* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P. (C.) No.3793/2010**

% **Date of Decision: 31.05.2010**

Delhi Development Authority. .... Petitioner
Through Mr.Arun Birbal, Advocate.

Versus

Sh.Shailender Kumar .... Respondent
Through Mr.Vivek Sood, Mr.Alimd Maaz &
Mr.Ranjan Sharma, Advocates.

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MR. JUSTICE MOOL CHAND GARG

1.	Whether reporters of Local papers may be allowed to see the judgment?	YES
2.	To be referred to the reporter or not?	NO
3.	Whether the judgment should be reported in the Digest?	NO

ANIL KUMAR, J.
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The petitioner, DDA has challenged the order dated 8th September, 2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A.No.2585 of 2008, titled as 'Shailendra Kumar, JE (C) v. Delhi Development Authority' whereby the application of respondent, a Junior Engineer challenging the

memorandum of charges dated 20th December, 2008 against him for the alleged lapses of 1992-93 was set aside.

The respondent as a Junior Engineer was involved for a very brief period from 11th May, 1992 to 27th January, 1993 (about 7 months) in the supervision of construction work. The respondent was initially not appointed as Junior Engineer for Civil (WD-X) for construction of 384 houses at Sector-III, Pocket-2, Dwarka when the work was initiated. Though the work was completed in 1996, however, the respondent was associated with the work only for 7 months and had been transferred in January, 1993 .

The memorandum was issued to the petitioner in 2008 without giving any cogent reason for delay alleging that he failed to ensure that the samples of water tested for construction work of houses were not the true representative of the water actually used at site. And that there was a lack of supervision resulting in inadequate cover of RRC working at the time of lying Concrete.

The memorandum also indicated that some of the buildings had developed cracks in 2001 and a report from NCCBM had been obtained during May, 2007 which suggested the possibility that the water used in the work might have had higher Chlorine content.

The respondent had challenged the memorandum of charges issued to the respondent belatedly in 2008 for the supervisory work as a Junior Engineer from May, 1992 to 1993 on the ground that he was not the sole person for supervising the work. It was contended that the memo of charge had been issued without application of mind and without considering the facts. The reliance was also placed on the quality control inspection which was carried out by the Chief Engineer (QCI) on 14th January, 1993, a week prior to the handing over of charge by the respondent where a satisfactory report was given and the memorandum of charge was contrary to the report. The respondent also contended that no reason was given for not conducting inquiry in time and therefore, it was contended that the charge sheet is not sustainable in law.

The petition was contested by the petitioner contending, inter-alia that since the work was defective; the respondent could not escape responsibility only because of passage of time. Regarding detail, it was contended that after obtaining the report from the expert body, it became possible to identify the reasons for the poor quality of the work and time taken for initiation for action could not have been, therefore, considered as unreasonable by any standards.

The Tribunal considered the pleas and contentions of the parties and held that it is too much to expect from a person who had

supervised the work in the year 1992 that to only for 7 months to answer alleged defects. It was noticed that the imputation of alleged defects was also only on the basis of guess work as nothing substantial has been shown in the imputation of charge to limit liability to the respondent only. The Tribunal noticed that in all probability nothing may come out of the proposed inquiry to incriminate the respondent as the charge are not precise, nor action has been taken promptly, and therefore, considering the totality of all the facts and circumstances, it would not be appropriate to allow to petitioner to continue the proceedings and it will be appropriate to quash the charge. The Tribunal also noticed that buildings had developed cracks after about 10 years of its existence and even at it that point of time also nothing was done to pin point liability at that time. In the opinion of the Tribunal huge delay is justifiable to come to conclusion that proceedings against the respondent are just to harass him, and consequently, quashed the charge sheet.

The learned counsel for the petitioner has challenged the order contending, inter-alia that the report from NCCBM had been obtained in 2007. The learned counsel, however, is unable to show any document or even on the basis of the report that the liability can be solely of the respondent. Even reports suggest that possibly the water use for the work might have had higher chlorine content. The report does not indicate conclusively that the defects were on account of the

higher chlorine content. In any case the respondent got the report regarding the chlorine content and submitted to the higher authorities, however, no action had been taken against the Assistant Engineer and Executive Engineer. In answer to the query as to why no action has been taken against the higher supervisor officer who were supervising and were in overall charge, it is disclosed by the petitioner that since they have retired, therefore, no action could be taken. This could not be a ground to justify the action against a junior Engineer only.

This is no more res integra that while considering the effects of delay in initiating the disciplinary proceedings, the Court has to take into consideration all the relevant factors and to balance them to determine, if it is in the interest of clean and honest administration that the disciplinary proceeding should be allowed to be terminated after delay particularly when the delay is abnormal and there is no explanation for the delay. While doing so, the nature of charge, its complexity and on what account delay occurred has to be considered. If the delay is unexplained, prejudice to the delinquent employee is writ large on the face of it. While setting aside the charge it also has to be seen as to how much disciplinary authority is serious in pursuing the charge against the delinquent.

In P.V.Mahadevan v. M.D.T.N. House Board (2005) 5 SCC 636 at page 641, the Apex Court had held that the protected disciplinary

inquiry against a Government employee should be avoided not only in the interest of the Government employee, but in Public interest and also in the interest of inspiring confidence in the minds of the Government employee. In Government of A.P. v. Appalla Swami, (2007) 14 SCC 49 at Page 53, the Supreme Court had held that the delay must be considered on the basis of the facts of each case. The Supreme Court had laid down the principles upon which a proceedings could be directed to be quashed on the ground of delay. The principles regarding consideration of memorandum of charge after inordinate delay could be summarized as under:-

1. The competent authority should be able to give an explanation for the in ordinate delay in issuing the memorandum of charge;

2. The charge should be of such serious nature, the investigation which would take a long time and would have to be pursued secretly;

3. The nature of charges would be such as to a long time to detect such as embezzlement and fabrication of false records;

4. If the alleged misconduct is grave and a large number of documents and the statement of witnesses had to be looked into, delay can be considered to be valid;

5. The court has to consider the nature of charge, its complexity and on what account the delay has occurred;

6. How long a delay is too long always depends on the facts of the given case;

7. If the delay is likely to cause prejudice to the charged officer in defending himself, the enquiry has to be interdicted; and

8. The court should weigh the factors appearing for and against the disciplinary proceedings and a decision on the totality of circumstances. In other words, the court has to indulge in process of balancing.

In the present facts and circumstances of the case, it is apparent that the petitioner is unable to give any cogent reasons for inordinate delay in issuing the memorandum of charge specially since the construction which was under the supervision of the petitioner only for 7 months and which construction had continued till 1996 after the respondent was transferred in January 1993, had developed cracks in 2001. In 2001 what was done by the petitioner to ascertain the defect and whose liability it was has not been disclosed. The delay from 2001 to 2007 has not been explained although it is stated that in 2007 NCCBM had given report. However, it is not disclosed as to when the petitioner had approached the NCCBM for report. Even the said report is in conclusive and does not prima facie impute liability on the respondent. It only suggests that possibly the water used for the work might have had higher chlorine contend. In the circumstances the observation of the Tribunal that memorandum of charges are not based on any cogent evidence and more on the guess work cannot be faulted. In the circumstances, even the prima facie, the imputation of the charge do not impute liability to the respondent except using bald words in the

charges. The petitioner has also failed to establish that the nature of charge is such which would have taken a long time and would have to pursued secretly. Since even the defects had arisen in 2001, therefore, it could not be held that that the nature of charges were such which would have taken a long time to detect. The petitioner has also failed to disclose that in order to infer alleged misconduct, a large number of documents or statements of witnesses had to be looked into rather there is no explanation given by the petitioner for delay except that the report of the NCCBM had been obtained during May, 2007.

Considering the nature of charges and the circumstances, it is apparent that the delay has caused prejudice to the respondent in defending himself and in the circumstances the inquiry has to be interdicted. On weighing the various factors, even this Court is of the view that the memorandum of charge should be quashed.

The learned counsel for the petitioner has also contended that second article of charges about the defects in RCC can be imputed to the respondent. According to the learned counsel for the respondent if the thickness of the RCC was not appropriate, it would have become apparent in 1996 when the work was completed. The completed work must have been measure to award the amount due to the constructing agency. Learned counsel for the petitioner, in the facts and

circumstances, is unable to give any cogent reasons for the delay in taking proposed action against the respondent.

In the totality of the facts and circumstances, therefore, this Court does not find any such illegality, irregularity or perversity in the order of Tribunal quashing the charges against the respondent, which will entail any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition in the facts and circumstances is without any merit and it is therefore, dismissed.

ANIL KUMAR, J.

May 31, 2010 **MOOL CHAND GARG, J.**
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