

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 2296/2004

This the 13th day of October, 2005

HON'BLE MR. JUSTICE M.A.KHAN, VICE CHAIRMAN (J)

Inspector Jagdish Malik
No. D-1/143,
C/o shri Sachin Chauhan, Advocate
Ch. No.311A, Western Wing,
Tis Hazari Court,
Delhi.

(By Advocate: Sh. Sachin Chauhan)

Versus

1. Union of India through
Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. Joint Commissioner of Police,
New Delhi Range,
I.P.Estate, M.S.O.Building,
New Delhi.
3. Deputy Commissioner of Police,
New Delhi District,
P.S. Parliament Street,
New Delhi.

(By Advcate: Mrs. Rashmi Chopra)

ORDER

Applicant has filed the OA for quashing the disciplinary proceeding and the order of the disciplinary authority and the appellate authority whereby the applicant has been awarded the penalty of censure.

2. The background of the case is as follows. Applicant is an Inspector in Delhi Police. On 10.11.2003 he was detailed for supervising the persons manning the pickets/barricades around the Prime Minister's residence. At about 2.37 p.m. the Prime Minister's carcade was returning to the Prime Minister's House. At the barricade near Gymkhana Post Office, ASI Mahender Singh, Constable Ram Gopal and Constable Paramhans were on duty. The allegation is that they failed to remove the barricade on time as a result the SPG Pilot car had to stop and ask the barricade staff to remove the barrier and in the meantime Prime Minister's carcade also came to a halt which caused

great inconvenience to the Prime Minister and immense embarrassment to the Police Force. The applicant was served with a show cause notice dated 12.11.2003 imputing that he was careless and grossly negligent in not being present at the static picket and further not properly briefing the staff detailed at barricade in question. He, as such, was guilty of dereliction in duty and had lackadaisical attitude towards his responsibilities. He was asked to show cause as to why his conduct should not be censured for the abovementioned lapse. Applicant submitted his explanation, inter alia, stating that as an Inspector Incharge he was not supposed to be present at every static picket and that he had properly briefed the staff which had adequate experience. He further stated that ASI Mahender Singh in his statement has admitted that the applicant had briefed the staff at the barricade barely 10 minutes before the Prime Minister's carcade passed through it. It is submitted that the applicant had performed his duties well and cannot be said to be negligent or carelessness or guilty of any misconduct. He also denied that he has admitted his lapse before the Dy. Commissioner of Police and that he had tendered apology as mentioned in the impugned order (Annexure A-2).

3. The respondents in the counter reply have refuted the allegation of the applicant that he was erroneously held responsible for the lapse on the part of the barricade staff. The respondents have justified the action for the same reason which have been mentioned in the impugned orders of the disciplinary authority and the appellate authority.

4. I have heard the learned counsel for the parties and perused the record.

5. The Tribunal's power while reviewing the orders of the disciplinary authority is very limited. It is settled law that Tribunal in exercise of power of judicial review reviews the manner in which the decision has been arrived at by the administrative authority and does not review the decision itself. It examine the procedure which has been followed in reaching the conclusion. The purpose of judicial review is to find whether the delinquent has been given a fair treatment and not to find that the conclusion reached by the respondent authority is necessarily correct in the eye of Court. The Tribunal does not sit in appeal over the order of the disciplinary authority. It interferes only if there is any material irregularity in the procedure which has resulted in prejudice to the delinquent in his defence, the order of the disciplinary authority is perverse or is based on no evidence and that it has been passed on the dictates of the superior authority

or for some extraneous consideration. The Hon'ble Supreme Court has succinctly elaborated the law in the case of B.C.Chaturvedi vs. Union of India AIR 1996 SC 484 wherein it has held as under:-

"12. 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. 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. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappraise the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

6. Having considered the power of the Tribunal of judicial review, as elaborated in the above cited judgment, I may now discuss the factual matrix of the present case.

7. Learned counsel for the applicant has fervently argued that none of the administrative instructions and extant rules as they existed at the relevant time required the Inspector Incharge to be present at every static picket or to be present at barricade which, in fact, was otherwise also physically impossible when the VIP carcade was moving fast. It has been stressed that the statement of ASI Mahender Singh recorded in disciplinary proceeding against him would belie the allegation against the applicant that

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he had not properly briefed the staff who failed to remove barricade in question and also that the applicant was negligent in performing his duty or supervising his subordinates over there. It has already been noticed that the Tribunal cannot act as an appellate authority and reappreciate and reappraise or decide about the adequacy and inadequacy of the evidence which was before the authorities. The authorities have taken into consideration the various factors including the explanation which was submitted by the applicant. The disciplinary authority as well as the appellate authority both are experienced senior police officers and they know the duty which an Inspector Incharge in such a situation has to perform. This Tribunal cannot take into consideration some extraneous material like the statement of ASI Mahender Singh to record, the finding in favour of the applicant.

8. Learned counsel for applicant during the course of his argument has not pointed out material procedural irregularity committed by the authority. The conclusion drawn by the disciplinary authority and the appellate authority cannot be interfered with in the present proceeding. Even if the Tribunal feels that the explanation given by the applicant is plausible or he could not be held to be at fault, though not deciding it, the order cannot be interfered with. No legal infirmity has been pointed out in the procedure adopted by the disciplinary authority. The conclusion drawn by the disciplinary authorities cannot be said to be perverse, based on no evidence, or based on extraneous material. The orders of the disciplinary authority and the order of the appellate authority do not suffer from legal infirmity so cannot be considered as vitiated.

9. The result is that the OA has no merits. It is dismissed. No costs.


(M.A. KHAN)
Vice Chairman (J)

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