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Court : Central Administrative Tribunal CAT Delhi

Decided On : Sep-30-2011

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

Appeal No. : OA-2747 of 2010

Appellant : Ajay Shrotiya

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

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

Judgement :

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

1. The applicant, who was proceeded against by his Disciplinary Authority (DA) on the allegations that during his tenure as Junior Engineer (Civil) in the Building Department/West Zone/MCD where he was working on deputation from Delhi Development Authority (DDA), he did not take action to book unauthorized construction u/s 343/344, initiate action for sealing the property under Section 345-A or for further prosecution u/s 332/461/complaint u/s 466-A of DMC Act. He has

challenged the penalty order dated 17.02.2009 of the DA and the order dated 16.11.2006 of the AA and the Memorandum dated 16.11.2006 with a prayer to set aside these orders and issue a direction to the respondents to give him all consequential benefits.

2. The applicant was working as Junior Engineer (Civil) in the Building Department/West Zone/MCD on deputation from DDA and was in-charge of Ward No. 45 from 06.05.2002 to 09.11.2002. Following the direction of the Hon'ble High court of Delhi to take stringent action against unauthorized constructions, the Vigilance Department of the MCD reviewed the position and noticed that the applicant had permitted unauthorized constructions in a few cases in the area under his charge. On that basis a major penalty charge sheet was issued to him on 16.11.2006. On denial of charges, an inquiry was conducted and the Inquiry Officer (IO) held that Charges No. 1 and 4 were proved, Charge No. 5 was proved in respect of six properties out of seven and Charges No. 2 and 3 were not proved. The DA accepted the finding of the IO but held that Superintending Engineer was responsible for disconnection of water supply and electricity, the allegation included in Article 5 of the charge. In other words, it was held that being in-charge of the area he was required to inspect the buildings at the initial stage of construction and check deviation and there was delay in initiating action on the part of the applicant. Accordingly, he imposed the following penalty:-

"..imposes the penalty of reduction of pay by 3% of basic pay plus grade pay (one increment) in the time scale of pay on Sh. Ajay Shrotriya, JE. He will not earn the increment of his pay during the period of reduction. After expiry of penalty period the reduction will have the effect of postponing his future increments of pay."

3. The applicant made a detailed appeal indicating the action he had taken in respect of all the properties where unauthorized constructions were noticed. But the AA in a non-speaking order felt that there were lapses on the part of the applicant and therefore there was no reason for him to interfere with the orders of the DA; hence this O.A.

4. At the time of hearing, learned counsel for the applicant submits that the unauthorized construction relate to erection of antenna towers by Cell Phone

Companies at 7 places. These were not new constructions but installations at old occupied buildings. He drew our attention to the note of the Executive Engineer dated 06.06.2002 in which a reference was made about the Resolution of the Corporation for grant permission to erect mobile phone towers/antenas in MCD areas after deposit of one-time fee. The Executive Engineer pointed out in the note that in some cases the building owners had not taken permission nor had deposited the one-time fee. He, therefore, sought permission to book unauthorized erection of these towers under the DMC Act. The permission was granted by the competent authority, namely, Dy. Commissioner, West Zone on 06.06.12002. Immediately thereafter the applicant booked cases of unauthorized construction in respect of six buildings on 07.06.2002 and for one building on 26.07.2002. It is argued that since there was a policy Resolution to permit erection of such towers on receipt of required fees, the Executive Engineer under whom the applicant worked had sought for specific permission. On getting such permission, the applicant moved promptly for booking of cases against the building owners. Not only that he issued show cause notices on 07.06.2002 but also demolition notices on 14.06.2002. Although demolition orders were passed on 22.06.2002, no programme was fixed by Executive Engineer (Building). Further, the applicant also initiated sealing action and sealing orders were passed by Dy. Commissioner whereas MCD on 20.06.2002. It is pointed out that all these facts were brought out in detail in the appeal petition (Annexure A-8). But the AA without discussing these issues rejected the appeal by a non-speaking order. Learned counsel further points out that the MCD has subsequently regularized the unauthorized construction after collecting the required fees. This would show that the respondents themselves were not serious about demolition of these constructions. Therefore, the charges levelled against the applicant were not bona fide. There would have been some case if the respondents would have taken the matter to its logical conclusion and demolished the so called unauthorized constructions. In the absence of any such action on their part, the charge sheet issued against the applicant itself was misconceived.

5. Learned counsel for the respondents submits that it was the duty of the applicant to inspect all the sites of construction coming within the area of his jurisdiction and initiate action under relevant provisions of the DMC Act against

building owners guilty of unauthorized construction. The applicant has been charge sheeted for negligence in initiating such action. It has been established during the inquiry that there was delay on the part of the applicant and the specific Articles 1 and 2 of the charge brought against him have been proved. However, he conceded that the defence grounds taken by the applicant in the appeal petition have not been discussed by the AA.

6. In view of patent non-application of mind of the AA, it is not possible to sustain its order, which is accordingly set aside. The matter is remitted to the AA to pass a speaking order according to rules after taking into consideration the defence pleas set up in the appeal petition as well as those noticed in our order within a period of two months from the date of receipt of a copy of this order. The O.A. is accordingly disposed of. No costs.

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