

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

+ **WP(C) No.8759/2008**  
% **Date of Decision: 26.02.2010**

DDA ..... Petitioners  
Through Mr. Arun Birbal, Advocate

Versus

P.C. Jain ..... Respondents  
Through Mr. R.S. Kela, Advocate.

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

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|----|---|-----|
| 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 29<sup>th</sup> April, 2008 passed by the Central Administrative Tribunal, Principal Bench in TA 92/2007 allowing the application of the respondent setting aside the penalty advice dated 21<sup>st</sup> March, 2001 for 2% cut in pension for one year pursuant to a charge sheet which was issued one day prior to retirement of the respondent on 30<sup>th</sup> January, 1996.

Brief relevant facts to comprehend the controversies are that the respondent was working as a Director (Building) with the DDA at the relevant time. A plot of land had been allotted to M/s. Jaina Group of Builders bearing Plot No. 272, Fruit and Vegetable Market, Okhla, New Delhi. The allottee of the plot was issued a notice by the petitioner to submit a stamped lease deed. For submitting the lease deed notice dated 3<sup>rd</sup> May, 1989 was issued by the land department of the petitioner against which a writ petition being WP(C ) No. 2218/1989 was filed by the allottee of the said plot.

During the pendency of the writ petition filed by the allottee/builder of the plot, an inspection of the building constructed thereon was made and certain unauthorized constructions were noticed which were not in conformity with sanctioned plan. In the writ petition filed by the allottee/builder of the plot, the petitioner, therefore filed an additional affidavit detailing the deviations found in the building.

The writ petition filed by the builder/allottee was disposed of by the High Court holding that the deviations pointed out by the petitioner/DDA in the additional affidavit be treated as a notice under Sections 30 & 31 of the DDA Act against the builder/allottee which should be replied by him. The High Court also ordered that the show cause notice

dated 3<sup>rd</sup> May, 1989 be disposed of after holding inquiry in accordance with law.

After the writ petition was disposed of by order dated 27<sup>th</sup> February, 1991, after giving opportunity to the builder/allottee to file the replies and documents, had directed the petitioner to take the decision within the time stipulated and thereafter, the petitioner was directed to act in accordance with law.

The plea of the respondent is that after the additional affidavit of the petitioner, which was treated as a show cause notice, the reply was filed by the builder/allottee, however, efforts were made to pressurize the respondent to control the builder's illegal activities both departmentally and otherwise. According to the respondent since he did not succumb to the pressure and passed an order directing demolition of unauthorized construction and on failure to demolish the unauthorized construction sealing of the premises, this resulted into departmental proceedings initiated against him at the fag end of his career. The charge memo was issued to him one day prior to his retirement. The respondent also contended that ultimately, after giving a reasonable opportunity to the builder, an order dated 9<sup>th</sup> February, 1993 was passed directing the builder for removal of unauthorized construction and on failure of the builder to

remove the unauthorized constructions to seal his property. The imputations which were made against the respondent were that in case of M/s. Pawan Apartments Pvt. Ltd., after hearing the builder a timely order was not passed by the respondent and the order for demolition and sealing the property in case unauthorized construction is not removed by the builder, then to seal the property, was passed after considerable time and consequently, the respondent had acted with dereliction of duty, negligence in performance of his duties and behaving in the manner unbecoming of an official of DDA and thus violated Rule 3 of CCS(Conduct) Rules, 1964 as made applicable to the DDA employees.

After serving the charge sheet a day before the retirement, the inquiry was conducted and a penalty of 2% cut in pension for one year was imposed which was challenged by the respondent before the Tribunal contending, inter-alia, that pursuant to the order passed by the High Court on 27<sup>th</sup> February, 1991 in WP(C) No. 2218/1989 whereby the deviations pointed in the additional affidavit were directed to be treated as a notice under Section 30 & 31 of DDA Act and after hearing the reply to show cause notice under section 30 & 31 of the DDA Act, the builder was given opportunity to file the relevant documents and the order could be passed only after hearing the builder. Consequently, it was contended that after giving reasonable opportunity to respondent, demolition order was passed against the builder and on failure of the builder to demolish the

unauthorized construction, the order to seal the property was also passed. In the circumstances, it is contended that there could not be any complicity on the part of the respondent nor could be imputed to him. It was also contended that the demolition and sealing order was not passed against the builder after receiving memo of charges against him. In the circumstances, it is contended that tenor, scope and purport of the order/directions had been deliberately misinterpreted by the petitioner to implicate the respondent on the eve of his retirement as he had declined to regularize the unauthorized construction of the builder.

The respondent also contended that the deviation complaints were regard to change of location of staircase was deviated from the sanctioned plan on account of mistake which occurred in the architectural drawings which were contrary to location and consequently contrary to the sanctioned plan. It was contended by the respondent that adjacent to the plot in dispute, is Plot No. 271 and in the sanctioned plan the location of the staircase was shown on other side that is towards the side of plot No. 277 which mistake was realized during the construction. The builder had also represented these facts before the respondent in the course of hearing, which hearings were granted pursuant to the direction by the High Court. In the circumstances it was contended though it was not a deviation yet with a view to avoid any controversy, rectification was directed. The lease papers which were also demanded pursuant to the show cause notice, were

given by the builder/allottee. The builder had alleged that the stamp papers had already been sent to the petitioner on 9<sup>th</sup> April, 1991, forwarded to the concerned department. The respondent also pointed out that after the close of the hearing about the deviation, for ascertaining the allegation of filing the stamped lease deed for which a notice had been given to the builder for which a writ petition was filed by him, the file did not remain in the building section and it either remained in the land section to consider the reply of the builder with regard to the notice dated 3<sup>rd</sup> May, 1989 or the file was otherwise kept away from the respondent and consequently, the final order directing either to demolish the deviation or for sealing the unauthorized construction could be passed on 9<sup>th</sup> January, 1993.

The pleas and contentions of the respondent were opposed on the ground that the facts disclosed were self justifying statement and the act of the respondent was contumacious conduct and the disciplinary proceedings had been initiated bonafide and legal formalities had been duly complied with. The plea of the respondent that not only the present disciplinary proceedings initiated but other disciplinary proceedings were initiated on the eve of his retirement has not been denied by the petitioner. It has been admitted that another penalty order dated 26<sup>th</sup> June, 2003 ordering 2% cut in pension for a period of ten years was passed which was challenged in TA-91/2007 which was allowed by the Central

Administrative Tribunal, Principal Bench by order dated 25<sup>th</sup> July, 2008 and the writ petition filed by the DDA against the order of the Tribunal, Principal Bench being WP(C) No. 540/2009, has also been dismissed today by order dated 26<sup>th</sup> February, 2010.

The Tribunal has considered Rule 4 & 5 of DDA, removal of objectionable development Rules, 1975 and the order of the High Court pursuant to which the directions were given to allow the builder to file response to show cause notice as the additional affidavit regarding the deviation was ordered to be treated as a show cause notice under Section 30 & 31 of the DDA Act. It was also noticed that a proper hearing as contemplated under law was given to the builder and only thereafter, an order of demolition of unauthorized construction and on failure to carryout unauthorized construction for sealing the premises was passed on 9<sup>th</sup> February, 1993.

The Tribunal also noticed that considering the tenor of the order dated 27<sup>th</sup> February, 1991, there is no violation of the Court's order nor any such complaints were made by any of the parties to the writ petition filed by the applicant/allottee. This has also been noticed that for extension of time granted by the High Court, it was for the petitioner to move appropriate application in view of the fact that the stamped copy of the lease deed was filed and to ascertain that fact, for the considerable period, the file was not with the respondent.

The learned counsel for the petitioner has emphatically contended that the findings of the disciplinary authority could not be disturbed by the Tribunal and has relied on *Government of Tamilnadu Vs. K.N. Ramamurthy*; *Government of Tamil Naldu Vs. K.N. Ramamurthy* (AIR 1997 SC 3571); *Union of India Vs. A.K. Patnaik* (AIR 1996 SC 280) and *Union of India Vs. K.K. Dhawan* (AIR 1993 SC 1478). The Tribunal has considered the precedents relied on by the petitioner and has held that the principals laid down in the cases relied on by the petitioner were not relevant to the facts of the case. The Tribunal had gone into supporting facts that the charge and the nature of evidence and other aspects and had held even *prima facie* no misconduct as alleged against the respondent was made out.

The observation of the Tribunal that apparently no reason to uphold the action especially since no willful guilt or conduct can be attributed to the respondent had been made out, cannot be faulted in the facts and circumstances. The inferences of the Tribunal in Para 12 of the order impugned before us are as under:-

“12. The circumstance that formalities in the matter of charge-sheeting had been observed is no reason to uphold action, when in essence there was no guilty conduct or lapses, which were of any substance. Mr. Birbal, of course, points out that the delay is not explained, nor was there any application for extension. But we have to note that the order of the High Court was not intended to be one of a peremptory nature, and a strict time schedule required to be mandatorily observed. In fact, time was not of essence taking notice of the follow up action that was expected from the applicant. The DDA need not have incorporated factors, which really were irrelevant. ”



The learned counsel for the petitioner has raised the same pleas and contentions before us. The learned counsel however, has not been able to deny that if the High Court had granted time to builder to file a reply, then the reply had to be considered by the respondent after it was filed. This has also not been disputed that the builder had also submitted the copy of the lease deed pursuant to the notice given by the petitioner, which was dealt with by a different department. This is also not disputed that the respondent ultimately passed the demolition order and on failure of the builder to demolish the unauthorized construction for sealing of the premises. In the totality of the facts and circumstances, the inference of the Tribunal that there is no misconduct as no contumacious conduct has been established against the respondent, cannot be faulted.

In the entirety of the facts and circumstances, we do not find it appropriate to exercise our jurisdiction to differ with the view of the Tribunal and set it aside the order impugned before us on the grounds as has been raised by the petitioner.

The order of the Tribunal in our opinion does not suffer from such illegality or irregularity, which would require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

The writ petition is therefore, without any merit and it is dismissed.

**ANIL KUMAR, J.**

**FEBRUARY 26<sup>th</sup> , 2010**  
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**MOOL CHAND GARG, J.**