

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.3285/92

New Delhi this the 15th day of July, 1999. 22

HON'BLE MR. JUSTICE V.RAJAGOPALA REDDY, VICE-CHAIRMAN (J)
HON'BLE MR. S.P. BISWAS, MEMBER (A)

Inspector Pratap Singh,
S/o Sh. Maman Singh,
R/o C-3/323, Lodi Colony,
New Delhi.

...Applicant

(By Advocate Shri Shankar Raju)

-Versus-

1. Lt. Governor of Delhi,
Delhi Administration,
Raj Niwas Marg, Delhi.
2. Commissioner of Police,
Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi.
3. Addl. Commissioner of Police (CID),
Police Headquarter,
M.S.O. Building, I.P. Estate,
New Delhi.

...Respondents

(By Advocate Mr.Vijay Pandita)

O R D E R

By Reddy. J.:

The applicant is an Inspector in the Delhi Police. On the allegation of ~~having~~ ^{not} ~~supervision~~ ^{lacking} in issue of summons to witnesses in a criminal case, departmental proceedings have been initiated against him. An Inquiry Officer has been appointed to conduct the inquiry who framed the charges and served on the applicant. The allegation against the applicant was that since the key prosecution witnesses were not brought before the Court on account of not serving summons on them and in spite of giving several opportunities by the Court, the accused in the case was to be acquitted where ~~in~~ a heinous crime was committed. The applicant was charged for the lack of

✓

supervision on his part and also gross negligence. The Inquiry Officer examined certain witnesses and after giving the opportunity to the applicant to cross examine the witnesses completed the inquiry and submitted his report to the disciplinary authority. The disciplinary authority after considering the Inquiry Officer's report and the representation made by the applicant concurred with the findings of the Inquiry Officer holding the applicant guilty of the charge and ordered that the pay of the applicant be reduced by five stages for a period of five years vide order dated 28.6.90 Annexure A-7. Aggrieved by the order the applicant, filed an appeal which also ~~was~~ ended in dismissal vide order dated 29.7.91 Annexure A-9. This OA is filed challenging the order of punishment dated 28.6.90 passed by the disciplinary authority and the order of the appellate authority dated 29.7.91.

2. The learned counsel has strenuously contended that there was no negligence on the part of the applicant which resulted in acquittal of the accused. The charge did not contain any specific commission or omission against the applicant as to the lack of supervision by the applicant as he was incharge of the Police Station and it was not his function to serve summons to the witnesses. The criminal court also has passed strictures against the I.O. for not serving the summons and there was no remarks or strictures against the applicant in this regard. Hence, it is contended that the applicant cannot be said to have committed any negligence or guilty of lack of supervision. The learned counsel for the respondents, however, submits that the

CA

Inquiry Officer after considering the evidence of several witnesses, including defence witnesses came to the conclusion that the applicant was guilty of the charges and the impugned order having been passed by the disciplinary authority on the basis of the findings of the Inquiry Officer this Tribunal has no jurisdiction to interfere with such an order. It is contended that it is not permissible to reappraise the evidence and reach a different conclusion than that of the disciplinary authority.

3. The learned counsel for the applicant in order to support his contention has taken us to the Inquiry Officer's report and read parts of the evidence of witnesses, as extracted in the Inquiry Officer's report. From the evidence of these witnesses, it is true that it is the duty of the I.O. to serve the summons to the witnesses. As the summons have been returned unserved, it is seen from the report, the Court has given several opportunities to serve the summons to witnesses as one of the witnesses was found to be key witness in the case whose evidence was crucial. In spite of several opportunities the summons were not served by the IO for some reason or the other and the court has rightly passed strictures against the I.O. On the basis of the above facts it is forcibly contended by the learned counsel for the applicant that the acquittal in the case was due to non-service of the summons by the investigating officer and not by the applicant who was least concerned in the ~~not the person to serving~~ ^{of} the summons.

100

4. We have, therefore, to consider whether the disciplinary authority was right in holding that the applicant was guilty of the charge. This is a case where several witnesses have been examined both on the side of prosecution as well of the defence. The I.O has elaborately discussed the evidence on record. He found on the basis of evidence that the applicant being the SHO should have taken steps to see that the summons were served properly. He did not even bother to see the reports which are being sent to the Court and he should have at least checked the report of summons in the case which is a very important case and thus he failed to supervise the service of summons. The EO has also found that it was his primary duty as SHO to see that the summons received at different stages during the trial of the case relating to his police station are properly served. A clear finding was given by the E.O that there was sufficient evidence on record which has been discussed in his report to show that the applicant was guilty of supervision. The learned counsel for the respondents relying on certain standing orders and police rules submits that it is the duty of the SHO as a controlling officer to delegate the responsibility to subordinates and keep an eye on their performance.

5. The Supreme Court considered the powers of the Tribunals in the matters of disciplinary proceedings in H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority Karnal & Ors. vs. M/s Gopi Nath & Sons & Ors. (1992 supp. (2) SCC 312). The Supreme Court observed:

CM

"Judicial review, it is trite, is not directed against the decision but is confined to the decision making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."


6. In view of the above principles of law, the tribunal cannot go into the position as to the validity of the findings of the disciplinary authority. It is empowered only to consider whether the disciplinary authority in reaching the finding has followed the procedure as laid down under the rules and regulations. There are no allegations in this case that the rules and regulations have been contravened. In the circumstances, we are precluded from interfering with the order of the disciplinary authority or the appellate authority.


7. The next question is as to whether the punishment imposed was disproportionate to the offence committed by the applicant. The punishment awarded in this case is of permanent forfeiture of five years approved service for a period of five years entailing reduction in pay from Rs.2300 to Rs.2000/- in the time scale for a period of five years. It should be noticed that in view of the lack of supervision of the applicant the accused in a heinous crime has been acquitted. Law is well settled that this Tribunal can interfere with the punishment only in rare circumstances, namely when the

100

punishment shocks the conscience of the court or if it comes to the conclusion that no reasonable man would award such a punishment. In the facts and circumstances of this case, we are not persuaded to hold such a view. Accordingly the punishment also is confirmed.

8. Consequently, in view of the foregoing discussion the OA is dismissed without an order as to costs.


(S.P. Biswas)
Member (A)


(V. Rajagopala Reddy)
Vice-Chairman(J)

'San.'