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IN THE HIGH COURT OF DELHI AT NEW DELHI*Judgment reserved on: 05.07.2023**Judgment delivered on: 04.08.2023*+ **W.P.(C) 4802/2023 & CM APPL. 18515/2023****DELHI DEVELOPMENT AUTHORITY** PetitionerThrough: Mr. Sanjay Katyal, Standing Counsel
with Mr. Gaganmeet Singh Sachdeva
and Mr. Nihal Singh, Advocates and
Mr. Akshay Kumar, Asstt. Director
(P) (I), Mr. Rajvir, M.T.S., CL/
Branch, DDA.

Versus

SANJAY KUMAR RespondentThrough: Mr. C. Mohan Rao, Sr. Advocate with
Mr. Lokesh Kumar Sharma, Advocate
with respondent in-person.**CORAM:****HON'BLE MR. JUSTICE V. KAMESWAR RAO****HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA****J U D G M E N T****ANOOP KUMAR MENDIRATTA, J.**

1. The challenge by way of this writ petition is to an order dated October 27, 2022 passed by the Central Administrative Tribunal (hereinafter referred to as 'Tribunal') in O.A.No. 2464/2021, whereby the Tribunal quashed the articles of charge, the report of Inquiry Officer, the order of the Disciplinary Authority and Appellate Authority apropos penalty imposed on the



respondent in following terms:-

“17. The applicant in our view has been subjected to a very harsh penalty in the matter without any substantive evidence. Accordingly, we cannot sustain the impugned orders dated 24.08.2020 and 04.10.2021 i.e. the order of the disciplinary authority and the appellate authority respectively. Accordingly, these orders are quashed and set aside. Along with them, is set aside the report of the Inquiry Officer dated 27.01.2017 and the memorandum dated 24.04.2019 vide which the Articles of Charges were issued.

18. Needless to say that pursuant to these directions, the applicant shall be entitled to all the consequential benefits, including arrears of any financial benefits which may accrue to him as a consequence of this order and he will be restored to his original position as a Senior Law Officer with effect from the date the penalty was imposed, meaning thereby that he continues to hold this position without interruption. The said directions shall be complied with within a period of six weeks' from the date of receipt of a copy of this order.”

2. In brief, as per the case of the petitioner/Delhi Development Authority (hereinafter referred to as ‘DDA’), a piece of land was allotted to Badarpur Traders Union (BTU) by Delhi Administration for a period of one year from June 23, 1967 to June 22, 1968. The land was placed at the disposal of DDA vide notification dated January 03, 1968 under Section 21 of the Delhi Development Authority Act, 1957. A show-cause notice dated June 24, 1971 was served upon BTU by the Estate Officer, DDA and subsequently DDA demolished and removed the encroachments from the said land on August 02, 2001.

Appeal preferred by BTU before learned ADJ was allowed vide order dated September 22, 2001 thereby setting aside the order passed by the



Estate Officer. A writ petition bearing No.7312/2005 was preferred by DDA before the High Court challenging the order passed by learned ADJ, wherein in the proceedings conducted on July 19, 2018, BTU submitted before the High Court that the writ petition had become infructuous, since DDA had executed a lease in favour of BTU. However, stand was taken on behalf of DDA that the lease deed which had been executed and registered, was not approved by DDA and was void/contrary to the statute. Pursuant to the same, High Court directed DDA to file a detailed affidavit explaining the circumstances in which the lease deed had been executed, identifying the official responsible for the same and the action which the Vice Chairman (VC) proposed to take in this regard.

3. It is further the case of DDA that pursuant to the aforesaid directions, a committee was constituted by Vice Chairman, DDA on August 08, 2018 to examine the mater. Shri Sanjay Kumar/respondent herein, who was then a Senior Law Officer (SLO) was issued a memo on September 05, 2018 vide which it was communicated that the committee which had been constituted had found some lapses, in not referring the file by the SLO to the CLA (Chief Legal Advisor) and handling the same himself in the absence of CLA.

In the disciplinary proceedings initiated against the respondent, the statement of imputation of misconduct in support of Articles of Charge was issued in following terms:-

"1. In compliance with the orders dated 19.07.2018 of Hon'ble High Court of Delhi in W.P. (C) NO. 7312/2005 titled DDA Vs. Badarpur Traders Union & Anr. VC, DDA constituted a



committee to examine, inter alia, the matter of whether the Perpetual Lease Deed dated 15.12.2017 executed in favor of Badarpur Traders Union suffered from any infirmities and also whether there had been any lapses on the part of any officers of DDA in this matter.

2. A note dated 13.10.2017 at page 181/N of file No. F.16(106)76/MP/Pt.I/Vol. IV was recorded by the Sr. LO(LD)-II observing that this was a triparty unique case wherein a lease has to be executed in favor of Badarpur Traders Union and further sub-lease in favor of the members of the Union. It was also mentioned that this was the first type of lease deed/ sublease in the CL Branch and the Clauses of the lease have been incorporated from the lease deed with Cooperative Society Branch and CL Branch as the lease deed sub lease, in this case, was unique in nature itself being the Badarpur Traders Union is Union and likely to act as Society which has its own members to whom the sub-leases are to be executed by the department separately to the members with the recommendations of Registrar/ Commissioner of Trade Union being triparty execution of sub-lease deed i.e. BTU, the sub-lease members, and DDA. In view of these facts, the SLO (LD)-II proposed final vetting of the draft of the perpetual lease by Ld. CLA. Thereafter the SLO(LD)-I availed the leave and the file was dealt with by Shri Sanjay Kumar, S.L.O. (LD). He did not, however, show the lease to CLA.

3. The Committee submitted its report, inter alia, mentioning that the lease deed was not shown to CLA by the link SLO(LD), who dealt with the case during the leave of SLO(LD)- II

4. Hence, by his above acts Shri Sanjay Kumar, Sr. Law Officer failed to maintain absolute devotion to duty, thereby contravening the provisions of Regulation-4 (i) of DDA Conduct, Disciplinary & Appeal Regulations, 1999."

4. In the inquiry proceedings, Inquiry Officer on the basis of documentary and oral evidence adduced in the proceedings held that the charge against the respondent was partly proved to the extent that the



amended draft of the perpetual lease deed was not referred to CLA for his approval and it was left at the discretion of the Commercial Land Branch to refer back the file to the Land Department with the remarks “*if required any alternative or deletion of the terms and conditions of the draft or any further enquiry the file may be referred to law department.*”

5. Vice Chairman, DDA/Disciplinary Authority vide order dated August 24, 2020 held that the file was dealt by the respondent during the leave period of regular SLO and amended and vetted the draft perpetual lease deed himself without taking approval from the Deputy CLA/CLA despite specific noting by the previous SLO seeking CLA’s approval on the draft of the perpetual lease deed as it was a unique case. The submissions made by the respondent that the file was required to be forwarded only through Deputy CLA/HoD and the file could have been referred back by Commercial Land Department, did not find favour. Penalty of reduction from the post of SLO to the post of JLO in time-scale for three years fixing the pay-scale at the level on which the pay was fixed on April 24, 2016 (i.e. the date before the appellant was promoted to the post of SLO) was accordingly imposed upon the respondent. It was further directed that on completion of penalty period the respondent will regain his present post of SLO and pay will be fixed at the level of pay-scale which the Charged Officer was getting on the date of reduction of the post, meaning thereby postponing all increments which respondent would have earned during the period of penalty, had he not been demoted.



6. An appeal preferred by the respondent before the Hon'ble Lieutenant Governor (LG) was thereafter dismissed.

7. Aggrieved by the aforesaid orders of the Disciplinary Authority and Appellate Authority, the respondent preferred O.A.No.2464/2021, which has been allowed by the Tribunal, as noticed above thereby setting aside the order passed by the Disciplinary Authority and Appellate Authority.

8. Learned counsel for the petitioner assails the impugned order passed by the Tribunal and written submissions have also been filed on record.

Learned counsel for DDA submits that the respondent/Sanjay Kumar did not show the file to CLA (Chief Legal Officer), DDA despite specific noting from the regular SLO, (LD)-II that it was an unprecedented matter involving a tripartite lease deed and, as such, final vetting of the draft of perpetual lease deed should have been done by the CLA. Further, the respondent without showing the file to CLA or Deputy CLA forwarded the file to Commercial Land Department, DDA and marked the same to Deputy Director, CL. It was further urged that there is nothing on record in support of the defence of respondent having discussed the matter with the Deputy CLA-III. As a consequence of deliberate misleading note of respondent, there was no reason for the CL Department to refer it back to the Law Department once approval of the Law Department had been granted.

It was pointed out that the Inquiry Officer had, in assessment of evidence, noted that the respondent in his note dated October 18, 2017 stated



that a discussion was held with Deputy CLA-III, but he failed to confirm the same in writing by getting his note endorsed/signed by the latter. Further, the general practice for a junior officer is, to record a written note of oral discussion held with senior officer, bearing the signature of such senior officer and even if the junior official fails to record a written note at the time of discussion, it is his duty to get a written confirmation from the senior officer at the earliest in terms of regulation 4(4) and 4(5) of DDA Conduct, Disciplinary and Appellate Regulations, 1999. It was vehemently urged that even though Deputy CLA-III was not produced on behalf of the petitioner during the inquiry proceedings for confirmation in case the file had been forwarded by the respondent after discussion with her, as reflected in the note of the respondent, but said obligation of an affirmative assertion lay on the respondent by summoning the Deputy CLA-III.

It was contended that the petitioner had also initiated departmental proceedings against Shri M.K. Sharma, (then Assistant Director, CL) and Shri H.K. Sharma (then Assistant Section Officer, CL) which culminated in the imposition of penalty against the said officers. Further, recordable warning was issued to Mr. V.S. Yadav, then Director, CL. Besides above, on account of the lapses in allotment of land to BTU, petitioner also referred case of Mr. Khush Dalbir (then Deputy Director, CL) and Shri Subu R. (then Commissioner, Land Disposal) for suitable administrative action to their respective parent departments.

It was further submitted that lease deed dated December 15, 2017



executed in favour of BTU was determined after due approval from the Hon'ble LG and also a suit was filed before the High Court {CS (OS) No.145/2020} seeking cancellation of lease deed and for taking over the possession.

Reliance was further placed upon the principles laid down in ***Lucknow Kshetriya Gramin Bank v. Rajendra Singh, Civil Appeal No.6142/2013*** to contend that the Tribunal should have remitted the matter back to the Disciplinary Authority or the Appellate Authority if the quantum of punishment was found to be inappropriate. Reference was also made to ***Anil Kumar Upadhyay v. Director General SSB***, (Civil Writ Petition No. 2707/2022) and ***B.C. Chaturvedi v. Union of India 1996 AIR 484***.

9. On the other hand, learned counsel for the respondent supported the findings of the Tribunal and submitted that the respondent, who was working as SLO at the relevant time, had been made a scapegoat for the alleged illegality committed by the officers of the Commercial Land Department. It is pointed out that the CLA had also dealt with the file before the in-principle decision of regularization of lease in favour of BTU was taken and only after decision of regularization, the demanded amount had been paid by BTU. It is urged that the respondent only as a link officer had dealt with the file for formal vetting of lease deed since the regular SLO was on leave and carried out the vetting of lease deed which was shown to the Deputy CLA-III and after discussion, the file was returned to the CL department.

It is also pointed out that despite a query raised by the Principal



Commissioner, Land, the file was not sent back to the Law Department and the lease deed was executed in favour of BTU. It is contended that for the alleged illegality committed in regularization by CL department, the respondent was made a scapegoat. It is vehemently urged that Deputy CLA-III was not examined and no effort was made to prove if the note was wrongly recorded by the respondent. It is emphasized that the respondent had seen the file in the absence of SLO (LD)-II only as a link officer and there was no reason for respondent to suspect any illegality, since the case was considered by the senior most officer including the CLA and V.C., before taking an in-principle decision for regularizing the lease. The emphasis of the learned counsel for the respondent is that the finding of the Inquiry Officer on the aspect of non-examination of Deputy CLA-III is not based on any evidence. It is pointed out that the crucial aspect of referring the case to Deputy CLA-III that the Inquiry Officer has simply given the finding as under:-

"...The charged officer though had stated that the issue regarding the vetting of the draft perpetual lease was discussed with Dy.CLA-III, however, the same has not been concurred/having seen by Dy.CLA at any stage".

In the aforesaid background, the interference by the Tribunal is stated to be justified. Reliance is further placed upon *State of Andhra Pradesh Pradesh and Others v. Chitra Venkata Rao, (1975) 2 SCC 557*.

10. We have given considered thought to the contentions raised.



There is no dispute as to the proposition of law laid down in *Anil Kumar Upadhyay v. Director General SSB (supra)* relied by the petitioner to contend that the question of quantum of punishment in disciplinary proceedings is primarily within domain of the Disciplinary Authority and the jurisdiction of the High Court under Article 226 of the Constitution of India or of the Administrative Tribunal is limited, and is confined to the applicability of one or other of the well known principles known as *Wednesbury Principle*. It is also equally well settled in *B.C. Chaturvedi v. Union of India (supra)* that the High Court/Tribunal while exercising the power of judicial review, cannot normally substitute its own conclusion of penalty and impose some other penalty. Further, if the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief and direct the disciplinary/Appellate Authority to reconsider the penalty imposed or to shorten the litigation, it may itself, in exceptional and rare cases impose appropriate punishment with cogent reasons in support thereof.

The principles referred in *Lucknow Kshetriya Gramin Bank v. Rajendra Singh (supra)* are also not disputed and may be beneficially referred:-

“19. The principles discussed above can be summed up and summarised as follows.

19.1. When charge(s) of misconduct is proved in an enquiry the



quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.

19.2. The courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.

19.3. Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the court.

19.4. Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case.

19. 5. The only exception to the principle stated in para 19. 4 above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were identical or the co-delinquent was foisted with more serious charges. This would be on the doctrine of equality when it is found that the employee concerned and the co delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge-sheet in the two cases. If the co-delinquent accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable. "

11. However, it is well settled that the High Court may interfere, where the departmental authorities, have held the inquiry proceedings against the charged officer inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of inquiry or where the authorities have disabled themselves from reaching a fair decision by allowing



themselves to be influenced by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion.

Reliance in this regard may be placed upon *State of Andhra Pradesh and Others v. Chitra Venkata Rao* (supra) as well as *Amarendra Kumar Pandey v. Union of India and Others*, 2022 SCC OnLine SC 881.

12. The Tribunal allowed the O.A. preferred by the respondent for the reasons as recorded in paragraphs 11 to 19 of the impugned order and may be reproduced for reference:

“11. We have heard the learned counsel for the parties and also gone through the voluminous documents on record. We -have particularly studied the relevant file notings which, in fact, throw clear light on, this case as also the reasons for holding the applicant guilty of violating DDA regulations by not showing the file to the CLA.

12. It is not disputed that the case of the lease/sub-lease of Badarpur Traders Union was to be dealt with by the SLO(LD)-II. It is also recorded on file that at the relevant point of time when the file was under submission, the said SLO(LD)-II was on leave and the present applicant, who was SLO(LD)-I found himself in a situation wherein he was asked to deal with the file and vet the lease/ sub-lease.

13. We find from the file notings that the Dy. CLA has given a categorical direction to the applicant to explain the vetting done page wise, para wise along with reasons and then discuss the matter. Thereafter, it is recorded that SLO(LD)-II is on leave and the matter has been discussed with Dy. CLA. It has not been



contested anywhere in this O.A. or any of the documents placed on record that the matter was not discussed with the Dy. CLA, as desired. Further, there is a detailed note in which the applicant in his capacity as SLO(LD)-II has discussed the lease deed and in that note too, it has been recorded on two occasions that the matter has been discussed with the Dy. CLA and the facts, as recorded, explained to her. It has further been recorded that the Dy. CLA has desired to return the lease file to the Commercial Department and if it requires any alteration or deletion or if there is any further query, the file may be referred to the Law Department again.

14. The file notings clearly indicate that the current applicant, in his capacity as SLO(LD)-II, has recorded all this at the behest of Dy. CLA, after discussion with her.

15. Since the facts as recorded on file are not controverted, we have no reason to doubt the same. The charge against the applicant is singular that he did not show the file to the CLA. However, during the course of hearing, it has been categorically submitted before us that the channel of reporting and submission of file of the applicant was Dy. CLA; and it has been conclusively established that he did submit the file to the Dy. CLA and subsequently also discussed the matter with her and after this discussion did he send the file back to the Commercial Department. Further, when the file was returned after vetting of the lease deed to the Commercial Department, no one in the Commercial Department also thought it appropriate to send the file back and seek the concurrence/approval of the CLA, despite the fact that a specific query had been put by one Principal Commissioner to 'this effect. What happened to this query, is not adequately revealed in the file, but what transpires is that at a much belated stage, it was observed that the proposed matter has been dealt with without approval of the CLA.

16. We do not know nor is it our remit to comment whether the issue of the concerned lease deed or some lease deed was dealt with in an appropriate manner, in accordance with the internal regulations of DDA. However, the facts as argued before us and as established by the documents on record, conclusively prove that the applicant could not have been held responsible for any



act of omission or violation of regulation of rules, in case there have been any. The applicant was only holding a temporary charge of the task assigned and in our view, he submitted the file as directed and as recorded in the file notings to the appropriate channel of reporting/submission of file. In case there has been any serious lapse in the entire matter, the record does not indicate any guilt of the same on the part of the present applicant.

17. The applicant, in our view, has been subjected to a very harsh penalty in the matter without any substantive evidence. Accordingly, we cannot sustain the impugned orders dated 24.08.2020 and 04.10.2021 i.e. the order of the disciplinary authority and the appellate authority respectively. Accordingly, these orders are quashed and set aside. Along with them, is set aside the report of the Inquiry Officer dated 27.01.2017 and the memorandum dated 24.04.2019 vide which the Articles of Charges were issued.

18. Needless to say that pursuant to these directions, the applicant shall be entitled to all the consequential benefits, including arrears of any financial benefits which may accrue to him as a consequence of this order and he will be restored to his original position as a Senior Law Officer with effect from the date the penalty was imposed, meaning thereby that he continues to hold this position without interruption. The said directions shall be complied with within a period of six weeks' from the date of receipt of a copy of this order.

19. The O.A. stands disposed of in the aforesaid terms. Associated M.A., if any, shall stand disposed of accordingly. There shall be no orders as to costs."

13. The background facts reveal that alleged illegality committed in regularizing the lease in favour of BTU came to light in pending proceedings before the High Court only when the writ petition preferred by DDA was sought to be withdrawn. Consequently, DDA was compelled to investigate and take action in view of the observations made by the High Court.



However, it is imperative to note that the in-principle decision of regularization of lease had already been taken by the Commercial Land Department prior to initiating proposal for formal vetting of 'lease' as reflected vide detailed note dated September 29, 2017 by DA/CL.

Perusal of note dated September 29, 2017 by **DA/CL (Commercial Land)** reflects that in response to office letter dated June 14, 2017 for regularization of 3.69 acres of land allotted to BTU, the demanded amount had already been deposited by BTU as per their letter dated August 28, 2017 including the payment of ground rent. BTU vide letter dated September 28, 2017 is also stated to have submitted required documents along with undertaking. **Thereafter, it is further noted that land measuring 3.69 acres allotted to BTU has been regularized on June 14, 2017 with the approval of the competent authority, which is already in possession of BTU.** The note further recorded *"Now, as such, the land is already in the possession of Badarpur Traders Union and request of the Badarpur Traders Union is already on file for issue of lease deed paper, if agreed we may issue lease deed paper, draft of which collected from the Corporative Society Branch and CL Branch, because the lease deed in this case is separate in nature itself being the Badarpur Traders Union case is likely to be society which has its members to whom the sub-leases are to be executed separately to the members with the recommendation of the registrar of trade unions being triparty execution of sub-lease i.e. in between the Badarpur Traders Union, the sub-lease/member and DDA for stamping purpose."*



The file was marked by DA/CL to AD(CL) who advised to obtain the valuable inputs of SLO(LD) with regards to T&C of lease deed as it is a unique case and was thereafter returned by JLO(LD) after discussions with SLO(LD) on October 10, 2017 to DD(CL).

14. The file was again forwarded by CL department along with perpetual lease deed placed on correspondence, with proposal to send to CLA for vetting vide note dated October 11, 2017 and was marked to SLO(LD). The matter was examined by SLO(LD) on October 13, 2017 and marked to Deputy CLA, who further recorded vide note dated October 16, 2017 (which is wrongly mentioned as August 16, 2017) for explaining the vetting done by SLO(LD)-II with reasons and for discussing the matter.

However, since SLO(LD)-II was on leave, the file was discussed by the Link Officer SLO(LD) i.e. the respondent in terms of note dated October 18, 2017 which is crucial and is reproduced for reference as it led to initiation of disciplinary proceedings against the respondent:

“The matter discussed with the Deputy CLA-III and explain the queries as raised on pre page. The matter also discussed with the SLO (LM) who looks after the cases of Badarpur Traders Union pending in the High Court. Commercial Land Branch, DDA has regularized 3.69 Acres of land to the Badarpur Traders Union and the demanded amount has already been deposited by the Badarpur Traders Union including the payment of ground rents. After finalize all the codal formalities, the Commercial Land Branch has drafted the perpetual lease deed placed opposite and sent it for vetting vide note dated 13.10.2017 SLO(LD)-11 has stated that this is triparty unique case wherein a lease has to be executed in favour of Badarpur Traders Union and further sub-lease in favour of the members



of the Union. The contents of perpetual lease of House Building Cooperative Societies (Group Housing Societies) available with DDA (Disposal of Nazul Land) Rules 1981 taken considering the Badarpur Traders Union shall act like a society and Tripartite sub-lease has to be executed to its members like members of the societies.

Draft perpetual lease seen & also seen by DY. CLA-III. Format of perpetual lease of House Building Cooperative Societies, Group Housing Societies (Form-A) available with DDA (Disposal of Nazul Land) Rules- 1981 has taken into consideration with following amendments.

1 Society replaced as Badarpur Traders Union.

2 Delhi Co-operative societies Act- 1972 replaced as trade union Act-1926.

3. The word residential & residential plots replaced as commercial and commercial plot.

4 Clause 5 (a) and (b) of the perpetual lease (Form A) deleted which deals with eligibility to be a membership society for residential plot having only one residential plot to each of its member or whose wife/husband or any of his/her dependents relatives including unmarried children does not own, in full or in part an free hold or lease hold basis any residential plot or house in urban area of Delhi, New Delhi or Delhi Cantonment, and who may be approved by the LG, Delhi.

The proposed draft of perpetual lease is based upon Form A available with DDA Act Disposal of Developed Nazul Land Rules-1981 which has been amended as above.

The matter discussed with Dy. CLA-III as SLO(LD)-II is on leave and aforesaid facts explained to her who desired to return this file to the Commercial Department, if required any alternation or deletion of the terms and conditions of the draft or any further query the file may be refer to the Law Department.

*SLO(LD)
18/10/2017*

DD(CL)

AD(CL)”



15. It is crucial to notice that respondent after making amendments in the proposed draft as recorded in his note dated October 18, 2017 returned back the file to CL department only after discussion with the Deputy CLA-III and as desired by the senior officer under whom he was working.

Surprisingly, the petitioner neither deemed it appropriate to cite Deputy CLA-III as a witness in the inquiry proceedings nor placed her denial *qua* noting dated October 18, 2017 made by the respondent. The matter appears to have been proceeded on the assumption in the inquiry proceedings that the matter was not discussed by the respondent with Deputy CLA-III despite his categorical assertion in the noting dated October 18, 2017. It appears that petitioner for the reasons best known overlooked the role of Deputy CLA-III and the proceedings were initiated against respondent making him the scapegoat.

16. It is further pertinent to observe that after marking of the file by SLO (LD) to Deputy Director (CL) on October 18, 2017 the same was placed through Assistant Director (CL), Deputy Director (CL), Director (CL), CL D to Principal Commissioner (L). Thereupon a query was rightly raised by Principal Commissioner (L), if the file has been seen by the CLA along with the format. The observations of Principal Commissioner (L) in this regard were attended vide note dated November 07, 2017 by ASO/CL with the observations that the case is already in the knowledge of CLA and the format of lease deed has been seen by the Deputy CLA-III as recorded by the SLO (LD) in his note dated October 18, 2017.



In view of detailed note by the respondent dated October 18, 2017 it was to the knowledge of Commercial Land Department regarding the levels at which the file had been examined in Law Department. The matter could not have been adversely proceeded against the respondent, who had merely seen the file as a Link Officer and returned the file after examination as per directions of his senior officer i.e. Deputy CLA-III. Reliance placed by petitioner on Regulation 4(4) of DDA Conduct, Disciplinary and Appeal Regulations, 1999 (hereinafter referred to as “Regulations”) during course of arguments affixing the liability on respondent is misplaced as the same only provides general conduct to be followed by the officers and has to be conjointly read in entirety. Regulation 4 prescribing ‘General Conduct’ may be further reproduced for reference, for testing the contentions raised by learned counsel for the petitioner:-

“4.General Conduct – 1. Every employee of the Authority shall at all time :

(i) Maintain absolute devotion to duty

(ii) Maintain absolute integrity

(iii) Do nothing which his unbecoming of a public servant.

2. Every employee of the Authority holding a supervisory post shall take all possible steps to ensure integrity and devotion to duty of all employees for the time being under his control and authority.

3. No employee in the performance of his official duties or in exercise of powers conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior.

4. The direction of the official superior shall ordinarily be in writing. Oral directions to subordinate shall be avoided as far



as possible. Where the issue of oral directions becomes unavoidable, the official superior shall confirm it in writing immediately thereafter.

5. An employee who has received oral direction from his official superior shall seek confirmation of the same in writing as early as possible, whereupon it shall be the duty of the official superior to confirm the direction in writing.”

It is pertinent to observe that Regulation 4(3) enjoins that no employee in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgment **except when he is acting under the direction of his official superior.**

A mere reading of regulation 4(3) reflects that the respondent complying with the directions of his superior officer i.e. Deputy CLA-III examined the proposal in the file as Link Officer and returned back the same to the concerned department i.e. 'Commercial Land' as per directions and after discussion with Deputy CLA-III. The respondent in no manner could have contravened the directions of the superior officer i.e. Deputy CLA-III since the matter was *bonafidely* examined and there are no allegations of *malafides*, extraneous motives or corrupt practice against the respondent.

The contention raised by learned counsel for the petitioner that in terms of regulation 4(5), burden lay upon the respondent to seek confirmation of the same in writing as early as possible, has to be seen in the light of the fact that it was the duty of the superior officer i.e. Deputy CLA-III to confirm the directions in writing. It has already been observed that for the reasons best known, the statement of Deputy CLA-III has not even been



recorded by the petitioner in inquiry for confirming in case the factual note recorded by the respondent on October 18, 2017 is factually incorrect.

In the aforesaid background, we do not find any merit in the contention raised by learned counsel for the petitioner that non-forwarding of the file to Deputy CLA-III vide note dated October 18, 2017 by the respondent amounted to misconduct, since respondent merely acted as per the directions of his senior officer i.e. Deputy CLA-III. In the present case, the 'misconduct' by the respondent is not discernible from the facts and circumstances and the action has been wrongly initiated against the respondent.

The observations of the Tribunal in para 17 of the impugned order to the extent that the respondent has been subjected to a very harsh penalty in the matter without any substantial evidence is to be seen in the light of the categorical finding that the record did not indicate any guilt on the part of the respondent.

17. For the foregoing reasons, we do not find any infirmity in the order passed by the Tribunal as the substantive evidence does not in any manner prove the charge against the respondent. Since the respondent has faced the ignominy of demotion and working at a lower rank, pursuant to the penalty imposed in disciplinary proceedings, which has been set aside, we impose a cost of Rs.25,000/- (Rupees Twenty Five Thousand Only) to be paid by the petitioner/DDA to the respondent. Further, financial benefits which may accrue to the respondent, as held by the Tribunal be paid with interest @ 7%



per annum.

The writ petition is accordingly dismissed. Pending applications, if any, also stand disposed of.

**(ANOOP KUMAR MENDIRATTA)
JUDGE**

AUGUST 04, 2023/mr/sd



**(V. KAMESWAR RAO)
JUDGE**