. We wish to observe here that it has not been brought to our notice whether there are similar provisions in DDA Conduct, Disciplinary and Appeal Regulation, 1999, as envisaged under Rule 27 of CCS (CCA) Rules, 1964. Accordingly, we have applied the aforesaid principle, which shall be kept in mind by the appellate authority while deciding the appeal of the applicant and pass a reasoned and speaking order within a period of three months from the date of receipt of a copy of this order. Order dated 17.11.2009 (Annexure A-1) passed by the appellate authority shall stand quashed and set aside.

9. With these observations, the OA shall stand disposed of. No costs.