

Ram Dass Vs. Delhi Development Authority and Others

Ram Dass Vs. Delhi Development Authority and Others

SooperKanoon Citation : sooperkanoon.com/938709

Court : Central Administrative Tribunal CAT Delhi

Decided On : Mar-05-2012

Judge : The Honourable Mrs. Meera Chhibber, Member (J) & the Honourable Dr. Veena Chhotray, Member (a)

Appeal No. : O.A. No.3349 of 2010

Appellant : Ram Dass

Respondent : Delhi Development Authority and Others

Advocate for Pet/Ap. : For the Applicant: Sidharth Joshi, Advocate. For the Respondents: Dhanesh Relan, Advocate.

Judgement :

MRS. MEERA CHHIBBER, MEMBER (J)

1. MA 3492/2011 seeking restoration of OA is allowed.
2. Applicant has challenged order dated 13.09.2010 whereby his appeal has been rejected, order dated 17.05.2010 whereby penalty has been imposed on him and charge sheet dated 13.03.2008.
3. It is submitted by the counsel for the applicant that vide memorandum dated 13.03.2008, following allegations were levelled against the applicant:

“Sh. Ram Dass was posted as Assistant (now Asstt. Director) in Co-operative Group Housing Society Section of DDA, INA, Vikas Sadan, New Delhi from October 1997 to May 2001. As Dealing Asstt., he dealt with the files of Co-operative Group Housing Societies of Delhi for allotment of land to these societies. He issued an offer-cum-allotment of land to these societies. He issued an offer-cum-allotment letter No.F.7(14)95/GH/DDA/764 dt. 31.3.95 to Maharani Avanti Bai CGHS Ltd. This letter was wrongly addressed to F-61, Laxmi Nagar, Delhi and as such returned undelivered. Thereafter, the letter was sent through Spl. Messenger, who also confirmed about the non-existence of the said address. In the meantime, society came into the hands of unauthorized persons who managed to submit forged and fictitious letters to DDA requesting therein for re-issue of the allotment letter. Sh. Ram Das dealt with these letters and put up a note which was in turn forwarded by Commissioner Housing to Chairman, who ordered for issue of the fresh offer-cum-allotment letter to the society. On the basis of forged and fictitious communication, fresh offer cum allotment letter dt. 21.9.98 was prepared by Sh. Ram Das after getting signed by Sh. Sanjeev Ahuja, Dy. Dir., the same was handed over to the unauthorized representative who forged the signatures of Sh. Bhupender Kumar.

By his above act, Sh. Ram Das, Dealing Asstt. (now Asstt. Director) failed to maintain absolute integrity and as a result, the DDA allotted the land to the society having unauthorized members/officer bearers. Sh. Ram Das by these acts of omission and commission contravened the provisions of Regulation 4.1 (i), (ii) and (iii) of DDA Conduct, Disciplinary and Appeal Regulations, 1999.”

He denied those charges whereupon enquiry was held. Inquiry Officer gave his findings by observing as follows:

“Annex. I of Memo reveals that the period of posting of C.O. Shri Ram Dass was from October, 1997 to May, 2001 dealt with the files of Co-op. G.H. Society of Delhi for allotment of land as also accepted in his brief submitted by CO vide diary No.125 dt. 28.11.2008 in this office.

Part of Annex. II i.e. statement of imputation of misconduct or misbehaviour in support of Article of charges framed against the CO that the C.O. issued an offer-

cum-allotment letter No. F.7(14)95/GH/DDA/764 dt. 31.3.95 to Maharani Avanti Bai CGHS Ltd. Annex.II. This statement of imputation of misconduct or misbehaviour further states the above stated offer-cum-allotment letter was wrongly addressed to F-61, Laxmi Nagar, Delhi and as such returned undelivered. The same as is stated in Annex.II was sent through special messenger who also confirm about the non-existence of the said address.

All the above events happened before the joining of the C.O. and as such this part of the imputation of misconduct or misbehaviour of charges framed against Shri Ram Dass does not hold good.”

and again,

“Regarding handing over of allotment-cum-offer letter, prosecution could not establish that the same was handed over to the unauthorized representative who forged the signature of Sh. Bhupinder Kumar through the exhibit D-4 where the duties of each official has been mentioned.”

However, on the basis of exhibit D-5 dated 10.10.2000, the charges were finally held to be partly proved.

4. The Disciplinary Authority purported to have issued disagreement note on 09.03.2010 (page 42) but this was in fact not the disagreement note inasmuch as Disciplinary Authority did not give his tentative reasons for disagreement but had already made up his mind by observing that the charges stand proved against the applicant. Thus the show cause notice/disagreement note itself is liable to be quashed as per the law laid down by Hon'ble Supreme Court and in the cases of Punjab National Bank and Others Vs. Kunj Bihari Mishra reported in 1998 (7) SCC 84 and Yoginath D. Bagde Vs. State of Maharashtra and Anr. Reported in JT 1999 (6) SC 62.

5. He further submitted that issuance of disagreement note is also violative of Regulation 26 (2) of DDA Conduct, Disciplinary and Appeal Regulations, 1999 inasmuch as, according to the regulations, it is required that before issuing a disagreement note, disciplinary authority should have referred the findings of the

Inquiry Officer to the delinquent, asked for his representation and then issued disagreement note. According to the counsel for the applicant, this issue has already been decided by the Tribunal in the cases of I.J. Gupta Vs. DDA and Ors. and L.D. Sharma Vs. DDA and Ors.

6. Counsel for the respondents fairly stated that the legal position as stated by the counsel for the applicant is correct inasmuch as both the issues have already been decided in favour of the delinquent either by the Tribunal or the Hon'ble Supreme Court but he prayed that liberty may be given to the authorities to start proceedings from the stage where irregularity is pointed out.

7. We have heard both the counsel and perused the pleadings also.

8. In Yoginath D. Bagde Vs. State of Maharashtra and Anr. Reported in JT 1999 (6) SC 62, it has been held by the Hon'ble Supreme Court as follows:

“29. We have already extracted Rule 9(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 which enables the Disciplinary Authority to disagree with the findings of the Inquiring Authority on any article of charge. The only requirement is that it shall record its reasoning for such disagreement. The Rule does not specifically provide that before recording its own findings, the Disciplinary Authority will give an opportunity of hearing to a delinquent officer. But the requirement of "hearing" in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before Disciplinary Authority finally disagrees with the findings of the Inquiring Authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the Inquiring Authority do not suffer from any error and that there was no occasion to take a different view. The Disciplinary Authority, at the same time, has to communicate to the delinquent officer the "TENTATIVE" reasons for disagreeing with the findings of the Inquiring Authority so that the delinquent officer may further indicate that the reasons on the basis of which the Disciplinary Authority proposes to disagree with the findings recorded by the Inquiring Authority are not germane and the finding of "not guilty" already recorded by the Inquiring Authority was not liable to be interfered with.

30. Recently, a three-Judge Bench of this Court in Punjab National Bank v. Kunj Behari Mishra (1998) 7 SCC 84 : AIR 1998 SC 2713 : (1998 AIR SCW 2762 : 1998 Lab IC 3012 : 1998 All LJ 2009), relying upon the earlier decisions of this Court in State of Assam v. Bimal Kumar Pandit (1964) 2 SCR 1 : AIR 1963 SC 1612; Institute of Chartered Accountants of India v. L. K. Ratna (1986) 4 SCC 537 : (AIR 1987 SC 71) as also the Constitution Bench decision in Managing Director, ECIL, Hyderabad v. B. Karunakar (1993) 4 SCC 727 : (1994 AIR SCW 1050 : AIR 1994 SC 1074 : 1994 Lab IC 762) and the decision in Ram Kishan v. Union of India (1995) 6 SCC 157 : (1995 AIR SCW 4027 : AIR 1996 SC 255), has held that (AIR 1998 SC 2713 : 1998 AIR SCW 2762 : 1998 Lab IC 3012 : 1998 All LJ 2009, para 17) :

"It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority."

9. From above, two things are clear that in case disciplinary authority disagrees with the findings of I.O., the disciplinary authority is required to give tentative reasons for disagreement whereas in the instant case, disagreement note dated 09.03.2010 reads as under:

"Shri J.D. Pahuja, C.E. (Retd.) I.O. was appointed as Inquiry Officer to enquire into the charges framed against Sh. Ram Dass, A.D. vide order No.198/Vig. Dt.

5.5.2008 and he has submitted his report vide letter dt. 14.5.2009 and held the charges as partly proved.

The undersigned being the disciplinary authority is not in agreement with the findings of I.O. on the grounds that findings of the I.O. on charges regarding acceptance of allotment money from those whose names did not figure in the freeze list, are accepted. Charges regarding failure to verify the genuineness of the person receiving the allotment letter have not been investigated properly. Since there was difference in signature of the person receiving the allotment letter with the signature of Sh. Bhupender Kumar, Secy. of the Society, the charges stands proved against Sh. Ram Dass, Asstt. Director”.

10. Perusal of above shows it was not the tentative view but final was already expressed by the disciplinary authority, therefore, the disagreement note is liable to be quashed on this ground alone.

11. Similar view has been taken by this Tribunal in the case of I.J. Gupta Vs. DDA and Ors. decided on 09.01.2008 in TA 94/2007.

12. In view of above, neither the disagreement note nor the resultant orders passed by the disciplinary authority as well as appellate authority are sustainable in law. Even otherwise, it is seen that the orders passed by the disciplinary authority as well as appellate authority are absolutely non-speaking order as none of the grounds taken by the applicant have been considered or discussed with, they are thus liable to be quashed on this ground also. Accordingly, the disagreement note, the orders passed by the disciplinary and appellate authority, dated 17.05.2010 and 13.09.2010, are quashed and set aside. The case is remitted back to the disciplinary authority with a direction to start the proceedings from the stage of Regulation 26 (1) (a) and then pass appropriate orders after following the due process of law within a period of three months from the date of receipt of a copy of this order under intimation to the applicant.

13. OA stands disposed of with the above directions. No order as to costs.