

13

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

D.A.No.1267 of 1991.

New Delhi, this the 18th day of January, 1996.

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

Sultan Singh, R/O Vill. Kheri Majat,
Post Office Sonepat, P.S. Rai,
Distt. Sonepat (Haryana). Applicant.
(Through Mr N.S. Bhatnagar, Advocate).

Versus

1. Union of India, through the Commissioner of Police, P.H.W., I.P.Bhawan, New Delhi.
2. The Addl. Commissioner of Police, Southern Range, PH, I.P.Bhawan, New Delhi.
3. The Dy. Commissioner of Police, South District New Delhi. Respondents.

(through Mr Rajinder Panditta, Advocate).

ORDER

Smt. Lakshmi Swaminathan, Member(J)

The applicant is aggrieved by the order passed by the Deputy Commissioner of Police (Southern Distt. New Delhi) dated 17.9.1990, dismissing him from service. This order has been passed after holding a departmental inquiry against the applicant. The applicant is also aggrieved by the rejection of his appeal by the order of the Appellate Authority dated 31.12.1990 (Annexure C) and so also the revision petition by the order of the Commissioner of Police Delhi dated 2.5.1990 (Annexure D). Hence

1/2
this OA has ^{been} filed under Section 19 of the Administrative Tribunals Act, 1985 to set aside the order of dismissal dated 17.9.1990 and to declare that the petitioner is in continuous service and to give all consequential benefits.

2. The brief facts of the case are that the applicant was posted as A.S.I.Okhla Police Station, Industrial Area and was detailed for night patrolling duty on the night of 1/2-11-1989 alongwith Constable Kanwar Singh. It is alleged in the Charge-Sheet dated 22.5.1990 (Annexure B) that the applicant and the Constable over-powered a thief with stolen property of Copper Goods in a Gunny Bag, kept the stolen property in the custody namely, Ifran of a Kabari/near Nala, Phase-I, Okhla and let the thief off and thereafter disposed of the stolen property for Rs.3000/-. It is alleged that later on the stolen property was recovered by S.I.Ishwar Singh, who deposited the same in the Makhana of P.S.Okhla after taking into police possession u/s 102 Cr.P.C. vide DD No.8A dated 18.11.1989. On account of these allegations, the applicant had been charged on 22.5.1990.

3. The applicant alleges that the disciplinary inquiry proceedings held against him were not in accordance with the rules and dismissal order dated 17.9.1990 should be quashed. The respondents have filed a reply disputing the averments made by the applicant in which they have stated that all the relevant rules have been complied with and there is no infirmity in the dismissal order or the subsequent order passed by the competent authorities.

18/

4. We have also heard Shri N.S.Bhatnagar, learned counsel for the applicant at great length as well as Shri Rajinder Panditta, learned counsel for the respondents.

5. Shri N.S.Bhatnagar had raised a number of points in the arguments but the main arguments on which he rests his case are the following :

(i) that the dismissal order is bad because the disciplinary authority has considered the previous record of punishment given to the applicant while awarding him the penalty contrary to the provisions of Delhi Police (Punishment & Appeal) Rules, 1980. His point is that the Disciplinary authority could not have considered the previous bad record unless a definite charge had been made against him based on this record and he had been given an opportunity to defend himself as required under Rule 16(xi).

(ii) The respondents have denied that it is necessary to frame a specific or separate charge based on the past record as punishment has already been awarded to him, which has become final in those cases. The Disciplinary Authority had only referred to his past record after it had come to the conclusion that the charges against him have been fully proved and substantiated by the evidence led by the prosecution witnesses in the departmental inquiry. He also referred to Rule 10 of the

Punishment and Appeal Rules, which permits the previous record of the Officer to be looked into. In the circumstances, Shri Rajinder Panditta states that there is no infirmity in the dismissal order on this ground.

(iii) The Disciplinary Authority has in para 5 of the order come to the conclusion that the charges framed against him have been fully proved on the basis of the evidence led in the departmental inquiry and that the applicant has not been able to produce tenable evidence to refute the charge made against him. Having come to this conclusion he perused the service record of both the defaulters and came to the conclusion that the applicant is prone to misconduct and he is an undesirable element. Having come to this conclusion, the order of dismissal was passed. Having regard to the provisions of Rule 10 of Delhi Police Rules and the facts in this case, therefore, we find no illegality in the order of dismissal. The contention of the applicant to the contrary based on Rule 16(xi) is not tenable and is rejected.

6 (i) the second ground urged by the applicant's counsel is that no sanction had been obtained from the competent authority, i.e., the Additional
19/

Commissioner of Police before instituting the disciplinary proceedings. He also submits that there has been no application of mind while granting this sanction.

He relies on the judgment in State of U.P. vs. Babu Ram, 1962(2) SLR 679, which is referred to in the Judgment of the Supreme Court in Delhi Administration vs. Chanan Shah (1969 SLR 270). Shri Bhatnagar submits that Rule 15(2) of the Delhi Police Rules is similar to para 486 Rule 1 of U.P. Police Regulations, which have been held mandatory ^(Supra) in Babu Ram's case. He, therefore, submits that since no proper sanction has been obtained from the Addl. Commissioner of Police, the departmental proceedings held against the applicant were illegal and void. In this connection he also draws attention to para 9 of the counter-affidavit, in which it is stated that the letter dated 9.2.90 relating to the permission of the Addl. Commissioner of Police for initiating proceedings against the applicant were given to him. According to the counsel, no such letter granting the permission to hold Departmental Inquiry was supplied to the applicant, and, therefore, this reply of the respondents is incorrect.

(ii) We had directed the respondents to produce the relevant departmental files in which sanction of the Addl. Commissioner of Police

82

under Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, was obtained to hold the departmental inquiry. In pursuance of our order dated 25.8.1995, the respondents filed an additional affidavit on 19.10.1995. They have re-iterated the facts given in the reply that the competent authority had accorded his approval for initiating a departmental inquiry against the applicant, which had been conveyed through Vigilance Branch letter No.F.24(26)SD/90/Vig./H A-II 4525 dated 9.2.1990(Ann: R-2). They state that after receipt of the approval of the competent authority for initiation of departmental inquiry against the applicant as well as Constable Kanwar Singh, a regular departmental inquiry was initiated by order dated 1.3.1990(Annexure R-3). Para 4 of this order refers to the approval of the Addl.C.P.(Southern Range) obtained under Rule 15(2) of the Delhi Police(Punishment Appeal) Rules conveyed by the memo. dated 9.2.1990. They have further stated that while the matter of punishment, which has been challenged by the applicant is pending before the Tribunal, the relevant papers/ files wherein formal approval of the Addl.Commissioner of Police(South Range) was accorded has been illegally destroyed without obtaining the "no objection certificate" from the concerned districts/Units for which ~~the~~

19.

V9

Dealing Hand, A.S.I. Aoun Kumar is being separately dealt with departmentally by order dated 12.10.1995 (Annexure R-4).

Based on these facts, the respondents have, therefore, submitted that formal approval has been obtained to initiate the departmental proceedings against the applicant. The relevant DE files No.10/8/90 and 1513 of 1989 have also been submitted by the respondents for our perusal.

(iii) Copy of the letter dated 9.2.1990 from the Addl. Commissioner of Police (Vigilance) addressed to the D.C.P. Southern Distt., New Delhi conveying the permission of the Additional Commissioner of Police (SR) to hold the D.E. proceedings is in the main D.E. file. This refers to the office letter dated 31.1.1990 on the subject, which is also on record in the original file i.e. 1531/89 addressed to the Addl. DCP Southern Distt. requesting that the necessary approval/sanction under Rule 15(2) may be given for conducting the D.E. against ASI Sultan Singh and Constable Kanwar Singh. It has also been stated that this sanction may be conveyed to DCP Vigilance with endorsement to this office that the departmental inquiry should be dealt with in the Vigilance Cell, Delhi. We also note that the departmental action has been instituted against the official, who has been responsible for illegal destruction of the relevant files in which sanction order had been recorded. Taking these facts and letters as a whole we find that there is no doubt that the Addl. Commissioner of Police (SR) has

18

given sanction to hold the Departmental proceedings in accordance with law. There is no infirmity in the Departmental Inquiry proceedings on this ¹² account and the allegations of the applicant to the contrary are, therefore, rejected. In this view of the matter, the judgment in Babu Ram vs. State of U.P. relied upon is of no avail, as the rules have been ¹² fully complied with in this case.

7. (i) In this connection, another plea taken by Shri N.S.Bhatnagar was that consequent to what has been stated in para 9 of the reply, relevant documents were not supplied to him, including the letter dated 9.2.1990 in which permission of the Addl.Commissioner of Police (Southern Range) for initiating Departmental Inquiry had been given. To this, Shri Rajinder Panditta drew our attention to the statement recorded by the applicant dated 29.3.1990, in which he has stated that he does not need any additional documents for his defence. In any case, the respondents submit that under Rule 15(2), the approval obtained from the Addl.Commissioner of Police to hold the D.E. was not required to be given to the applicant. In the circumstances, the applicant has not in any way been prejudiced in putting forward his defence before the disciplinary authority.

(ii) As mentioned above, from the original records by the respondents submitted by the respondents, there is no doubt at all that the necessary sanction/approval of the competent authority, namely, the Addl.Commissioner of Police (S.R.) has been obtained to initiate disciplinary

yes

L

proceedings against the applicant under Rule 15(2) of the Delhi Police (Punishment and Appeal) Rules. This Rule does not provide that a copy of this sanction is to be furnished to the applicant. However, in this case, the respondents have no doubt stated that the same has been supplied to the applicant which has been denied by him.

(iii) In the circumstances of the case and having regard to the provisions of Rule 15(2) of Delhi Police Rules, we are of the view that even if the sanction letter has not been given to the applicant, this in no way prejudices his case or vitiates the proceedings held against him which are otherwise in accordance with law. Therefore, we find no merit in this argument of the learned counsel and the same is rejected.

8(i) The applicant fourthly submitted that the disciplinary action has not been initiated by the competent authority in accordance with Rule 14(4) of the Delhi Police (Punishment and Appeal) Rules. This Rule provides that the disciplinary action shall be instituted by the competent authority under whose disciplinary control the Police Officer concerned is working at the time it is decided to initiate disciplinary action.

8(ii) Shri N.S.Bhatnagar, learned counsel for the applicant submitted that since the applicant was working under the control of D.C.P. (South Distt.), the Disciplinary authority who/should have initiated the disciplinary proceedings should have been the

DCP(South Distt.), whereas in this case, the same has been done by the D.C.P.(Q.E.Cell). This has been denied by the respondents.

(ii) After the Addl.Commissioner of Police had given the necessary sanction for holding the disciplinary proceedings against the applicant under Rule 15(2) of the Discipline and Appeal Rules, this sanction has been conveyed to the DCP(South Distt.) and ordered to be conducted by an officer of the D.E.Cell(Vigilance). This procedure is in accordance with the Standing Order No.290. Para 2(3) of this SRO provides that all departmental inquiries in the Districts/Units after 1.2.1987 and having allegations of vigilance angle are deemed to be taken over by departmental inquiry cell. Having regard to the provisions of Rule 14(4) and SRO 290 and the facts of the case, we do not find any infirmity in the departmental inquiry proceedings being conducted by the D.E.Cell.

9. The fifth argument advanced by Shri N.S.Bhatnagar was that the impugned order of dismissal has not been passed in accordance with the principles laid down under Rule 8 of the Delhi Police(Punishment & Appeal) Rules, 1980. His point was that the order of dismissal could only be awarded for the act of mis-conduct rendering him unfit for police service. He states that the entire evidence against the applicant has been fabricated by the S.H.O./S.I.Ishwar Singh. The applicant had also put in more than 30 years

of service and the order passed did not state that the applicant was guilty of "grave misconduct".

(ii) The respondents have refuted the above argument. According to them, the allegations against the applicant have been fully proved which shows that the applicant had committed gravest act of misconduct in accepting the illegal gratification and allowing the thief to run away, apart from mis-appropriating the stolen property.

(iii) We have considered the impugned order. In Para 5 of this order, the competent authority has held that the charges levelled against the applicant have been found proved, in view of the evidence led by the prosecution witnesses in the departmental inquiry. After saying so, he has considered the previous record of the applicant, A.S.I. Sultan Singh and stated that he is of the considered opinion that the applicant is "prone to misconduct and an undesirable element". He further goes to state that ~~since~~ ^{that} ~~since~~ misdemeanour in an organised force can play havoc in maintenance of discipline and morale if it is tolerated because it is likely to spread to others as well. Their involvement in the present instance shows that they can do anything immoral or noxious whatsoever in their personal interests. No lesser punishment than that of their dismissal from the force, would meet the ends of justice. A perusal of the order, therefore shows that the competent authority was very much aware of the circumstances in which the order of dismissal should be imposed on the delinquent official and it

13

also clearly recorded that the applicant is an undesirable element and has acted in a manner unbecoming of a police officer. Having regard to these findings, therefore, we can conclude that the competent authority was satisfied that the petitioner has committed an act of grave misconduct rendering him unfit for police service for which he has awarded punishment of dismissal from service. We are fortified in our view by the Full Bench Judgment of this Tribunal in Hari Ram vs. Delhi Administration (OA No.1344/90, decided on 4.8.1993 - CAT(PB) Full Bench Judgments 1991-94 Bari Brothers Vol.III page 240). In the facts and circumstances of the case, we find no force in this argument advanced by the learned counsel for the applicant and it is accordingly rejected.

10. The final argument raised by the applicant's counsel was that the entire evidence against the applicant has been fabricated by S.I.Ishwar Singh and S.H.O.Inspector Bhag Singh. According to him, S.H.O.had been annoyed because the applicant had referred to certain discrimination against him in matters of assignment of duties, He states that there was no thief who was let off by the applicant nor any copper goods sold or misappropriated. The counsel for the applicant's submission is that S.H.O. S.I.Ishwar Singh had put pressure on Kabari Mehboob (DW-3) and obtained copper wire from him and then shown it as if it had been recovered from godown of

Ys,

another Kabari Kallu, which was ¹³ then deposited in the Malkhana. Shri Bhatnagar elaborated the point that the recovered copper wire is still lying in the Malkhana. He further states that evidence of certain other witnesses, Ifran and Kallu cannot be relied upon, since the case has been made out officially by the aforesaid two witnesses. He further submitted that the Enquiry Officer has also wrongly disbelieved the version given by the defence witnesses.

11. The respondents have, on the other hand stated that the inquiry has been properly held according to the Rules and the conclusions that the charges have been proved are based on evidence produced on record. They also submit that the allegations of malafide and other personal allegations made against other officers, including the Enquiry Officer are after thought and not taken at the appropriate time before the Inquiry Officer.

12. We have seen the records in the disciplinary proceedings, including the evidence of the prosecution witnesses and defence witnesses. It is clear from the arguments of the learned counsel for the applicant that he does not state that there was no evidence at all against the applicant on which it could be reasonably held that the charges can be held to have been proved. What Shri N.S.Bhatnagar submits is that the Tribunal should re-appraise the evidence which was brought on record before the Inquiry Officer to see if the

18

conclusions arrived at are proper or not.

13. In Union of India vs. Parma Nand (1989) 2 SCR 19, the Supreme Court has unequivocally stated that the jurisdiction of the Tribunal to interfere with the disciplinary matters for punishment cannot be equated with an appellate jurisdiction. The Court further held that the Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It was also held that if there has been an enquiry consistent with the rules and in accordance with the principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can be lawfully imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own direction for that of the authority.

14. In B.C.Chaturvedi vs. Union of India 1995(6) SCALE, the Supreme Court again held :

" Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with.

88/

Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence.

...."

13. The same principles of judicial review by the Tribunal in disciplinary proceedings have been reiterated by the Supreme Court in a number of other decisions:

(1) Govt. of Tamil Nadu vs. A. Raja Pandian

(AIR 1995 SC 561)

(2) Upendra Singh vs. Union of India

(1994)1 SLR 831.

14. Having regard to the decisions of the Supreme Court in the aforesaid cases and having seen the D.E.record, we are satisfied that the disciplinary proceedings have been held in accordance with the rules and the principles of natural justice. The appraisal of evidence and the conclusions arrived at by the competent authority cannot be interferred with by this Tribunal, while exercising the powers of judicial review unless it is found that the conclusions are wholly arbitrary, utterly perverse or shocking which no reasonable person would have arrived at on the evidence on record. We are unable to come to the conclusion on the facts and the circumstances of the case that the decision of the competent authority suffers from

18.

any such infirmity which warrants any interference in the matter.

15. For the reasons given above, we find no merit in the application and it is accordingly dismissed leaving the parties to bear their own costs.

K.M.
(K. Muthukumar)

Member (A)

Lakshmi
(Smt. Lakshmi Swaminathan)
Member (J)

18/1/96