

**Ram Karan Pathak Vs. Delhi Development Authority Through Its Vice-chairman, New Delhi**

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**Court :** Central Administrative Tribunal CAT Delhi

**Decided On :** Sep-30-2011

**Judge :** The Honourable Mrs. Meera Chhibber, Judicial Member & the Honourable Dr. a.K. Mishra, Administrative Member

**Appeal No. :** OA-1499 of 2010

**Appellant :** Ram Karan Pathak

**Respondent :** Delhi Development Authority Through Its Vice-chairman, New Delhi

**Advocate for Pet/Ap. :** For the Applicant: G.K. Srivastava, Advocate. For the Respondent: Ms. Alka Sharma, Advocate.

**Judgement :**

Dr. A.K. Mishra, Member (A)

1. The prayer of the applicant in the present O.A. is to set aside the order dated 21.07.2009 passed by the Appellate Authority (AA) by which the penalty of "removal from service" imposed on him by order dated 03.06.2008 of the Disciplinary Authority (DA) was upheld.

2. A major penalty charge sheet was issued against the applicant on 15.07.2002 on the allegation that while working as Reader to the Estate Officer, he demanded

and accepted Rs. 5000/- as bribe money from one complainant Mr. Vijay Kumar Diwan ostensibly for reducing demurrage charges on unauthorized encroachment made in front of his house at Kalkaji. He was caught red handed by officers of Anti Corruption Bureau and arrested in connection with FIR No.2/2001 u/s 7/13 Prevention of Corruption Act. A criminal case which was started against him ended in conviction on 31.01.2008. His criminal appeal No. 155/2008 before the Hon'ble High Court of Delhi has been admitted and the sentence imposed on him has been suspended. In the disciplinary proceeding, Inquiry Officer (IO) found him guilty of the charge. The Commissioner (Pers.)/DDA forwarded a copy of the inquiry report and asked the applicant to make his representation against the findings in the inquiry report. He submitted his reply on 18.01.2008. The Disciplinary Authority in his order dated 03.06.2008 concurred with the findings of IO that the charge was serious in nature and proved against the applicant. Accordingly, he imposed the penalty of removal from service on the applicant. The applicant appealed against this order to the Lt. Governor of Delhi, who by his appellate order communicated with the letter No.5958 dated 21.07.2009 rejected it after discussing the grounds taken in the appeal.

3. At the time of hearing, learned counsel for the applicant highlighted two grounds: (1) that there is no evidence suggesting that the applicant had demanded the bribe amount; (2) that he being an employee in the rank of LDC could not have granted any favour to the complainant in the matter of reduction of demurrage charges. In this connection, he brought to our notice the observation in the judgment of the Special Judge before whom the applicant stood criminal trial in the complaint case No. 2/2001 u/s 7/13 of Prevention of Corruption Act, 1988 to the effect that it was Estate Officer who had the authority to levy damages in respect of construction on government land not the applicant. He placed reliance on the judgment/order of the Hon'ble Supreme Court in the case S.V. Kameswar Rao and Another Vs. State (A.C.B. Police, Karnool District, andhra Pradesh, 1991 Supp (1) SCC 377 in which in a case of similar nature it was held that when there was no acceptable evidence about the demand of the bribe, the finding of the High Court that the prosecution had established the charge of demand and acceptance of bribe against the accused was not sustainable. We find that the facts of the present case are distinguishable. In the case before Hon'ble Supreme Court the

charge was that the accused had instructed his subordinate employee to collect regular bribe amount (mamool) from the peasants of the village for permitting their goats to graze in the forest area. The accused had taken the plea that the amount received from the subordinate employee was towards satisfaction of personal loan taken by that employee. In that case none of the villagers gave any evidence that they were paying monthly amounts to the accused through his subordinate.

3.1 In the present case the plea of the learned counsel for the applicant is just the opposite. It is argued that the bribe amount which was recovered from the person of the applicant was meant for the Estate Officer. In other words, the bribe amount has been recovered from the subordinate officer, not the principle recipient which was the position in the case S.V. Kameswar Rao (supra).

3.2 The plea about the applicant not having the authority has been dealt with by the IO in the following manner:-

“xxxxxxxx He was the reder of the Estate Officer and that capacity he was to calculate the amount of damages to be recovered from Shri Diwan. It was in lieu of these charges that the bribe was demanded from Shri Diwan. Almost all person involved in illegal constructions would prefer to pay the minimum damages. Therefore, the affected person will always plead for the less amount, which leads to the scope for bribe. The charged officialas such, may not have the power to finally approve the damages, but he definitely has capacity to play with the figures and thereby increase or decrease the amount. Hence, his arguments that he could not assess the damages at his level, is not convincing and offers him no reprieve.”

3.3 After discussion of the evidence and the defence plea, the IO came to the following conclusion:-

“Lastly, the charged official has stated that he had not demanded bribe from Sh. Diwan and sh. Arvind Kumar (PW-3) has also stated in his evidence that bribe was not asked in his presence. It is a fact that this Panch witness has deposed like that. But at the same time the witness has said that Sh. Pathak took the amount of rs.5000/- from Sh. Diwan and put it in his pant pocket. The charged official has also admitted that the money was found in his pocket. From this, it can be

reasonably and logically inferred that the complainant had given the bribe amount only if the same had been demanded from him. Otherwise, Sh. Diwan would not have dared to offer it. The very fact that Sh. Pathak took it as confirmed from evidence in the inquiry manifestly shows that he must have demanded the bribe as mentioned in the written complaint of Sh. Diwan. If Sh. Pathak had a clear conscience as he has pleaded now, he could have refused to take the money from Sh. Diwan. But the proven fact is that money was found in the pocket of his pant when the ACB officials caught him red-handed.

Thus, almost all the arguments given by the charged official in the defence have been found hollow with no substance in them. On the other hand, the case put up by the prosecution has been found to contain a lot of force to carry conviction about the correctness of the charge. He has himself accepted that the money was found in his pocket and the numbers and details of the currency notes recovered from him tallied with the number and details mentioned in the seizer memo recorded earlier. In the circumstances, the only conclusion which can be derived from the oral as well as documentary evidence is that the charge brought against Sh. Pathak is correct.”

4. Although the learned counsel for the applicant did not highlight the ground taken in the application that the Commissioner (Pers.) who had issued the charge sheet and the orders relating to appointment of IO/Prosecuting Officer and the letter forwarding the copy of the inquiry report was not the competent authority we may advert to it in passing. Learned counsel for the respondents produced the schedule of powers as given in the DDA (Conduct and Appeal) Regulation, 1999. It says that for a post carrying a maximum pay of over Rs. 4000/- but less than Rs. 9000/- the Commercial (Pers.) was the DA in respect of all penalties. Therefore, there was no irregularity in issue of the charge sheet or in the orders appointing the IO and communicating the findings of the IO.

4.1 Strangely enough the applicant had taken the opposite ground in the appeal filed before the Lt. Governor. His ground was that the DA in his case was the Commr. (Pers.) not the Vice-Chairman, DDA and as such he challenged the penalty imposed by the Vice-Chairman/DDA as illegal. This ground has been dealt

with in the Appellate order by stating that the Vice-Chairman being the Appointing Authority, there was no infirmity in the penalty order of removal from service imposed by him. The AA has also dealt with the other ground taken by the applicant that the DA could not have imposed the penalty of removal in view of the pendency of the criminal appeal against his conviction in the criminal case before Hon'ble High Court. The AA has correctly held that disciplinary proceedings have been issued under relevant Regulations of the DDA and have nothing to do with the criminal culpability of the applicant. His misconduct was taken into consideration and after giving him reasonable opportunity the DA has come to a finding that the charge of misconduct had been proved against him.

8. We also find that the applicant has not specifically impugned the order of the DA. For reasons best known to him, he has limited his prayer to quash the Appellate order only. In view of the aforesaid discussions, we do not find any infirmity in the appellate order which would justify any interference. In the result, the O.A. fails; hence dismissed. No costs.

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