
(2018) 12 CAT CK 0067

In the Central Administrative Tribunal

Case No : Original Application No. 4593 Of 2018, Miscellaneous Application No. 5252, 5253 Of 2018

Rakesh Kumar Sharma

APPELLANT

Vs

New Delhi Municipal Corporation Through And Ors

RESPONDENT

Date of Decision : 19-12-2018

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 13(1)(d), 13(2)
New Delhi Municipal Council Act 1994 — Section 39(2)
Indian Penal Code, 1860 — Section 120B, 420
Code Of Criminal Procedure, 1973 — Section 428
Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 14, 15, 16, 17, 18, 19, 19(i)
New Delhi Municipal Council Act, 1994 — Section 39(2)

Citation : (2018) 12 CAT CK 0067

Hon'ble Judges : V. Ajay Kumar, J; A.K. Bishnoi, Member (A)

Bench : Division Bench

Advocate : Rashmi Chopra

Final Decision : Disposed Off

Judgement

V. Ajay Kumar, J

1. The applicant, an Executive Engineer in the respondents-New Delhi Municipal Corporation (in short NDMC), filed the OA seeking the following reliefs:-

"(a) Set aside Show Cause Notice dated 30.11.2018.

(b) Direct the respondent to initiate disciplinary enquiry/proceedings as per law; and in terms of their own Order No.3912/Vig./Imp./364/T.O. (C-I)/14 dated 30.11.2018; and

(c) And pass such other or further order(s) as may be deemed fit and proper in the facts and circumstances of the present case".

2. Heard Ms. Rashmi Chopra, the learned counsel for the applicant.

3. Admittedly, in a case registered by the Central Bureau of Investigation, against the applicant, vide RC-02(A)/2012-AC-III under Sections 120-B read with 420 IPC and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, the Special Judge, CBI-01, Patiala House Court, New Delhi, by his judgment dated 03.10.2018, convicted the applicant and sentenced him to undergo rigorous imprisonment vide order dated 08.10.2018 and the relevant paragraphs of the said order are as under:-

"10. Keeping in view the overall facts and circumstances, I sentence convict no.1, R.K. Sharma to undergo rigorous imprisonment for a period of one year and fine of Rs. 25,000/- (Rupees Twenty Five Thousand Only) for the offence punishable U/s 13(2) r/w Section U/S 13(1) (d) of PC Act, 1988. In default of payment of fine, convict no.1 shall undergo simple imprisonment for a period of two months.

11. Further, I also sentence convict no.1, R.K. Sharma to undergo rigorous imprisonment for a period of one year, and to pay a fine of Rs.25,000/- (Rupees Twenty Five Thousand Only) for the offence punishable under section 120B and Section 13(2) r/w 13(1)(d) of P.C. Act, 1988. In default of payment of fine, convicts shall undergo simple imprisonment for a period of two months.

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13. Both the sentences of the convict R.K. Sharma shall run concurrently. The convict shall be entitled to benefit of Section 428 Cr. PC."

4. However, the sentence imposed on the applicant was suspended pending criminal appeal filed by the applicant.

5. In view of the conviction and sentence imposed on the applicant, the respondents-NDMC issued the impugned Annexure A-I Show Cause Notice dated 30.11.2018 under Rule 19 (i) of CCS (CCA) Rules, 1965 read with Section 39 (2) of NDMC Act, 1994 calling upon him to show cause why the penalty of dismissal from service be not imposed on him. The respondents have also placed the applicant under suspension vide Annexure A-2 Office Order dated 30.11.2018 pending the disciplinary proceedings. Hence, the OA.

6. Ms. Rashmi Chopra, the learned counsel appearing for the applicant submits that invoking the power under 19(i) of the CCS (CCA) Rules, 1965, by the respondents, without conducting a regular departmental enquiry by giving an opportunity to the applicant to disprove the charge, if any, is in violation of the CCS (CCA) Rules, 1965 itself and also against the Constitution Bench judgment of the Hon'ble Apex Court in Union of India and Others Vs. Tulsi Ram Patel and Others, AIR 1985 SC 1416.

7. Rule 19 of the CCS (CCA) Rules, 1965, reads as under:-

"19. Special procedure in certain cases Notwithstanding anything contained in rule 14 to rule 18-

(i) where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or

(ii) where the Disciplinary Authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules, the Disciplinary Authority may consider the circumstances of the case and make such orders thereon as it deems fit:

[Provided that the Government servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under clause (i):

Provided further that the Commission shall be consulted, where such consultation is necessary, [and the Government servant has been given an opportunity of representing against the advice of the Commission,] before any orders are made in any case under this rule.]"

8. While drawing our attention to Rule 19, the learned counsel submits that a careful reading of the judgment of the Special Judge, CBI, clearly shows that the conduct of the applicant cannot be said to have been led to his conviction and hence, invoking the power under Rule 19(i), is illegal. The learned counsel further submits that if the applicant is proceeded under Rule 19(i), he will not get any fair opportunity and the action of the respondents is in violation of the principles of natural justice, as held by the Constitution Bench in Tulsi Ram Patel's case (supra).

8A. We cannot accept either of the submissions of the learned counsel for the applicant. A delinquent employee, who was convicted and sentenced with rigorous imprisonment cannot contend that his conduct cannot be said to have led to his conviction in the criminal case and that his employer cannot invoke power under Rule 19(i), and impose the proposed punishment, after giving an opportunity of making representation. Even the Constitution Bench in Tulsi Ram Patel (supra) held that Rule 19(i) read with the 1st proviso was upheld by various courts, in respect of the convicted delinquent employees.

9. In the circumstances and for the aforesaid reasons, we do not find any merit in the OA and accordingly the same is dismissed. However, this order shall not preclude the respondents from considering the representation, if any made, by the applicant in response to the impugned Show Cause Notice dated 30.11.2018, before passing final orders of penalty. All the pending MAs also stand disposed of. No costs.