

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.3021/2012

Order Reserved on: 14.09.2016
Order pronounced on 02.12.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri P. K. Basu, Member (A)

Const. Jitender Singh
No.1893/SW (PIS NO.28881084)
S/o Shri Hari Singh, Age 43 years
R/o WZ-804/A, Naraina Village
New Delhi – 110 028. Applicant

(By Advocate: Shri Sachin Chauhan)

Versus

1. Govt. of NCTD through
The Commissioner of Police
Police Headquarters, I.P.Estate
M.S.O.Building, New Delhi.
2. The Special Commissioner of Police
Through the Commissioner of Police
Police Headquarters, I.P.Estate
M.S.O.Building
New Delhi.
3. The Addl. Dy. Commissioner of Police
South-West
Police Headquarters, I.P.Estate
M.S.O.Building
New Delhi.

4. The Addl. Commissioner (Vigilance)
Through the Commissioner of Police
Police Headquarters, I.P.Estate
M.S.O.Building
New Delhi.

5. The Dy. Commissioner of Police
1st BN., DAP
Through the Commissioner of Police
Police Headquarters, I.P.Estate
M.S.O.Building
New Delhi. ... Respondents

(By Advocate: Shri Amit Anand)

ORDER

By V. Ajay Kumar, Member (J):

The applicant, a Constable in the Respondent-Delhi Police, filed the OA, questioning the action of the respondents in imposing the penalty of forfeiture of three years approved service permanently, on him.

2. The brief facts of the case are that the respondents initiated departmental proceedings against the applicant vide Annexure A1-Order dated 02.06.2010 and the charge levelled against the applicant therein was as under:

"It is alleged against Const Jitender Singh, No.1893/SW(PIS No.28881084) that a FIR No.06/03 dated 04.02.2003 u/s 406/420/468/471/120 B IPC & 12 PP Act, P.S. Special cell, Lodhi Colony, New Delhi was registered against him on the complaint of one Sh. Pragat Singh S/o Shri Ranjit Singh R/o H.No.217, Sector-12 Ward No.10 Hanumangarh, Rajasthan by SI Soban Barak No.D/1352 (PIS No.28850473), that a racket headed by Dr. S.K.Bansal R/o Plot No.47-48, E-21, Sector-23, Rohini, Delhi is indulging in cheating the innocent persons aspiring to go abroad for employment. The racket had collected huge money on the pretext of sending the manpower abroad for job and also procuring the passports for them from

RPO, Delhi by preparing and submitting the forged documents with active connivance of officials of Special Bench. The said Dr. S.K.Bansal had given advertisement in the newspaper for this purpose.

Victim namely Pragat Singh mentioned above, stated that in response to the advertisement in the newspaper he met Dr. S.K.Bansal at his residence cum office. Dr. S.K.Bansal demanded Rs.7 lacs for sending him to USA for employment including Rs.50,000/- cash for preparing the passport from RPO, Delhi. Consequently, he paid Rs.5 lacs to Dr. S.K.Bansal. He, in order to assure him gave two post dated cheques of Rs.2,70,000/- and Rs.1,50,000/- and said if the job is not done, he could draw the money from his account.

Dr.S.K.Bansal got the passport of Pragat Singh prepared from RPO, Delhi by furnishing the false address of village Naraina, Delhi which belongs to one Naresh Kumar. The police verification was done by ASI Om Prakash of Special Branch. The Victim Pragat Singh never resided at the address i.e. WZ-883/1, Naraina Village Delhi. Further, enquiries revealed that on the same address by submitting the forged documents 3 more passports were got prepared in the same names of (i) Surbir Singh S/o Than Singh, (ii) Ajit Singh S/o Surjit Singh and (iii) Naresh Kumar S/o Rampal from RPO, Delhi and all the above persons had never resided there. The police verification at the given address had been done by ASI Om Prakash, No.1315/D of Special Branch who had falsely verified that the said Pragat Singh and others had resided at the given address. Shri Naresh Kumar S/o Jeet Singh, owner of House No.WZ-883/1, Naraina Village, Delhi and above Const. Jitender Singh S/o Sh. Hari Singh R/o WZ-904A, Village Naraina, Delhi had falsely stated that the applicants had resided at House No.WZ-883/1, Naraina Village, Delhi.”

3. In pursuance of the aforesaid initiation of departmental proceedings, an inquiry has been conducted into the said charge and the Inquiry Officer vide his Annexure A5 findings, dated 26.08.2011, held the charge levelled against the applicant is proved beyond doubt.

4. The 5th Respondent-Disciplinary Authority, after considering the representation of the applicant and after hearing him in Orderly Room (OR), against the findings of the Inquiry Officer, vide Annexure A2-Order dated 07.10.2011, imposed the punishment of forfeiture of five years approved service permanently on the applicant entailing proportionate reduction in his pay with immediate effect.

5. The 2nd Respondent-Appellate Authority, after considering the appeal of the applicant, and also after hearing him in Orderly Room (OR), vide his appellate order dated 11.06.2012 reduced the punishment to that of forfeiture of three years approved service permanently.

6. Heard Shri Sachin Chauhan, learned counsel for the applicant, and Shri Amit Anand, the learned counsel for the respondents, and perused the pleadings on record.

7. Shri Sachin Chauhan, the learned counsel appearing for the applicant, in support of the OA averments, inter-alia, while submitting that the findings of the Inquiry Officer are perverse and illegal, would mainly contend as under:

- (i) Inquiry officer proved a charge which is not even alleged against the applicant. The charge against the applicant was that he had falsely stated that the passport applicants, namely, (1) Pargat Singh, (2) Surbir Singh, (3) Ajit Singh and (4) Naresh Kumar (s/o Rampal), had resided at House No.WZ-883/1, Naraina Village, Delhi, but the inquiry officer while holding the charge as proved, observed that the applicant had connived and conspired with co-accused persons in all acts in commission of offence.
- (ii) PW-5 - Pargat Singh – on whose complaint the charge is levelled against the applicant, in his cross-examination

before the inquiry officer categorically stated that "he did not mention in his complaint, that he is not residing at house no.WZ-883/1, Village Naraina, Delhi", and hence, the basis for the charge itself gone.

- (iii) Material witnesses such as Dr. S.K.Bansal, etc. were not examined and no attempt was made to bring them as witnesses. As a result, the applicant lost the opportunity of cross-examining them.
- (iv) The disclosure statement of the applicant given to police under Section 161 of Cr.PC was used against the applicant in the inquiry to prove the charge, which is illegal, more so when no recovery was made from the applicant.

8. Per contra, Shri Amit Anand, the learned counsel appearing for the respondents, would contend as under:

- (a) Once there is no allegation of violation of any rule or principles of natural justice, Courts and Tribunals would not act as second appellate authorities in disciplinary matters.
- (b) Admittedly, Pargat Singh was not residing at House No.WZ-883/1, Naraina Village, Delhi and once PW-5 Pargat Singh stated that he was residing at House NO.21, Sector 12, Ward No.12, Hanuman Garh, Rajasthan, the question of stating that he was not residing at House No.WZ-883/1, Naraina Village, Delhi does not arise at all.

- (c) The inquiry officer under Point 5 of discussion part, categorically held that the applicant along with ASI, Om Prakash, falsely verified the residential address of Pargat Singh is at Naraina, Delhi.
- (d) The disclosure statement of the applicant given under Section 161 of Cr.PC was produced by PW-3, i.e., SI, Hari Singh, and though an opportunity to cross examine him was provided to him but he has not chosen to put any relevant question to the said PW.
- (e) The applicant having not examined any witnesses such as Dr. S.K.Bansal or any other person, if he is advised that their evidence will help him in disproving the charge against him, cannot contend that they were not examined by the prosecution.

9. In view of the aforesaid rival submissions it is necessary to refer to certain decisions of the Hon'bl Apex Court with regard to the power of judicial review of the Courts/Tribunals in disciplinary matters.

10. In **M.V.Bijlani v. Union of India & Others**, (2006) 5 SCC 88 it was held by the Hon'ble Supreme Court that the judicial review is of the decision making process and not with re-appreciation of evidence.

It was held that

"25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there

had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

11. In a recent decision of the Hon'ble Apex Court in **Union of India & Others v. P. Gunasekaran**, (2015) 2 SCC 610, it was held that

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- (i) the finding of fact is based on no evidence.

13. Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii). go into the adequacy of the evidence;

- (iv). go into the reliability of the evidence;
- (v). interfere, if there be some legal evidence on which findings can be based.
- (vi). correct the error of fact however grave it may appear to be;
- (vii). go into the proportionality of punishment unless it shocks its conscience.

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17. In all the subsequent decisions of this Court upto the latest in Chennai Water Supply and Sewarage Board v. T. T. Murali Babu[(2014) 4 SCC 108], these principles have been consistently followed adding practically nothing more or altering anything."

12. Keeping in view the principles in the aforesaid cases of the Hon'ble Apex Court and other similar line of cases and on careful examination of the pleadings on record, such as the charge levelled against the applicant and the findings of the Inquiry Officer, we do not find any violation of any rules or violation of the principles of natural justice, either in conducting the inquiry or in the decision making process, in imposing the punishment on the applicant.

13. Further, as rightly pointed out by the learned counsel for the respondents that the Inquiry Officer validly proved the charge levelled against the applicant. We cannot accept the contention of the applicant that the charge levelled against him is different from that of the one, which was proved against him by the Inquiry Officer. Similarly, when Pargat Singh deposed that he was residing at Hanuman Garh, Rajasthan, his non-mentioning in his complaint that he was not residing at Naraina, Delhi is irrelevant. The other grounds raised by the applicant are also without any substance, in the

circumstances of the case. We do not also find any lacuna in the orders passed by the disciplinary authority and the appellate authority.

14. In the circumstances and for the aforesaid reasons the OA is dismissed. No order as to costs.

(P. K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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