

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 90/2014

**Reserved on : 16.07.2016
Pronounced on : 21.07.2016**

**Hon'ble Mr. Justice M. S. Sullar, Member (J)
Hon'ble Mr. K. N. Shrivastava, Member (A)**

Nav Rattan,
Head Constable No. 150/SB,
Delhi Police ...Applicant

(Argued by: Mr. M. K. Bhardwaj, Advocate)

Versus

Commissioner of Police & Other Through :

1. The Commissioner of Police,
PHQ, I.P. Estate, New Delhi.
2. The Additional Commissioner of Police
Special Branch,
I.P. Estate, New Delhi.
3. The Deputy Commissioner of Police,
Special Branch, Delhi Police Bhawan,
Asif Ali Road, Delhi.Respondents

(By Advocate : Ms. Sumedha Sharma)

O R D E R

Justice M. S. Sullar, Member (J) :

The challenge in this Original Application (OA), filed by applicant, HC Nav Rattan, is to the impugned order dated 26.05.2010 (Annexure A/3) whereby, a regular Departmental Enquiry (DE) was ordered against him under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980 [hereinafter to be referred as “D.P. Rules”], by the competent authority and punishment order dated 11.03.2011 (Annexure A/1), vide which a

penalty of forfeiture of one year approved service, temporarily entailing proportionate reduction in his pay, was imposed on him by the Disciplinary Authority (DA). Applicant has also assailed the impugned order dated 21.05.2013 (Annexure A/2), by virtue of which his appeal was dismissed by the Appellate Authority (AA) as well.

2. The matrix of the facts and material relevant, for deciding the instant OA and emanating from the record, is that the applicant was stated to have made a false Passport verification report and thus committed a grave misconduct in discharge of his official duty. As a consequence thereof, and after completing all the formalities, the following impugned summary of allegations (Annexure A/4) were levelled against the applicant:-

"It is alleged against HC Nav Rattan, No. 150/SB (PIS No. 28821321) that while posted in North-East Zone, Special Branch, he was detailed to conduct verification of the Passport enquiries. In the meantime, a complaint dated 27.01.2010 made by Sh Akeel Ahemed S/o. Sh. Ali Ahemad R/o. A/1-Old Seema Puri Delhi-110 095 was received in Special Branch. In his complaint the complainant alleged that the enquiry officers of Special Branch are conducting wrong passport enquiries. On this a vigilance Enquiry was got conducted into the complaint through Vigilance Branch/Spl. Branch, which reveals that HC Nav Rattan No. 150/SB submitted a wrong report on the verification of Passport, application submitted by one Nikil Sharma s/o. Sh. Madan Sharma r/o. G2/142,, Ground Floor, Dilshad Colony Delhi-110095. During the Vigilance Enquiry it revealed that the applicant never resides in the address and found that one Sanjay Bhatia S/o. Anil Bhatia was resides in the address and found that one Sanjay Bhatia S/o. Anil Bhatia was residing there for the last three years. However, on 14.08.2009, HC Nav Rattan, No. 150/SB recorded his remarks over the personal particular form of Nikil Sharma that he visited the address and found that the premises was locked and neighbours told that the applicant Nikhil Sharma had gone out of Delhi and they do not know when he will come back.

The aforesaid act on the part of HC Nav Rattan, No. 150/SB (PIS No. 28821321) amounts to gross misconduct, negligence and dereliction in the discharge of his official duties, which render him liable to be dealt with departmentally under the provision of Delhi Police (Punishment & Appeal) Rules, 1980."

3. Although, the applicant has denied the allegations, but a DE was initiated against him vide impugned order dated 26.05.2010

(Annexure A/3) by the competent authority. The Enquiry Officer (EO) recorded, scrutinised the entire evidence and after following the due procedure, came to a definite conclusion that the charge framed against the applicant stands duly proved by means of impugned inquiry report dated 02.02.2011, conveyed to the applicant vide memo dated 23.02.2011 (Annexure A/6).

4. Agreeing with the findings of the EO and taking into consideration the defence statement and entire evidence on record, the indicated penalty was imposed on the applicant vide impugned order dated 11.03.2011 (Annexure A/1) by the DA. Sequelly, the appeal filed by the applicant was dismissed vide impugned order dated 21.05.2013 (Annexure A/2) by the A.A as well.

5. Aggrieved thereby, the applicant preferred the instant O.A, challenging the impugned inquiry proceedings and orders invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

6. The case set up by the applicant, in brief, in so far as relevant, is that, the actions of EO, DA and AA in awarding punishment to the applicant, smack of bias and complete non-application of mind in dealing with the issue in hand. The EO did not inquire into the allegations against other accused, mentioned in the complaint of complainant Akeel Ahmed and chose to submit an erroneous report against the applicant in a mechanical manner. The EO has not appreciated the evidence on record in general and the statement of Sanjay Bhatia in particular.

7. According to the applicant, if the negligence of carelessness alleged against the applicant is taken to be on its face value, even then, no misconduct is made out against him, because, the applicant was not regularly assigned the work of verification reports of Passports. He was stated to have only submitted the verification report of Nikil Sharma in question. It was alleged that no action was taken against H.C. Ashok Kumar, who was involved in the Passport racket, and the applicant has been singled out and punished. There is no direct evidence against the applicant to warrant the punishment. Moreover, punishment awarded to him was stated to be too harsh and severe. It was pleaded that no proper procedure was followed by the competent authority as per the Financial Rules, 29. The applicant has termed the impugned orders as illegal, arbitrary, biased, non-speaking, result of non-application of mind and based on surmises and conjectures.

8. Levelling a variety of allegations and narrating the sequence of events, the applicant claims that the impugned orders are illegal and without jurisdiction. On the basis of aforesaid grounds, the applicant has sought quashment of the impugned inquiry proceedings and orders in the manner indicated herein above.

9. The contesting respondents refuted the claim of the applicant, filed their reply and pleaded as under :-

“.....that a departmental enquiry was initiated against HC Nav Rattan, No. 150/SB (PIS No. 28821321) (herein after called the applicant) under the provision of Delhi Police (Punishment and Appeal) Rules, 1980 vide this office order No. 3219-3240/HAP/SB (P-I) dated 26.05.2010 on the allegations that while posted in North East Zone, Special Branch, he was detailed to conduct verification of the passport enquiries. A complaint dated 27.01.2010 filed by Sh. Akeel Ahmed S/o Sh. Ali Ahmad R/o A-1,

Old Seema Puri Delhi-110095 was received in Special Branch. The complainant alleged in his complaint that the enquiry officers of Special Branch were conducting wrong passport enquiries. On this a Vigilance Enquiry was got conducted through Vigilance Branch/Spl. Branch, which had revealed that HC Nav Rattan, No. 150/SB had submitted a wrong report on the verification of Passport application submitted by one Nikhil Sharma S/o. Sh. Madan Sharma R/o. G2/142, Ground Floor, Dilshad Colony, Delhi-110 095. During the Vigilance Enquiry it revealed that the applicant never resides in the address and found that one Sanjay Bhatia S/o. Anil Bhatia was found residing there for the last three years. However, on 14.08.2009, HC Nav Rattan, No. 150/SB recorded his remarks over the personal particular form of Nikhil Sharma that he visited to the address, found the premises locked, the applicant's neighbours told that he had gone out of Delhi and they didn't know when he (applicant) would come back.

The Enquiry Officer, after evaluating of the statements of prosecution witnesses, charge as well as documents on records submitted the findings concluding therein that the charge levelled against the applicant stands proved. Tentatively agreeing with the findings submitted by the enquiry officer, a copy of the same was served upon the applicant vide this office u.o. No. 1213/HAP/SB (P-I) dated 23.02.2011 with the direction to submit his reply, if any, in response to the findings. The applicant had submitted his written representation in response to the findings on 10.03.2011.

The disciplinary authority after going through the findings of the Enquiry Officer, representation of the applicant and hearing him in person on 10.03.2011, awarded the punishment of forfeiture of one year approved service temporarily to the HC Nav Rattan, No. 150/SB entailing proportionate reduction in his pay vide this office order No. 1593-1615/HAP/SB(P-I), dt. 11.03.2011.

The applicant had filed an appeal against the above said punishment before the Appellate Authority who after carefully considering the appeal in the light of facts, circumstances of the case and hearing the applicant in OR, found no infirmity/illegality in awarding the punishment by the disciplinary authority and rejected his appeal vide order No. 227-228/P.Sec./Addl.C.P., SB dated 21.05.2013. Hence this O.A.”

10. Virtually, acknowledging the factual matrix and reiterating the validity of the departmental proceedings and the impugned orders, the respondents have stoutly denied all allegations and grounds contained in the main O.A and prayed for its dismissal.

11. Controverting the allegations of reply filed by the respondents and reiterating the grounds contained in the O.A, the applicant filed the rejoinder. That is how we are seized of the matter.

12. After hearing the learned counsel for the parties, going through the record with their valuable assistance and after considering the entire

matter, we are of the firm view that there is no merit and the present OA deserves to be dismissed for the reasons mentioned hereinbelow.

13. As is evident from the record that in the wake of complaint dated 27.01.2010 made by complainant, Akeel Ahmed S/o Shri Ali Ahmed, the matter was enquired into by the Vigilance/Special Branch of Delhi Police. It was found that applicant submitted a wrong verification report on 14.08.2009, on the application for issuance of Passport, moved by one Nikil Sharma S/o Shri Madan Sharma R/o G-2/142, Ground Floor, Dilshad Colony, Delhi-110095. During the course of enquiry, it further revealed that Nikil Sharma never resided at the aforesaid address and, in fact, one Sanjay Bhatia S/o Anil Bhatia was residing at the given address for the last about 3 (three) years. However, on 14.08.2009, applicant made a false verification report and recorded his remarks over the personal particulars of Nikil Sharma, that he (applicant) visited the address and found that the premises was locked and neighbours told that Nikil Sharma had gone out of Delhi and they do not know when he will come back. It is not a matter of dispute, rather acknowledged by the applicant, that he himself made the indicated report.

14. Meaning thereby, the applicant wrongly presumed that Nikil Sharma was residing at the given address and the house in question was found locked on that day and neighbours told that Nikil Sharma had gone out of Delhi and they do not know when he will come back. In fact, Nikil Sharma never resided in house in question, bearing No.G-2/142, Ground Floor, Dilshad Colony, Delhi-110095. Indeed, one Sanjay Bhatia S/o Shri Anil Bhatia was residing in it for the last 3 years. That means,

the applicant has made a false verification report with regard to the address of Nikil Sharma for issuance of Passport.

15. What cannot possibly be disputed here is that, in order to substantiate the summary of allegation, the prosecution has examined SI Om Singh, PW-1, SI Mohender Singh, PW-2, complainant Akeel Ahmed, PW-3, Narothom Singh Chauhan, PW-4, Ct. Somender Singh, PW-5 and Sanjay Bhatia, PW-6, who have duly supported the case of the prosecution on all vital counts, set up against the applicant. They were cross-examined at length, but nothing substantial could be elicited in their cross-examination to dislodge their testimony. Not only that, the EO has also considered the statements of ASI Deeraj Singh, DW-1 and Dal Chand, ACP, DW-2. The statements of these two defence witnesses will not come to the rescue of the applicant, in view of his admission that he has himself made the Passport verification report of Nikil Sharma.

16. After considering the prosecution & defence evidence and other material, EO has finally concluded that the charge against the applicant stands duly proved, vide his impugned enquiry report dated 02.02.2011 (Annexure A-6), the operative part of which is as under:-

“The main charge levelled against the delinquent HC are that he had submitted inquiry report in respect of PP Form of one Nikil Sharma S/o. Sh. Madan Sharma r/o. G-2/142/Ground Floor Dilshad Colony Delhi 95 with the remarks that the premises was locked and neighbours told that the applicant (Nikhil Sharma) had gone out of Delhi on 14.08.2009. There is no controversy that the PP Form of Nikhil Sharma was subsequently marked to the delinquent HC who visited the given address of the applicant and the submitted his enquiry report which established that the person in the name of Nikhil Sharma who applied for the Passport was resided at the given address as per his physical verification but went out of Delhi except PW-6 who twisted his earlier statement and added that he told the delinquent HC that Nikhil Sharma went out of Delhi and did not know when he comes on the instance of Pankaj and Chiranjit. PW-1 as well as PW-2 to whom the complaint of PW-3 was marked for enquiry categorically deposed that Nikhil Sharma never found resided at that address. DWs produced by the delinquent HC also failed to establish the correctness of

the verification report submitted by him in r/o Nikhil Sharma. On the assessment of all the evidence came on record during the DE proceedings and other relevant record adduced on file, it is evident that the delinquent had submitted his incorrect verification report and was remained negligent and dereliction in the discharge of his official duties. He was supposed to make extensive enquiry to ascertain the facts of the case before submitting his incomplete/incorrect enquiry report but he failed to do so. As in fact Sh. Nikhil Sharma was not residing there at the given address in passport form the delinquent HC Nav Rattan has not tried again to verify that the genuineness of Nikhil Sharma's residence. Hence, the allegations are proved."

17. Sequelly, the mere facts that EO did not enquire into the allegations against HC Ashok Kumar and other persons mentioned in the complaint and that applicant was not regularly assigned the work of verification of Passport, ipso facto, are not the grounds, much less a cogent ground, to exonerate the applicant from the specific charge, particularly when he has himself admitted that he made the verification report of Passport of Nikil Sharma in question.

18. Similarly, since very serious and direct accusations of making a false Passport verification of Nikil Sharma are assigned, it cannot possibly be said that the allegations levelled against the applicant will not constitute misconduct, as contrary urged on his behalf.

19. Lastly, ex-facie, the arguments of the learned counsel that since the authorities have wrongly placed reliance on interested prosecution witnesses by ignoring their cross-examination, unchallenged statements of Defence Witnesses were not considered and the impugned disciplinary proceedings & orders are liable to be set aside, are again meritless.

20. As described above, the EO and DA have decided the matter on the basis of oral as well as documentary evidence produced on record by the parties including the defence witnesses. As indicated hereinabove, the defence evidence of DW-1 and DW-2 would not

come to the rescue of the applicant in view of his categorical admission that he himself has made a Passport verification report in question of Nikil Sharma. Thus, the defence evidence pales into insignificance. In the instant case, the EO appreciated the evidence of the parties and discussed the evidence in detail. Not only that, DA & AA have dealt with each and every aspect of the matter in the right perspective and passed the very detailed and reasoned orders.

21. Further, it is now well settled principle of law that neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceedings. This matter is no more res integra.

22. An identical issue came to be decided by the Hon'ble Apex Court while considering the jurisdiction of judicial review and rule of evidence in the case of **B.C. Chaturvedi Vs. U.O.I. & Others AIR 1996 SC 484** has ruled 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 eye of the Court. When an inquiry is conducted on charges of a 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 be 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 on its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at the 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 of 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 co-extensive power to reappreciate 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* (1964) 4 SCR 718 : (AIR 1964 SC 364), this Court held at page 728 (of SCR): (at p 369 of AIR), 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”.

23. Sequelly, the Hon'ble Apex Court in the case of **K.L. Shinde v. State of Mysore, (1976) 3 SCC 76**, having considered the scope of jurisdiction of this Tribunal in appreciation of evidence has ruled as under:-

“9. Regarding the appellant's contention that there was no evidence to substantiate the charge against him, it may be observed that neither the High Court nor this Court can re-examine and re-assess the evidence in writ proceedings. Whether or not there is sufficient evidence against a delinquent to justify his dismissal from service is a matter on which this Court cannot embark. It may also be observed that departmental proceedings do not stand on the same footing as criminal prosecutions in which high degree of proof is required. It is true that in the instant case reliance was placed by the Superintendent of Police on the earlier statements made by the three police constables including Akki from which they resiled but that did not vitiate the enquiry or the impugned order of dismissal, as departmental proceedings are not governed by strict rules of evidence as contained in the Evidence Act. That apart, as already stated, copies of the statements made by these constables were furnished to the appellant and he cross-examined all of them with the help of the police friend provided to him. It is also significant that Akki admitted in the course of his statement that he did make the former statement before P. S. I. Khada-bazar police station, Belgaum, on November 21, 1961 (which revealed appellant's complicity in the smuggling activity) but when asked to explain as to why he made that statement, he expressed his inability to do so. The present case is, in our opinion, covered by a decision of this Court in *State of Mysore v. Shivabasappa*, (1963) 2 SCR 943 = AIR 1963 SC 375 where it was held as follows:-

"Domestic tribunals exercising quasi-judicial functions are not courts and therefore, they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can, unlike courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against who it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case, but where such an opportunity has been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts.

2. In respect of taking the evidence in an enquiry before such tribunal, the person against whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the explanation of the witness will in its entirety, take place before the party charged who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him ,and admitted in evidence, a copy thereof is given to the party and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word and sentence by sentence, is to insist on bare technicalities and rules of natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged and he is given an opportunity to cross-examine them."

24. Therefore, taking into consideration the material and evidence on record and the legal position, as discussed herein above, we are of the considered opinion that the EO has correctly evaluated the evidence of the prosecution on the principle of preponderance of probability. The DA has rightly imposed the pointed punishment which was upheld by the AA. The DA as well as AA have dealt with each and every aspect of the matter, recorded cogent reasons, examined the matter in the right perspective and passed the impugned orders. We do not find any illegality, irregularity or any perversity in the impugned orders.

Hence, no interference is warranted in this case by this Tribunal, in the obtaining circumstances of the case.

25. No other point, worth consideration, has been urged or pressed by learned counsel for the parties.

26. In the light of the aforesaid reasons and thus seen from any angle, there is no merit and hence the OA deserves to be and is hereby dismissed as such. However, the parties are left to bear their own costs.

(K N Shrivastava)
Member (A)

(Justice M S Sullar)
Member(J)

Rakesh