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Central Administrative Tribunal, Principal Bench

Original Application No. 1664 of 1998

New Delhi, this the 20th day of April, 2000

Hon'ble Mr. V.K. Majotra, Member (A)  
Hon'ble Mr. Kuldip Singh, Member (J)

Jai Narain  
Ex. Constable (Driver) No. 1631/DAP,  
S/o Shri Devi Singh  
R/o Village & P.O. Barahi, P.S. Bahadurgarh,  
District Jhajjar (Haryana). - Applicant

(By Advocate - Shri Sama Singh)

Versus

1. The Commissioner of Police,  
Delhi Police Headquarters,  
M.S.O. Building,  
I.P. Estate,  
New Delhi-110 002.
2. The Sr. Additional Commissioner of  
Police (AP&t),  
Delhi Police Headquarters,  
M.S.O. Building,  
I.P. Estate,  
New Delhi-110 002.
3. The Deputy Commissioner of Police,  
2nd Bn., DAP, Delhi. - Respondents

Shri Anil Singhal, proxy for Ms. Jasmine Ahmed,  
Counsel for the respondents.

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (J)

The applicant, an ex-Constable (Driver) under the Delhi Police, had been proceeded departmentally and vide impugned order (Annexure-A), had been dismissed from service. Against the said order, an appeal was preferred which had also been rejected vide Annexure-B and revision petition was also rejected vide Annexure-C. In the present O.A., the applicant has challenged the orders passed by the disciplinary authority as well as the appellate authority and the revisional authority.

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(B)

2. The allegation against the applicant was that on 19.10.1995 at about 7.35 A.M., the applicant while on duty as Constable (Driver) was directed to report for duty to Shri Rajneesh Gupta, ACP/IIInd Battalion DAP, along with Government vehicle but the applicant is stated to have flatly refused to perform his official duty. The matter was reported to Sub Inspector (MT) who called the applicant and again asked him to report for duty to the ACP but again the applicant refused to perform the duty. A report to this effect was recorded and it is alleged that this act of refusal on the part of the applicant amounts to grave misconduct, indiscipline, negligence, dereliction of duty and was unbecoming of a police officer which rendered him liable for departmental action under Section 21 of the Delhi Police Act, 1978, so departmental enquiry was initiated. The Enquiry Officer was appointed to conduct the enquiry, who returned his findings holding the applicant to be guilty. Consequent thereupon, the applicant was dismissed from service.

3. While assailing the impugned orders, the applicant has taken up the ground that the charge against him was erroneously framed because of no evidence. It was also pleaded that the appellate authority had also dismissed the appeal as the said authority acted prejudicially against the applicant and was bent upon to oust the applicant from service.

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4. It is also pleaded that the appellate authority as well as the revisional authority had passed the orders without appreciating the evidence. It is stated that even the prosecution witnesses have refuted the allegation of refusal on the part of the applicant to perform the duty. It is also stated that no charge of grave misconduct, indiscipline, negligence or dereliction in the discharge of duty has been made the basis of evidence adduced by the applicant.

5. Another ground taken by the applicant is that it has also come on the file that during the fateful time, the applicant was sick and was suffering from diarrhoea and as such, he has not committed any act of refusal in not performing the duty. It is also stated that the authorities had wrongly disbelieved the medical certificate submitted by the applicant.

6. We have heard the learned counsel for the parties and have gone through the records.

7. The main contention of the learned counsel for the applicant is that the findings recorded by the Enquiry Officer on the basis of which the disciplinary authority had passed the order of removal from service is based on no evidence and as such the same is liable to be quashed.

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8. The second contention of the learned counsel for the applicant is that the medical certificate submitted by him has not been considered by the Enquiry Officer as well as by the disciplinary authority and the appellate authority etc.

9. However, from the perusal of the enquiry report and the statement of witnesses recorded during the enquiry do show that there was sufficient evidence on record to the effect that the applicant had refused to perform the duty. The statement of PW-2 particularly shows that the applicant had refused to drive the Government vehicle on demand by the ACP.

10. Even otherwise, the contention of the learned counsel for the applicant that the applicant was sick and the medical certificate submitted by him had not been considered and because of his sickness he was prevented to perform the duty that itself goes to show that there is an implied admission on the part of the applicant to the effect that he had refused to perform the duty.

11. As per law on this point is concerned we may quote a portion from the Shorter Constitution of India by Durga Das Basu 12th Edition at page 1017 which reads as under:-

"(c) The Court can interfere where there is no evidence at all or where the evidence is such that no reasonable person can arrive at the conclusion which is impugned, or the finding is, on the face of it, arbitrary and capricious, or based on mere suspicion.

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In such a case, it is not necessary to establish, further, that the findings was mala fide.

But if there is some evidence which can justify the finding, the Court cannot interfere with the finding on the ground that the best evidence has not been produced; or that it would be insufficient for securing conviction of the delinquent on the same charge, at a criminal trial.

Since the High Court, under Article 226, is not a court of appeal, it cannot interfere on the ground of inadequacy or reliability of the evidence on which the disciplinary authority has acted. It cannot review the evidence and come to its own conclusions. It can only interfere where (a) there is no legal evidence to support the finding, or (b) the finding is perverse".

12. While making these observations, the learned author had also relied upon the various decisions of the Supreme Court given in the foot notes on page 1017.

13. In this case also, we find that as per the statements of the prosecution witnesses, the applicant had refused to perform the duty at the time when he was called upon by the ACP to perform the same.

14. As regards his medical certificate is concerned, it has also come on record that according to the medical certificate the applicant had fallen sick on 18.10.1995 but he had not informed about the same to his superior nor there is any entry made in the daily dairy register regarding his sickness. So on that basis, the departmental authorities had not placed any reliance on the medical certificate and as already observed in the above quoted passage, the Tribunal cannot review the evidence and come to its

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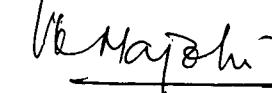
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own conclusions as per the judgment in Maharashtra, S.B.E. Vs. Gandhi, (1992) 2 SCC 716 and State of A.P. Vs. Venkatrao, A. 1975 SC 2151. In view of this, we are of the considered opinion that the Tribunal while exercising the power of judicial review, cannot interfere with the findings recorded by the departmental authorities which are based on some evidence and the Tribunal cannot substitute its own findings by reappreciating the evidence recorded during the departmental enquiry.

15. In view of the above, we are of the considered opinion that no interference is called for in the impugned orders and the O.A. is liable to be dismissed. Accordingly, OA is dismissed but without any order as to costs.

  
 (Kuldip Singh)  
 Member (J)

Rakesh

  
 (V.K. Majotra)  
 Member (A)