

(2018) 11 CAT CK 0038
In the Central Administrative Tribunal
Case No : Original Application No. 833 Of 2017

Ram Kishan

APPELLANT

Vs

Lieutenant Governor Of Delhi And Anr

RESPONDENT

Date of Decision : 26-11-2018

Acts Referred:

Citation : (2018) 11 CAT CK 0038

Hon'ble Judges : L. Narasimha Reddy, J; Aradhana Johri, Member (A)

Bench : Division Bench

Advocate : A.K. Singh, R.K. Jain

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J

1. The applicant was working as Executive Engineer in the South Delhi Municipal Corporation (for short, SDMC). In the year 1998, he was kept in-charge of the stores and the mechanical division of the Corporation. A charge memo was issued in the year 2008 alleging that a) he failed to conduct routine inspection of stocks at the Auto Workshop,

b) he bifurcated job works to bring them within his financial competence and thereby exceeded his delegated financial limits, and that c) he failed to exercise proper supervision and control over the functioning of the subordinate staff. The applicant submitted a reply denying the charges. An Inquiry Officer was appointed by the Disciplinary Authority. On a consideration of the oral and documentary evidence before him, the Inquiry Officer, i.e., Director (Inquiries) North DMC submitted a report on 18.07.2014 holding that the Charge No.1 is partly proved and Charges No.2 & 3 are not proved. The applicant was served with the copy of the same and he offered his comments. Taking them into account, the Disciplinary Authority passed an order dated 25.02.2015 imposing the punishment of stoppage of two increments without cumulative effect. An appeal preferred to the Lt. Governor was rejected through order dated

18.03.2016. Hence, this OA.

2. The applicant contends that the charge memo itself was issued ten years after the so called acts of misconduct, and in the enquiry it has clearly been established that the splitting of works had to be resorted to, on account of the strictures passed by the Trial Court and the Hon"ble Supreme Court in M. C. Mehta's case. He further contends that though the two main charges were held not proved, the Disciplinary Authority has imposed the punishment without even issuing a disagreement memo. It is also pleaded that even while holding that the Charge No.1 is partly proved, the Inquiry Officer himself indicated that lapses, if any, were on account of the burden of work upon the applicant.

3. The respondents filed a counter affidavit opposing the OA. It is stated that the disciplinary proceedings were conducted strictly in accordance with the prescribed procedure and that the Disciplinary Authority himself has taken a lenient view in the matter and imposed a minor penalty. It is stated that the Appellate Authority has discussed the matter at length and declined to interfere with the order of punishment.

4. We heard Shri Anil Kumar Singh, learned counsel for the applicant and Shri R. K. Jain, learned counsel for the respondents.

5. The lapses pointed out against the applicant were referable to the year 1998. The charge memo was issued in the year 2008. The charges read as under:-

"i) He failed to conduct routine inspection of stocks of Auto Workshops under his charge which was necessary u/s 48 Volume 2 of CPWD Manual.

ii) He also bifurcated job works to bring them within his financial competency, exceeded his delegated financial limits and awarded major portion of the job works in clandestine manner to a group of firms controlled and maintained by a single family thereby causing pitiful financial gains to them.

iii) He also failed to exercise proper supervision and control over the functioning of his subordinate staff."

A detailed enquiry was conducted in the matter. On Charge No.1, the Inquiry Officer held as under:-

"The stock was not verified regularly by Executive Engineer (Auto). As per section 48 Volume 2 of CPWD Manual, Executive Engineer is required to have stock taken throughout his Division at least once a year and that it is not necessary that all the stocks should be checked and counted at the same time but the dates on which the stock is taken should be entered in the Store Register. Section 48 further states that such verification/certification should be promptly reported to the SE and Auto/Pay & Accounts Officer. During investigation, it was revealed that verification of stocks has been done in bits and pieces. However, no report as required u/s 48 has been submitted to the SE.

Although he has conducted inspection of stores under his charge in bits and

pieces he had not made stores inspection according to the set guidelines as envisaged in the CPWD Manual, therefore, he has caused lapses in discharge of his official duties.

However it is to be noted that due to heavy workload and charge of 4 zones under him during 1998-99 he could not make thorough inspection of stores at regular interval.

Hence this charge is partly proved to the extent that no report as required u/s 48 has been submitted to the SE, but verification of stocks by Shri Ram Kishan, EE, was done in bits and pieces probably due to heavy workload."

The charges No.2 & 3 were held "Not Proved".

6. A perusal of the Inquiry Report itself reveals that the SDMC did not think of initiating any proceedings against the applicant, and it was only on account of an enquiry conducted by the CBI into certain lapses, not directly referable to the applicant, that the disciplinary proceedings were initiated. An Officer of the CBI as also examined in the enquiry. He admitted that there was necessity for undertaking immediate repairs to the vehicles and to split the works on account of the orders passed by the Trial Court and the Hon"ble Supreme Court regarding the condition of the vehicles of the Municipal Corporation. It was not even suggested that the applicant has acted in a dishonest manner.

7. The only finding which went against the applicant in the disciplinary proceedings was that the Charge No.1 was partly held proved. Even as regards that, the Inquiry Officer virtually provided justification for the lapses on account of the heavy work load upon the applicant. The finding on Charge No.1, which is extracted as above, hardly warrants any punishment. The misconduct, if at all, could have been established only on Charges No.2 & 3. The Inquiry Officer held those charges as not proved. In case the Disciplinary Authority wanted to take a different view, he was under obligation to issue a disagreement memo. If he totally agreed with the findings of the Inquiry Officer, the punishment imposed upon him was not warranted.

8. Though the Appellate Authority has undertaken extensive discussion, it was not with reference to the specific points of law that were involved. It was proceeded as though the Disciplinary Authority himself has taken a lenient view, when the situation is exactly otherwise. Viewed from any angle, the order of punishment cannot be sustained in law.

9. We, therefore, allow the OA and set aside the order of punishment. It is represented that the applicant has since retired from service. Since the order of punishment is set aside, he shall be entitled to be extended all the benefits which were denied to him on the basis of the impugned order, including the one, as regards fixation of pension.

There shall be no order as to costs.