

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 754/1998

199

T.A.No.

DATE OF DECISION 15.3.99

9

Sh.Jai Charan Verma

....Petitioner

Mrs. Meera Chhibber

....Advocate for the  
Petitioner(s)

VERSUS

UOI through Lt.Governor of  
Delhi and Ors

....Respondent

Sh.Rajinder Pandita

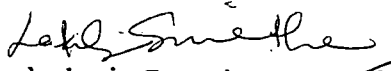
....Advocate for the  
Respondents.

CORAM

The Hon'ble Smt.Lakshmi Swaminathan, Member (J)

The Hon'ble Shri K.Muthukumar, Member (A)

1. To be referred to the Reporter or not?YES
2. Whether it needs to be circulated to other  
Benches of the Tribunal? No.

  
(Smt.Lakshmi Swaminathan)  
Member(J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI.

OA 754/1998

New Delhi this the 15th day of March, 1999.

Hon'ble Smt. Lakshmi Swaminathan, Member (J)  
Hon'ble Shri K. Muthukumar, Member (A)

In the matter of

Shri Jai Charan Verma,  
S/O Shri Hukam Singh,  
R/O Village Dallu Pura,  
Delhi-110091.

... Applicant

(By Advocate Mrs. Meera Chhibber )

Versus

1. Union of India  
through Lt. Governor, Delhi  
Raj Niwas, Delhi.

2. Additional Commissioner of Police,  
D.A.P. Kingway Camp,  
Delhi.

3. Deputy Commissioner of Police  
8th Bn. Malviya Nagar (Old Police  
Training Centre),  
New Delhi.

... Respondents

(By Advocate Shri Rajinder Pandita )

O R D E R

(Hon'ble Smt. Lakshmi Swaminathan, Member (J))

The applicant is aggrieved by the penalty orders passed by the respondents dismissing him from service as Sub Inspector (SI) in Delhi Police by order dated 21.3.97 and rejection of his appeal by the appellate authority's order dated 8.1.1998.

2. The aforesaid orders/against the applicant after holding a departmental enquiry against him under Section 21 of the Delhi Police Act, 1978 for his misconduct while posted in 8th Bn., DAP, Delhi when attending the court of Shri A.K. Chaturvedi, M.M. Shandra, Delhi in connection with case FIR No. 398/90 u/s 308/34 IPC P.S. Kalyan Puri, Delhi registered against him. The allegations were that the applicant had threatened Constable Jagdish Prasad, Naib Court

in the court as to why he has filed affidavit against him in the said case. On the complaint of Constable Jagdish Prasad, Naib Court, a case FIR 129/93 dated 7.4.93 u/s 506 IPC P.S. Shahdara, Delhi was registered against him. A departmental enquiry was initiated against the applicant by order dated 27.8.93 which was stayed by the Tribunal in OA 1683/94 filed by the applicant. On SLP being filed against this order, the Supreme Court in SLP No. 22744/95 (Govt. of NCT Vs. Jai Charan Verma) set aside the stay order. Thereafter the departmental enquiry against the applicant, which had been kept pending, was re-opened and conducted by the Enquiry Officer, who had submitted his report that the charge against the applicant was not made out. The disciplinary authority disagreeing with the findings of the Enquiry Officer's report, gave notice to the applicant with reasons, to which the applicant has also filed a written reply. The Disciplinary authority after having considered the evidence on record and the reply filed by the applicant came to the conclusion that the applicant is not fit to be retained in the Delhi Police as he had committed mis-conduct by threatening a colleague which was not proper in a disciplined force. In the circumstances he had issued the penalty order of dismissal against the applicant which has been challenged in this O.A. In this order the disciplinary authority had also referred <sup>to</sup> the list of criminal cases registered and pending against him. This was done in connection with dealing <sup>with that</sup> reply filed by the applicant in which he has alleged that the police officials of P.S. Kalyanpuri had tried to implicate him falsely in a case and that the senior officers of Delhi Police were out to harm him. The disciplinary authority has stated that the complainant has no reason to falsely implicate the applicant and his allegation is clearly borne out by O.D. No. 11-A which was lodged on the same <sup>date</sup> and he came to the conclusion that the charge against the defaulter S.I. was substantiated. The appellate authority in his order has also referred to the facts that the departmental enquiry held against the applicant and the appeal filed by him in his

order dated 8.1.1998. The appellate authority has stated that after analysis of the evidence on record, it shows that the applicant has threatened Constable Jagdish Prasad, Naib Court of M.M. Shahdara, Delhi for filing an affidavit against him before the Court in connection with case FIR 398/90 u/s 308/34 IPC P.S. Kalyan Puri, Delhi. This incident has been recorded in DD of P.S. Kalyan Puri vide No.11 A dated 23.3.93 on the same date and Constable Jagdish Prasad had also deposed about it during the D.E. proceedings. In the DD entry it was stated that the applicant threatened the Naib Court, questioning him as to why he had filed false affidavit against him and that "he would see him." According to the appellate authority, the threat "I will see you" implies all consequences and should not be taken lightly. Taking into account the totality of the facts and circumstances of the case he agreed with the findings of the disciplinary authority and held that there was no justification to interfere with the dismissal order.

3. The applicant had joined the Delhi Police as SI in 1968 and till the impugned order of dismissal was passed, the applicant had put in more than 29 years of service. Mrs. Maera Chhibber, learned counsel has taken a number of grounds challenging the impugned penalty orders. She has submitted that the penalty orders are illegal and not at all commensurate with the gravity of the offence. She has also vehemently submitted that the applicant has been acquitted in all the cases referred to by the disciplinary authority in the order and in one case the case was ordered to be withdrawn by the orders of Hon'ble Lt. Governor. She has also submitted that even if the applicant had threatened the Naib Court and the case was registered against him that he had stated "I will see you", that cannot be termed as a mis-conduct justifying dismissal from service. She has also emphasised that the criminal case in connection with this

alleged mis conduct has been concluded and it has been decided in favour of the applicant where the learned Judge, in his order dated 12.3.98 has stated that Constable Jagdish Prasad was not a reliable and trustworthy person. Learned counsel has also emphatically argued that even for the sake of argument, if it is assumed that the applicant had used the words " I will see you" against the Naib Court, the penalty order of dismissal from service was too severe and disproportionate, especially considering the fact that the applicant has already put in 29 years of service. She has, therefore, submitted that the penalty order is totally perverse and dis-proportionate to the alleged mis-conduct, if any, and is absolutely uncalled for in the circumstances of the case. Learned counsel has accordingly submitted that the penalty order of dismissal affirmed by the appellate authority should be quashed and set aside and the applicant should be reinstated in service with all consequential benefits, including arrears of pay, seniority and promotion or in the alternative a prayer has been made that the case may be remitted to the respondents to pass appropriate orders, keeping in view the acquittal passed by Ld. A.C.M.M. and Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980.

4. The respondents in their reply have controverted the above submissions. Shri Rajinder Pandita, learned counsel has submitted that the impugned order of dismissal has been passed correctly after holding a disciplinary enquiry in accordance with law. He has submitted that none of the grounds taken by the applicant are tenable. He has submitted that there is no evidence that the senior officers of Delhi were out to harm the applicant and the fact that there is a long list of criminal cases registered against the applicant, which has been referred to in the reply, speaks for itself, even though he might have been acquitted later. He has submitted that on the evidence before the disciplinary authority he had come to the conclusion that the applicant was not

a fit person to be retained in Delhi Police and hence he had issued the penalty order of dismissal. This has been upheld by the appellate authority who had also dealt with the facts and evidence on record. Shri Rajinder Pandita, learned counsel has, therefore, submitted that having regard to the settled law on the principles of judicial review of Courts/Tribunals in such disciplinary matters there is no ground to set aside the penalty orders. We have also seen the rejoinder filed by the applicant. (14)

5. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

6. In the facts and circumstances of the case and taking into account the catena of judgements of the Supreme Court regarding the exercise of the power of judicial review by the Courts/Tribunals in disciplinary proceedings (See for example B.C. Chaturvedi Vs. UOI & Ors (JT 1995(8) SC 65; N. Rajarathinam Vs. State of Tamil Nadu and Another (1997) (1) SLJ(SC) 10; UOI Vs. Parma Nanda (AIR 1989 SC 1185), we are not in a position to hold that the disciplinary enquiry has not been held by the competent authority in accordance with the Rules or the principles of natural justice which justifies any interference in the matter, except on the question of the quantum of punishment. We are also unable to agree with the contentions of the learned counsel for the applicant that in the context in which the applicant was alleged to have said "I will see you" against the complainant, the respondents could not have held the disciplinary proceedings or come to the conclusion that he should be punished. This is not a case where there is no evidence and the competent authority has dealt with the facts and evidence on record in accordance with the rules. We do not also find any force in the arguments advanced by the learned counsel for the applicant that because the applicant had been acquitted in the criminal case in which the learned Judge had made certain observations against Constable

Jagdish Prasad the disciplinary proceedings ought not to have been held against the applicant. It is settled law that the burden and degree of proof in disciplinary proceedings is not the same as in criminal cases and there is also no bar to holding disciplinary proceedings in these circumstances. Regarding the contention of the learned counsel for the applicant that the disciplinary authority had relied upon extraneous material, namely, a number of FIR cases listed in the penalty order, we find that other than giving the list of criminal cases filed against the applicant, the penalty has been imposed on FIR 129/93 read with DD 11 A i.e. the complaint of Constable Jagdish Prasad, Naib Court on the allegation that applicant had used the expression "I will see you" which is the subject matter of the disciplinary proceedings. As laid down by the Supreme Court in a number of judgements, including those referred to above, it is not for the Court or the Tribunal to re-appraise the evidence or interfere with the discretion exercised by the competent authority unless it is arbitrary or utterly perverse. In Parma Nanda's case (supra), the Apex Court has further held that the Tribunal cannot also interfere with the penalty if the conclusion of the competent authority is based on evidence, even if some of it is found to be irrelevant or extraneous to the matter. We are also not able to come to the conclusion that the applicant had not conducted a misconduct by threatening the complainant "I will see you" in the context of the case. Therefore, after careful perusal of the impugned penalty order, ~~although~~<sup>as held</sup> as held in a recent case (Dr. Anil Kapoor Vs. UOI & another (JT 1998(8) SC 29), ~~that~~<sup>but</sup> though it is possible to take another view in the matter, that will not <sup>be</sup> sufficient ground to interfere in the matter and held that no penalty is warranted in this case.

7. However, taking into account the nature of the offence and the facts of the case, we are of the view that the punishment is so shocking <sup>by</sup> disproportionate and perverse so as to call for

interference on this account. It is also relevant to note that neither the disciplinary authority or the appellate authority has noticed the long number of years of service put in by the applicant in the Delhi Police before the penalty of dismissal was imposed. As held by the Supreme Court in Ranjit Thakur Vs. Union of India and Ors. (1987) (5) ATC 113, which is a case relied upon by the applicant, judicial review, generally speaking, is not directed against a decision but is directed against the decision making process. It has been further held:-

" ..... that the question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction."

(emphasis added)

In Union of India and Another Vs. G. Ganayutham (1997) (7)

SCC 463, the Supreme Court has dealt with in detail some aspects of judicial review, especially the questions regarding reasonableness, rationality and proportionality. Reference has also been made to the judgement in Ranjit Thakur's case (supra) wherein the Court interfered with the punishment after coming to the conclusion that the punishment was in outrageous defiance of logic and was shocking. In B.C. Chaturvedi Vs. Union of India 1995(6) SCC 749 a three Judge Bench said the same thing, which has been quoted by the Apex Court in Ganayutham's case (supra) as follows:-

" ... The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. 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, either directing the disciplinary authority/appellate authority to reconsider



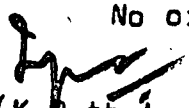
the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof." (17)


Similar view was taken in Indian Oil Corpn.Ltd.Vs. Ashok Kumar Arora(23)(1997)3 SCC 72) that the Court will not intervene unless the punishment is wholly disproportionate."

In Ganayutham's case, however, the Court has set aside the Tribunal's order, which had interfered with the quantum of punishment and had also substituted its own view of the punishment. The punishment awarded by the departmental authorities was restored which had imposed the penalty of withholding of 50% pension and 50% of gratuity against the respondents.

8. In the result, the appellate authority's order dated 8.1.98 is quashed and set aside and the case is remitted to the appellate authority to reconsider the penalty and pass a reasoned order imposing any other lesser punishment, other than <sup>removal</sup> dismissal from service, keeping in view the fact that the applicant has put in 29 years of service in Delhi Police. This shall be done within six weeks from the date of receipt of a copy of this order.

No order as to costs.

  
(K. R. Nuthukumar)  
Member (A)

  
(Smt. Lakshmi Swaminathan)  
Member (J)

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