

(2013) 02 DEL CK 0227

In the Delhi High Court

Case No : WP (C) 5544 of 2011 and WP (C) 4223 of 2012

MCD

APPELLANT

Vs

Dr. Ved Prakash Kanoji and Another
 Dr. Jairaj Singh
Sagar Vs MCD Thru" Commissioner

RESPONDENT

Date of Decision : 25-02-2013

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 2, 200(d), 3, 41, 42

Citation : (2014) 209 DLT 657

Hon'ble Judges : Veena Birbal, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Yatendra Sharma in WP C 5544/2011 and Mr. Rajshekhar Rao in WP C 4223/2012, for the Appellant; P.S. Bindra and Ms. Shweta Priyadarshini, Advocates for R-1., Mr. Rajshekhar Rao and Mr. Anand K. Mishra, Advocates for R-2 in WP (C) 5544/2011 and Mr. Anubhav Mehrotra, Advocate in WP (C) 4223/2012, for the Respondent

Judgement

Pradeep Nandrajog, J.—In the year 2001 Dr. Ved Prakash Kanoji and Dr. Jai Raj Singh Sagar were working on the posts of Deputy Health Officer and Resident Medical Superintendent respectively in the Municipal Corporation of Delhi. In the same year i.e. 2001, irregularities were detected in the purchase of medicines and food items by the Health Department of MCD. A "P.E." was registered by CBI and upon investigation it was opined by CBI that it could not gather any evidence which could sustain a charge of conspiracy but since facts surfaced which prima facie justified a departmental action recommendation made by CBI was to proceed departmentally against Dr. Ved Prakash and Dr. Jai Raj; concurrence to which opinion was accorded by the Central Vigilance Commission.

2. Without finding out whether he i.e. the Commissioner of the Corporation was the Competent Authority of the two officers or whether it was the Corporation, the Commissioner MCD put up a proposal before the Corporation; which was obviously on the assumption that the disciplinary authority was the Corporation, to initiate departmental action against the two officers which proposal was

rejected by the Corporation by a resolution passed on March 10, 2003. The matter was referred back to the Central Vigilance Commission which reiterated its opinion and once again the Commissioner MCD, making a reference to the advise rendered by the Central Vigilance Commission, referred the matter to the Corporation to initiate disciplinary action against the two officers and once again vide Resolution dated December 02, 2004 the Corporation rejected the proposal.

3. Upon the assumption that the Corporation was the Competent Authority and thus the Lt. Governor, Delhi would be the Revisional/Reviewing Authority, the Commissioner placed the matter before the Lt. Governor, Delhi who, vide order dated December 12, 2004 advised the Corporation to initiate departmental action against the two officers. Based thereon the Commissioner placed the matter once again before the Corporation which resolved on February 21, 2005 not to initiate any departmental action; and once again the Commissioner placed the matter before the Lt. Governor, Delhi who, this time ordered that a departmental action be initiated against the two officers resulting in the Commissioner once again placing the matter before the Corporation. As before, vide Resolution dated October 24, 2005, for the fourth time, the Corporation reiterated not to initiate any action against the two officers.

4. On June 21, 2006 the Commissioner MCD once again put up the matter before the Corporation for initiating departmental proceedings against Dr. Ved Prakash and Dr. Jairaj, and while doing so he pointed out in the proposal as under:-

CVC in agreement with the CBI recommendations also advised for initiation of major penalty proceedings against them vide OM No. 99-MCD-17 dated 27.3.2001.

The allegations pointed out by the CBI against the aforementioned officers are inter alia that medicines far in excess of the total allocated budget were purchased without requirement. Bulk of the purchased medicines was made from a particular firm i.e. M/s. Aimil Pharmaceuticals. Milk, vegetables and fruits for patients were purchased by Chowkidars of the hospital and bills were submitted in fictitious names etc.

Accordingly, the charge sheets in respect of Shri Jai Prakash Sharma, Store Keeper, Shri V.K. Sachdeva, UDC and Shri Surinder Singh, UDC have since been issued under the orders of Addl. Commissioner (Health), the Disciplinary Authority. These three officials were placed under suspension vide office order No. 1/131/2002/CPC/DA-II/2002/S-404, 405 & 406 dated 21.2.2002. Under the orders of Addl. Commissioner (Health), all these three officials were reinstated w.e.f. 16.12.2002.

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In view of the above, the matter is resubmitted to the Corporation enroute through Appointments, Promotions, Disciplinary & Allied Matters Committee, for according approval for initiation of RDA for major penalty proceedings against Dr.

Ved Prakash Kanoji, DHO/ISM, Dr. Jai Raj Singh Sagar, RMS and Shri G.K. Malik, AO (Retd.) and also the statement of Charges and Statements of Allegations against all these three officials annexed thereto as Annexure "A" "B" & "C" respectively.

(Emphasis Supplied)

5. Aggrieved by the matter being placed before the Corporation for the fifth time by the Commissioner of the Corporation, Dr. Ved Prakash and Dr. Jai Raj challenged the same by filing a writ petition in this Court alleging mala fide against the Commissioner, which petition(s) were transferred to the Central Administrative Tribunal for decision.

6. Opposing the writ petition the Commissioner of the Corporation contended:-

(i) in terms of the provisions of Section 89 of the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as the "DMC Act") the Commissioner is the Disciplinary Authority keeping in view the posts held by Dr. Ved Prakash and Dr. Jai Raj and that under a misapprehension of law the Commissioner had been sending the proposal to initiate departmental action to the Corporation;

(ii) in terms of Section 95 of the DMC Act read with Regulation 16 of the Delhi Municipal Corporation Service (Control and Appeal) Regulations, 1959 (hereinafter referred to as the "Regulations"), the Lt. Governor of Delhi would be the Reviewing Authority if the posts held by Dr. Ved Prakash and Dr. Jai Raj are under the disciplinary control of the Corporation and since the Lt. Governor had directed the Corporation to reconsider the matter, he was justified in placing the matter once again before the Corporation; and

(iii) By virtue of Section 490A of the DMC Act the Lt. Governor of Delhi was empowered to exercise the power conferred upon the Central Government under the Act and Section 487 of the DMC Act his mandate was binding on the Commissioner as also the Corporation. Thus, the directions issued by the Lt. Governor had to be complied with by not only the Commissioner but even the Corporation.

7. The petition(s) filed by Dr. Ved Prakash and Dr. Jai Raj were allowed by the Tribunal by a common judgment dated January 25, 2010, and the reasoning of the Tribunal is:-

(i) if it was to be treated that the posts held by Dr. Ved Prakash and Dr. Jai Raj are under the disciplinary control of the Commissioner, MCD, the superior authority would then be the Corporation and once the superior authority has decided not to initiate disciplinary proceedings, the disciplinary authority would be bound;

(ii) the decision not to initiate departmental action against Dr. Ved Prakash and Dr. Jai Raj being taken by the highest body i.e. the Corporation, the Commissioner is bound to abide by the said decision;

(iii) Regulation 16 of the Regulations has no application in the instant case for the reason only the decisions which have been taken by the disciplinary and appellate authorities after completion of departmental action against a delinquent officer can be reviewed under Regulation 16;

(iv) the Lt. Governor had no power to review the decision of the Corporation to not initiate departmental action against Dr. Ved Prakash and Dr. Jai Raj because no provision in the statute empowers him to do so;

(v) the Lt. Governor cannot direct the Corporation to accord approval for initiation of departmental action against Ved Prakash and Jai Raj in exercise of power u/s 487 of the DMC Act for the reason Section 487 confers power upon the Lt. Governor to direct the Corporation to perform only such duties relating to municipal governance and providing civic amenities which are required to be performed by the Corporation under 41, 42 and 43 of the DMC Act; and

(vi) the Commissioner was not justified in placing the matter for the 5th time before the Corporation because the Corporation could not review its decision as no new material had emerged.

8. Thereafter Dr. Jai Raj Singh filed a miscellaneous application praying that consequential benefit of promotion be directed to be granted to him inasmuch as he was not being promoted due to the controversy whether or not departmental proceedings had to be initiated against him, which application was dismissed by the Tribunal vide order dated August 11, 2011. Review sought by Dr. Jai Raj was dismissed vide order dated December 08, 2011.

9. Aggrieved by the judgment dated January 25, 2010, the MCD has filed W.P.(C) No. 5544/2011. On the other hand, aggrieved by the orders dated August 11, 2011 and December 8, 2011 passed by the Tribunal, Dr. Jai Raj has filed W.P.(C) No. 4223/2012.

10. From the conspectus of facts noted above, it is evident that following 3 questions arise for consideration:-

(I) Who is the Disciplinary Authority of the post of Deputy Health Officer and the post of Senior Medical Superintendent i.e. the posts held by Dr. Ved Prakash and Dr. Jai Raj?

(II) If the disciplinary authority is the Corporation, whether the Lt. Governor could review the decision of the Corporation under Regulation 16 of the Regulations?

(III) Whether the Lt. Governor could order initiation of departmental action against Dr. Ved Prakash and Dr. Jai Raj in exercise of his powers under Sections 487 and 490A of the DMC Act?

11. Delhi Municipal Corporation Act, 1957 was enacted in the year 1957. It was amended from time to time and the amendment made in the year 1993 would be relevant by virtue whereof Section 509 was omitted and Sections 44, 59, 89, 92,

95 and 487 were amended. We shall be noting the said amendments at the relevant stage.

12. Section 2 of the DMC Act defines "Commissioner", "Corporation", "Member" and "Municipal Authority" as under:-

2. Definitions: - In this Act, unless the context otherwise requires, -

(6) "Commissioner" means the Commissioner of the Corporation;

(7) "Corporation" means the Municipal Corporation of Delhi established under this Act;

(27) "member" in relation to the Corporation means a councilor or an alderman thereof;

(28) "municipal authority" means any of the municipal authorities specified in section 44;

13. Section 3 refers to the establishment of the Corporation in the following words:-

3. Establishment of the Corporation:- (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be a Corporation charged with the municipal government of Delhi, to be known as the Municipal Corporation of Delhi.

(2) The Corporation shall be a body corporate with the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and may by the said name sue and be sued.

(3) The Corporation shall be composed of councilors and aldermen.

14. Section 41 enlists the general powers of the Corporation as under:-

41. General powers of the Corporation: -

(1) Subject to the provisions of this Act and rules, regulations and bye-laws made thereunder the municipal government of Delhi shall vest in the Corporation.

(2) Without prejudice to the generality of the provisions of sub-section (1), it shall be the duty of the Corporation to consider all periodical statements of the receipts and disbursements and all progress reports and pass such resolutions thereon as it thinks fit.

15. Sections 42 and 43 specify the obligatory and discretionary functions of the Corporation.

16. Section 54 deals with the appointment of the Commissioner, the relevant portion whereof reads as under:-

54. Appointment, etc., of the Commissioner: -

(1) The Central Government shall, by notification in the Official Gazette, appoint a suitable person as the Commissioner of the Corporation.

(2) The Commissioner so appointed shall hold office for a term of five years in the first instance:

Provided that his appointment may be renewed from time to time for a term not exceeding one year at time:

Provided further that where the Commissioner holds a lien on any service under the Government, the Central Government may at any time after reasonable notice to the Corporation replace his services at the disposal of that Government.

17. Section 59 lays down the functions of the Commissioner. It reads as under:-

59. Functions of the Commissioner: -

Save as otherwise provided in this Act, the entire executive power for the purpose of carrying out the provisions of this Act other than those pertaining to the Delhi Electric Supply Undertaking or the Delhi Transport Undertaking and of any other Act for the time being in force which confers any power or imposes any duty of the Corporation, shall vest in the Commissioner who shall also -

(a) exercise all the powers and perform all the duties specially conferred or imposed upon him by this Act or by any other law for the time being in force;

(b) prescribe the duties of, and exercise supervision and control over the acts and proceedings of, all municipal officers and such municipal employees other than the Municipal Secretary and the Municipal Chief Auditor and the municipal officers and other municipal employees immediately subordinate to them and subject to any regulation that may be made in his behalf, dispose of all questions relating to the service of the said officers and other employees and their pay, privileges, allowances and other conditions of service;

(c) on the occurrence or threatened occurrence of any sudden accident or any unforeseen event or natural calamity involving or likely to involve extensive damage to any property of the Corporation, or danger to human life, take such immediate action as he considers necessary and make a report forthwith to the Standing Committee and the Corporation of the action he has taken and the reasons for the same as also of the amount of cost, if any, incurred or likely to be incurred in consequence of such action, which is not covered by a budget-grant;

(d) exercise the powers and perform the duties conferred or imposed by or under this Act upon the General Manager (Electricity) or the General Manager (Transport) in his absence or on failure by him to exercise or perform the same.

18. Sections 89 and 92 make provisions regarding appointment of the employees of the MCD. Section 95 makes provision for levying punishment on the employees of MCD and reads as under:-

95. Punishment for municipal officers and other employees: -

(1) Every municipal officer or other municipal employee shall be liable to have his increments or promotion withheld or to be ensured, reduced in rank, compulsorily retired, removed or dismissed for any breach of any departmental regulations or of discipline or for carelessness, unfitness, neglect of duty or other misconduct by such authority as may be prescribed by regulations:

Provided that no such officer or other employee as aforesaid shall be reduced in rank, compulsorily retired, removed or dismissed by any authority subordinate to that by which he was appointed:

Provided further that the Corporation may by regulations provide that municipal employees belonging to such classes or categories as may be specified in the regulations shall be liable also to be fined by such authority as may be specified therein.

(2) No such officer or other employee shall be punished under sub-section (1) unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:

Provided that this sub-section shall not apply -

(a) where an officer or other employee is removed or dismissed on the ground of conduct which had led to his conviction on a criminal charge; or

(b) where the authority empowered to remove or dismiss such officer or other employee is satisfied that for some reason to be recorded by that authority, it is not reasonably practicable to give that person an opportunity of showing cause.

(3) If any question arises whether it is reasonably practicable to give to any officer or employee an opportunity of showing cause under sub-section (2), the decision thereon of the authority empowered to remove or dismiss such officer or other employee shall be final.

(4) An officer or other employee upon whom a punishment has been inflicted under this section may appeal to such officer or authority as may be prescribed by regulations.

(Emphasis Supplied)

19. Section 480 of the DMC Act reads as under:-

480. Supplemental provisions respecting regulations:-

(1) Any regulation which may be made by the Corporation under this Act, may be made by the Central Government within one year of the establishment of the Corporation; and any regulation so made may be altered or rescinded by the Corporation in the exercise of its powers under this Act.

(2) No regulation made by the Corporation under this Act shall have effect until it has been approved by the Central Government and published in the Official Gazette.

20. Section 509 dealt with the power of the Central Government to make first appointment in the Corporation. When in the Statute book, it read as under:-

509 Power of Central Government to make first appointments-

(1) Notwithstanding anything contained in section 60 or in section 89 or section 92, the first appointment to the post of the General Manager (Electricity) or the General Manager (Transport) or the first appointment to the post of any municipal officer or other municipal employee may be made by the Central Government so however that the term of any such appointment shall not in any case exceed three years:

Provided that the power under this sub-section shall not be exercised after the expiry of three years from the commencement of this Act.

21. In exercise of its power u/s 98 of the DMC Act, the Central Government framed Delhi Municipal Corporation Service (Control and Appeal) Regulations, 1959. Clause (b) and (c) of said Regulation 2 defines "Appointing Authority" and "Disciplinary Authority" respectively as under:-

(b) "Appointing Authority" in relation to a municipal officer or other municipal employee means the authority empowered by or under the Act to make appointments to the post which such officer or employee for the time being holds;

(c) "Disciplinary Authority" in relation to the imposition of a penalty on a municipal officer or other municipal employee means the authority competent under these regulations to impose on him that penalty;

22. Regulation 6 prescribes the nature of penalties which may be imposed upon a delinquent officer and reads as under:-

6. The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a municipal officer or other employee, namely:-

Minor Penalties:

(i) Censure.

(ii) Withholding of increments or promotion.

(iii) Recovery of the whole or part of any pecuniary loss caused to the Corporation by negligence or mis-conduct.

Major Penalties:

(iv) Reduction in rank including reduction to a lower post, or to a lower time scale of to a lower stage in a time-scale.

(v) Compulsory Retirement.

(vi) Removal from service which shall not be a disqualification for future employment.

(vii) Dismissal from service which shall ordinarily be a disqualification for future employment.

Explanation: - The following shall not amount to a penalty within the meaning of this regulation.

(a) reversion to his permanent post of a municipal officer or other municipal employee appointed on probation to another post during or at the end of the period of probation in accordance with the terms of his appointment or the rules and orders governing probation;

(b) replacement of the services of a municipal officer or other municipal employee whose services have been borrowed from the Central Government or a State Government or any local or statutory authority, at the disposal of the authority which had lent his services;

(c) compulsory retirement of a municipal officer or other municipal employee in accordance with the provisions relating to his superannuation or retirement; and

(d) termination of the services:-

of a municipal officer or other municipal employee appointed on probation, during or at the end of the period of probation, in accordance with the terms of his appointment or the rules and orders governing probation; or

of a temporary municipal officer or other municipal employee in accordance with rule 5 of the Central Civil Services (Temporary Services) Rules, 1949, as applied to such officers or employees; or

of a municipal officer or other municipal employee employed under an agreement, in accordance with the terms of such agreement.

23. Being relevant we note Regulations 7 and 16 which read as under:-

7. The authority specified in column 1 of the schedule may impose on any of the municipal officers or other municipal employees specified there against in column 2 thereof any of the penalties specified there against in columns 3 thereof. Any such officer or employee may appeal against the order imposing upon him any of those penalties to the authority specified in column 4 of the said schedule.

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16. Notwithstanding any other contained these regulations:-

(1) The Commissioner, in case the order proposed to be reviewed has been made by the Dy. Commissioner or other officer subordinate to him;

the Corporation in case the order proposed to be reviewed has been made by the Standing Committee;

the Central Govt. in case the order proposed to be reviewed has been made by the Corporation;

"may at any time, either on his or its own motion or otherwise call for the record of proceedings/enquiry and review any order made under these regulations from which an appeal is allowed but from which no appeal has been preferred or from which no appeal is allowed and may:-

confirm, modify or set-aside the order, or

confirm, reduce, enhance or set-aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed;

or remit the case to the authority which made the order or to any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or

pass such orders as it may deem fit.

Provided that no order imposing or enhancing any penalty shall be made by the reviewing authority unless the municipal officer or the municipal employee has been given reasonable opportunity of making a representation against the proposed penalty and if it be proposed to impose any penalty specified in clauses (iv) to (vii) of regulation 6 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an enquiry in the manner laid down in regulation 8 and after giving a reasonable opportunity to the municipal officer or municipal employee concerned of showing cause against the penalty proposed on the evidence adduced during the enquiry.

(2) No proceedings for review shall be commenced until after:-

(i) the expiry of the period of limitation for an appeal, or

(ii) the disposal of the appeal where such appeal has been preferred.

(3) An application for review shall be dealt within the same manner as if it were on appeal under these regulation.

(Emphasis Supplied)

24. Regulation 7 makes a reference to the Schedule. It reads as under:-

25. In the year 1993 the Delhi Municipal Corporation (Amendment) Act, 1993 (hereinafter referred to as the "DMC (Amendment) Act") was enacted to amend the Delhi Municipal Corporation Act, 1957.

26. By virtue of the Amendment Act, Section 509 was omitted from the DMC Act and simultaneously Sections 44, 59, 89, 92, 95 and 487 of the DMC Act were amended, and as amended the said Sections read as under:-

44. Enumeration of Municipal Authorities: -

For the efficient performance of its functions, there shall be the following municipal authorities under the Corporation, namely:-

- (a) the Standing Committee;
- (b) the Wards Committee; and
- (c) the Commissioner.

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59. Functions of the Commissioner: -

Save as otherwise provided in this Act, the entire executive power for the purpose of carrying out the provisions of this Act and of any other Act for the time being in force which confers any power or imposes any duty of the Corporation, shall vest in the Commissioner who shall also -

- (a) exercise all the powers and perform all the duties specially conferred or imposed upon him by this Act or by any other law for the time being in force;
- (b) prescribe the duties of, and exercise supervision and control over the acts and proceedings of, all municipal officers and such municipal employees other than the Municipal Secretary and the Municipal Chief Auditor and the municipal officers and other municipal employees immediately subordinate to them and subject to any regulation that may be made in his behalf, dispose of all questions relating to the service of the said officers and other employees and their pay, privileges, allowances and other conditions of service;
- (c) on the occurrence or threatened occurrence of any sudden accident or any unforeseen event or natural calamity involving or likely to involve extensive damage to any property of the Corporation, or danger to human life, take such immediate action as he considers necessary and make a report forthwith to the Standing Committee and the Corporation of the action he has taken and the reasons for the same as also of the amount of cost, if any, incurred or likely to be incurred in consequence of such action, which is not covered by a budget-grant;
- (d) subject to any regulation that may be made in this behalf, the Commissioner shall be the disciplinary authority in relation to all municipal officers and other municipal employees.

(Emphasis Supplied)

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89. Appointment of certain officers:-

(1) The Corporation shall appoint suitable persons to be respectively the Municipal Engineer, the Municipal Health Officer, the Education Officer, the Municipal Chief Accountant, the Municipal Secretary and the Municipal Chief Auditor and may appoint one or more Deputy Commissioners and such other officer or officers of a status equivalent to or higher than the status of any of the officers specified earlier in this sub-section as the Corporation may deem fit on such monthly salaries and such allowances, if any, as may be fixed by the

Corporation.

(2) The appointment of the Municipal Chief Auditor shall be made with the previous approval of the Government and every other appointment referred to in sub-section (1) except that of the Municipal Chief Accountant and the Municipal Secretary shall be subject to confirmation by that Government:

Provided that the Municipal Chief Auditor shall not be eligible for any other office under the Corporation after he has ceased to hold his office.

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92. Power to make appointments: - 1) Subject to the provisions of section 89, the power of the appointing municipal officers and other municipal officers and other municipal employees whether temporary or permanent shall vest in the Commissioner:

Provided that the power of appointing officers and other employees immediately subordinate to the Municipal Secretary or the Municipal Chief Auditor to category B posts or category C posts shall vest in the Standing Committee:

Provided further that the Standing Committee may delegate to the Municipal Secretary or the Municipal Chief Auditor the power of appointing officers and other employees immediately subordinate to the said Secretary or Auditor, to category C posts.

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95. Punishment for municipal officers and other employees: -

(1) Every municipal officer or other municipal employee shall be liable to have his increments or promotion withheld or to be ensured, reduced in rank, compulsorily retired, removed or dismissed for any breach of any departmental regulations or of discipline or for carelessness, unfitness, neglect of duty or other misconduct by such authority as may be prescribed by regulations:

Provided that no such officer or other employee as aforesaid shall be reduced in rank, compulsorily retired, removed or dismissed by any authority subordinate to that by which he was appointed:

Provided further that the Corporation may by regulations provide that municipal employees belonging to such classes or categories as may be specified in the regulations shall be liable also to be fined by such authority as may be specified therein.

(2) No such officer or other employee shall be punished under sub-section (1)

unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:

Provided that this sub-section shall not apply -

(a) where an officer or other employee is removed or dismissed on the ground of conduct which had led to his conviction on a criminal charge; or

(b) where the authority empowered to remove or dismiss such officer or other employee is satisfied that for some reason to be recorded by that authority, it is not reasonably practicable to give that person an opportunity of showing cause.

(3) If any question arises whether it is reasonably practicable to give to any officer or employee an opportunity of showing cause under sub-section (2), the decision thereon of the authority empowered to remove or dismiss such officer or other employee shall be final.

(4) An officer or other employee upon whom a punishment has been inflicted under this section may appeal to such officer or authority as may be prescribed by regulations. Provided that in the case of an officer or other employee appointed by the Commissioner an appeal shall lie to the Administrator.

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487. Directions by the Central Government:-

(1) If, whether on receipt of a report or on receipt of any information or report obtained u/s 485 or section 486 or otherwise, the Central Government is of opinion -

(a) that any duty imposed on the Corporation or any municipal authority by or under this Act has not been performed or has been performed in an imperfect, insufficient or unsuitable manner, or

(b) that adequate financial provision has not been made for the performance of any such duty,

it may direct the Corporation or the municipal authority concerned, within such period as it thinks fit, to make arrangements to its satisfaction for the proper performance of the duty, or, as the case may be, to make financial provision to its satisfaction for the performance of the duty and the Corporation or the municipal authority concerned shall comply with such direction:

Provided that, unless in the opinion of the Central Government the immediate execution of each order is necessary, it shall before making any direction under this section give the Corporation or the municipal authority concerned an opportunity of showing cause why such direction should not be made.

(Emphasis Supplied)

27. Relevant portion of Section 490 of the DMC Act, as amended by the DMC

(Amendment) Act reads as under:-

490. Supersession of the Corporation: -

(1) If, in the opinion of the Central Government, the Corporation persistently makes default in the performance of the duties imposed on it by or under this Act or exceeds or abuses its powers, the Central Government may by an order published, together with a statement of reasons thereof, in the Official Gazette, dissolve the Corporation:

Provided that the Corporation shall be given a reasonable opportunity of being heard before its dissolution.

28. Section 490A was inserted in the DMC Act by the Amendment Act and the same reads as under:-

490A. Delegation of power by the Central Government: - The Central Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act shall, subject to such conditions, if any, as may be specified in the notification be exercisable by the Government or any of its officers or by the Commissioner or any other authority.

29. We deal with the first question: Who is the Disciplinary Authority of the posts held by Dr. Ved Prakash and Dr. Jai Prakash? The Commissioner or the Corporation?

30. As already noted hereinabove, the Delhi Municipal Act, 1957 was enacted in the year 1957. In exercise of its power u/s 98 of the DMC Act, the Central Government framed Delhi Municipal Corporation Service (Control and Appeal) Regulations, 1959. A cumulative reading of Section 95 of the DMC Act and Regulation 7 of the Regulations brings out that the Disciplinary Authority of a particular post has to be determined with reference to the Schedule appended to Regulation 7 of the Regulations, which Schedule prescribes different Disciplinary Authorities for different categories of posts.

31. Then came the year 1993 when the DMC Act, 1957 was amended. By virtue of the amendments made clause (d) of Section 59 of the DMC Act, 1957 was amended to provide: "subject to any regulation that may be made in this behalf, the Commissioner shall be the disciplinary authority in relation to all municipal officers and other municipal employees." However, correspondingly no change was effected in Section 95, Regulation 16 and the existing Schedule to the Act and the Regulations. Thus, while on the one hand we have Section 59(d) which prescribes that the Commissioner shall be the Disciplinary Authority in relation to all municipal officers and other employees, on the other hand we have Section 95 and Regulation 16 which prescribe that the Disciplinary Authority of a particular post has to be determined with reference to the Schedule appended to Regulation 7 of the Regulations, which Schedule prescribes different Disciplinary Authorities for different categories of posts.

32. This apparent conflict between Sections 59(d) and 95, Regulation 16 and the Schedule was examined by a learned Single Judge of this Court in CrI. M.C. No. 2695/2010 titled "G.S. Matharao v. CBI" decided on January 25, 2012. It would be relevant to note following portions of said decision:-

14. Learned counsel for the CBI canvasses that this Court should read the words "may be made in this behalf" introduced with effect from 1.10.1993 by the amending Act to mean that the existing regulations stood repealed and till the new regulations are notified, the Commissioner is the only competent authority for disciplinary action qua all municipal employees and municipal officers. On the first blush the contention of the learned counsel for CBI seems to be attractive, however such an interpretation would lead to negating the provision of Sections 95 and 480 of the DMC Act. Section 480 DMC Act specifically provides that any regulation made may be altered or rescinded by the Corporation in exercise of its power under the Act. By sub-Section 2 it also provides that no regulation made by the Corporation under this Act shall have effect until it has been approved by the Central Government and published in the official gazette. Thus regulations once notified would not stand repealed automatically without there being any recession or alteration thereof by the Corporation. Further under the DMC Act, Section 95 specifically provides for the authority competent to remove or dismiss, subject to the regulations and Section 59 provides for the general functions of the Commissioner, MCD. Both these provisions are required to be harmoniously construed. On a harmonious construction being given to both the provisions i.e. 59(d) and 95(1) the words "may be made in this behalf" used in Section 59(d) have to be read as "may be prescribed in this behalf" as used in Section 95(1), as both the provisions in the Act provide for the disciplinary authority of the municipal officers or other municipal employees, however subject to the regulations, and Section 59 being further subject to other provisions of the Act.

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16. Further the interpretation sought to be given by the learned counsel for the Respondent is also fallacious on the count that though Section 89(1), DMC Act provides that the Corporation will be the appointing authority for a certain category of senior municipal officers of the rank of Deputy Commissioner and above, by virtue of Section 59(d) in the absence of any regulations that may be made, the Commissioner would be their disciplinary and removing authority. There is no dispute that by virtue of Section 44 of the DMC Act the Commissioner is only one of the municipal authorities under the Corporation. Thus, with the interpretation as sought to be canvassed by the Respondent, the disciplinary authority competent to remove the officers of the rank of Deputy Commissioner and above would be the Commissioner who is subordinate to the Corporation i.e. the appointing authority. This interpretation is impermissible as the disciplinary authority can never be lower than the appointing authority.

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19. In terms of Section 59(d), DMC Act, it is clear that the power of the Commissioner for disciplinary action is subject to Regulations that may be made thereunder. By virtue of power to make Regulations u/s 480 of the DMC Act, the Corporation vide its notification dated 15th December, 1976 notified the Schedule to Regulation 7 which provided that for category A posts, the Corporation was the authority competent to impose penalty. This Regulation 7 and the Schedule thereto have not been rescinded till date despite the amendment u/s 59 of the DMC Act. As a matter of fact, the Additional Commissioner (Establishment) had sent a proposal to bifurcate the posts in category A and as per the amendments proposed, it was proposed that for officers of the rank of Deputy Commissioner and above, the authority competent to impose the penalty of removal would be the Corporation and for the post below that of Deputy Commissioner, the Commissioner would be the competent authority. The amendments proposed reads as under:-

(The proposal stands noted and is omitted by us to be recorded inasmuch as it is irrelevant).

20. A perusal of the proposal sent by the Additional Commissioner (Establishment) on 20th September, 2010 itself states that the said amendments in the Regulations was to bring the same in conformity with the provisions of the Act and as per the 4th paragraph it was proposed that the existing schedule framed under Regulation 7 as placed as Annexure A may be substituted by the amended schedule as proposed at Annexure B. However, this proposal was not accepted by the Corporation. Thus, it is clear that the Corporation itself is of the considered opinion that the existing schedule needs to be continued. This is contrary to what has been urged by learned counsel for the CBI that the schedule to the Regulations stood repealed by the amendment Act of 1993. Further Section 59(d) of the DMC Act could not be construed to mean that it repealed the existing Regulations and was only subject to the Regulations which would be made after the amendment Act. A plain reading of the provisions of the Act and the Regulations show that the Corporation is the competent authority to remove the Petitioner from the service and not the Commissioner, MCD.

21. Further, the contention of the learned counsel for CBI that the effect of omission of Section 509 by the amendment Act of 1993 is that the schedule to the Regulation get automatically repealed. It may be noted that in the Schedule as reproduced above only Part "A" relates to officers appointed u/s 509 whereas the Petitioner is Group "A" employee in Part "B". It may be noted that Section 509 related only to the first appointment to the post of General Manager (Electricity) and any municipal officer or other municipal employee to be made by Central Government whose term was not to exceed three years.

33. We entirely agree with the aforesaid view taken by the Single Judge that Sections 59(d) and 95 should be harmoniously construed and the Disciplinary Authority, for a given post, has to be determined with reference to the Schedule appended to Regulation 7 of the Regulations.

34. As already noted hereinabove, the Schedule prescribes different Disciplinary Authorities for different categories of posts. In the pleadings it has not been made clear as to in which category the post of Deputy Health Officer and the post of Resident Medical Superintendent falls i.e. the posts held by Dr. Ved Prakash and Dr. Jai Raj. There is no reference to the category of the posts held by Dr. Ved Prakash and Dr. Jai Raj in the pleadings of the parties before the Tribunal. Thus, unless the category of the posts held by Dr. Ved Prakash and Dr. Jai Raj is known, the Disciplinary Authority of said posts cannot be determined.

35. And thus the matter needs to be remanded to the Commissioner MCD to determine as to in which category the post held by Dr. Ved Prakash and Dr. Jai Raj falls and thereupon find out as to who would be the disciplinary authority of Dr. Jai Raj and Dr. Ved Prakash.

36. But since the Tribunal has held that assuming the Commissioner was the Disciplinary Authority, then the Corporation would be the Appellate Authority and once the Appellate Authority has opined to the contrary, the Disciplinary Authority has to abide, we need to write a bit more.

37. The view is incorrect and is overruled and insaid regards, it would be most apposite to note the decision of a Single Judge of this Court reported as Nirmal Kumar Jain and Others Vs. Municipal Corporation of Delhi and Another, The case concerned Section 200(d) of the DMC Act, 1957 as per which only the Commissioner was competent to sell municipal property but with the prior approval of the Corporation. Without the Commissioner seeking an approval, a suo motu resolution was passed by the Corporation to sell its flats to the municipal employees who were occupying the flats as licensees. The Commissioner refused to abide. Mandamus was prayed by the employees against the Commissioner and the argument was that once the superior authority has taken a decision on the subject, the inferior authority was bound. The argument was refuted by the Court holding that no decision by a superior authority could bind the inferior authority if the decision was contrary to the interest of the organization and more importantly the appellate power could not be used to usurp the original power in the subordinate authority.

38. The aforesaid decision of the learned Single Judge was affirmed by a Division Bench of this Court in the decision reported as Nirmal Kumar Jain and Others Vs. Municipal Corporation of Delhi and Others, .

39. That leaves the third question to be answered: Whether the Lt. Governor can issue the directions to the Corporation to initiate disciplinary proceedings against Dr. Ved Prakash and Dr. Jai Raj. As noted above, the proceedings were defended before the Tribunal by placing reliance upon Regulation 16 of the DMC Service (Control & Appeal) Regulations, 1959 and the view taken by the Tribunal is that unless a disciplinary action is taken, said power cannot be exercised, a view with which we agree. But, the view taken by the Tribunal that the power of the Central Government u/s 487 which can be exercised by the Lt. Governor by

virtue of Section 490A cannot be exercised qua service matters and would only relate to municipal governance is patently incorrect and runs contrary to the Full Bench decision of this Court reported as *Satish Chandra Khandelwal Vs. Union of India and Others*, . Vide an order dated April 11, 1980, the Central Government superseded the Corporation. A writ petition was filed in this Court challenging said supersession. The supersession was preceded by a notice to show cause issued by the Central Government. The said notice enumerated various defaults of the Corporation and also set out instances of abuse of powers by it. One of the instances of abuse of powers, which was enumerated, was as follows:-

The Corporation passed a resolution to sell the staff quarters in Nimri Colony to the occupants/allotters ignoring the fact that the quarters were meant to serve as an amenity to serving staff.

40. Dealing with the question whether the instances enumerated in the show cause notice amounted to an abuse of power or not, the Full Bench observed as follows:

The best illustration of abuse of power seems to me the sale of staff quarters. The Corporation sold quarters in Nimri Colony to the occupants ignoring the fact that the quarters were meant to serve as an amenity to the staff. Section 43(n) says that one of the discretionary functions of the Corporation is to provide "dwelling houses for municipal officers and other municipal employees." It will be an unauthorised use of its power to transfer the quarters to the occupants, even though it be as market rate.

41. In said case, the Full Bench also dwelt upon the powers of the Commissioner and observed as follows:-

83. But it is unjust to blame the Commissioner for the defaults of the Corporation or its incompetency or abuse of power. The office of the Commissioner is an important part of the machinery of the local Government. He may be said to stand between the Corporation and the Central Government. He is there to assist by his advice and action in the conduct of public affairs in the Corporation, and if there is a disposition on the part of the corporation to ride roughshod over be opinion, the question must at once arise whether the deliberative wing of the Corporation is not solely to be blamed for the consequence. If the Commissioner is not answerable to the Corporation he is answerable to no one. The Act harmonises the two principles of municipal home rule with central control. The municipal government of Delhi vests in the Corporation composed of Councillors and alderman (see Section 3). It does not vest in the Commissioner. The Commissioner is the Chief Executive. He owes dual responsibility to the Government and the elected representatives. Placed between universal suffrage and the Central power, he is between anvil and the hammer. This has been said of the French Prefect. It is true of the Municipal Commissioner of Delhi.

But his opinion is entitled to great weight. He represents the official element in the municipal administration which is a happy combination of the elected

amateur and the professional administrator. He advised the Corporation that they should not incur excessive expenditure, that they should stop development work, that they should not accept tender of Trading Engineers, that they should not sell Nimri Staff quarters, that they should not pass any resolutions for the regularization of demolished buildings contrary to law and in the face of express provisions contained in Chapter Xvi on building regulations, whatever be, their sympathy for those who suffered in emergency excesses.

42. Needless to state the Full Bench clearly held that wherever the Corporation defaults while discharging its statutory duties under the Act and does not take corrective action the Central Government would be entitled to intervene. The view taken by the Tribunal appears to be influenced by the fact that municipal governance i.e. providing civic amenities is co-terminus with the powers of the Corporation. Those are the duties of the Corporation; as would be more. Pertaining to its employees, where the Corporation is the Disciplinary Authority it would be the duty of the Corporation to take action against those who cheat the revenue of the Corporation. The duty of the Commissioner is to report the violations committed. It is settled law that where law casts a duty to act in a particular manner if facts warrant, not performing the duty would be an actionable wrong capable of being rectified by a superior authority.

43. Thus, even on the assumption that the Corporation was the Disciplinary Authority, the Corporation was bound with the direction of the Lt. Governor for the reason the CBI report, which is akin to a fact finding report, brings out facts prima facie attracting disciplinary action.

44. Since our opinion is a little lengthy, we summarize our findings:-

(1) Without determining the category in which the posts were held by Dr. Ved Prakash and Dr. Jai Singh it cannot be found as to who would be the disciplinary authority and for this the matter is remanded to the Commissioner to decide the issue.

(2) If it is found that the Commissioner is the disciplinary authority, the fact that the Corporation has taken a decision to the contrary has to be ignored for the reason the appellate authority cannot usurp the jurisdiction of the disciplinary authority.

(3) If the Corporation is found to be disciplinary authority, it would be bound by the directive issued by the Lt. Governor and would act according to the said directive for which the matter would be placed before the Corporation for necessary sanction.

45. The two petitions stand disposed of setting aside the impugned order dated January 25, 2010 passed by the Tribunal. T.A. No. 203/2009 and T.A. No. 205/2009 are dismissed. W.P. (C) No. 4223/2012 filed by Dr. Jai Raj is dismissed for the reason he cannot be promoted till the decision taken to take disciplinary action against him reaches a conclusion. No costs.