

**Central Administrative Tribunal
Principal Bench**

OA No. 3854/2011

Order reserved on: 25.07.2016
Order pronounced on: 22.08.2016

Hon'ble Mr. Justice M.S.Sullar, Member (J)
Hon'ble Mr. V. N. Gaur, Member (A)

Sh. Naresh Kumar Verma
S/o Late Sh. B.D.Verma
R/o Govt. Qtr. No.P-97/4,
DRP Lines, Pul Mithai, Delhi.

- Applicant

(By Advocate: Sh. Ajesh Luthra)

Versus

1. Commissioner of Police,
PHQ, MSO Building,
IP Estate, New Delhi.
2. Jt. Commissioner of Police,
(Security),
PHQ, I.P.Estate,
New Delhi.

- Respondents

(By Advocate: Sh. N.K.Singh for Mrs. Avnish Ahlawat)

ORDER

Hon'ble Mr. V.N.Gaur, Member (A)

The applicant is a Sub Inspector of Police working under respondent no.2. A joint disciplinary proceeding was started against the applicant, and another officer Inspector Ramesh Chander Dagar, vide order dated 06.08.2008 and the applicant was placed under suspension. The applicant was served with a summary of allegations which he denied. The Disciplinary

Authority (DA) ordered a departmental enquiry in which the enquiry officer submitted his report on 18.11.2009 proving the charges against the applicant. The DA provided him a copy of the enquiry report and the applicant submitted his representation which was considered by the DA and finally an order dated 31.03.2010 imposing the penalty of *withholding of one increment for a period of two years with effect of postponing future increments* was imposed and his suspension period was also ordered not to be treated as spent on duty. The appeal submitted by the applicant was also rejected by the Appellate Authority (AA) on 06.12.2010. The applicant has filed this OA with the following prayer:

- “(a) quash and set aside the impugned actions/orders of the respondents dated 6.12.2010 and 31.3.2010 in including the illegal Finding Report with all consequential benefits including seniority and monetary.
- (b) award costs of the proceedings and
- (c) pass any other order/direction which this Hon’ble Tribunal deem fit and proper in favour of the applicant and against the respondents in the facts and circumstances of the case.”

2. The applicant and Inspector Ramesh Chander Dagar were charged with the following allegations:

- “(1) Arms Licence No. NE-SH-040115 of Sh. Ram Dutt Sharma having fake entry and bogus All India validity was not detained for further verification and report from GNCT of Delhi, rather it was returned to him on 23.01.08, which was later produced and taken in custody in the office of Addl. CP/Licensing on 04.02.08.

- (2) You SI (Min.) Naresh Kumar Verma and Inspr. R.C.Dagar, both of Licensing Branch Delhi demanded Rs.50,000/- to settle the issue.
- (3) You SI (min.) Naresh Kumar Verma had visited the house of the complainant and had drinks etc. with his nephew. Telephone records also reveal that you SI (Min.) Naresh Kumar Verma was in contact with Sh. Devender Sharma and there were 05 calls on 23.01.08, 24.01.08 and 04.02.08 in this regard.”

3. The applicant has challenged the orders of the disciplinary authority and appellate authority on several grounds as mentioned in para 5 of the OA. However, during the arguments learned counsel for the applicant emphasised on the following grounds. The enquiry officer had proved the charges against the applicant on the basis of the statement of PW-12 Sh. Ram Dutt Sharma, which was not supported by any other PW, including PW-11 Sh. Devender Sharma, who remained with PW-12 throughout during his presence in the Licensing Branch. The statement of PW-9 Sh. Rajneesh Gupta, Addl. DCP, who was a supervisory officer at that time, had stated that it was not the duty of the applicant to retain arms licence and therefore, the licence of Sh. Ram Dutt Sharma had not been retained by the applicant. The applicant never demanded Rs.50,000/- as has been alleged, which is supported by the cross examination of PW-11 and PW-12. PW-1 & 2 have also confirmed that the applicant was attending a function at Vikas Puri between 7.30 p.m. to 10.30 p.m. on 30.01.2008, therefore, he could not be having drinks at the house of the complainant. It was also admitted by

PW-11 Sh. Dev Dutt Sharma during his cross examination. The evidence of PW-10 could not be relied because he had a grudge against the applicant and had a criminal history. There was no application of mind by the DA and the order of the AA was not a speaking order. The respondents did not provide him a copy of the DE report conducted by the Vigilance Branch. The applicant himself had asked for a transfer from the Licensing Branch on medical grounds. Had he been a corrupt person he would not have made any effort to leave the Licensing Department.

4. The learned counsel for the respondents, on the other hand, vehemently denied the statement of the learned counsel for the applicant and stated that the applicant was involved in an act of gross misconduct. The Arms License no.NE-SH-040115 of Sh. Ram Dutt Sharma having bogus all India validity was not retained for further verification by the concerned agencies, which in such a situation he was expected to do. Instead, he kept Sh. Ram Dutt Sharma and Sh. Devender Sharma waiting in the office till 3 p.m. for the crowd in the office to clear out, and thereafter allowed him to leave the office. The telephone records reveal that he was in touch with Sh. Devender Sharma, the nephew of Sh. Ram Dutt Sharma. He further submitted that the applicant has contended that by not supplying a copy of the preliminary enquiry the entire disciplinary proceeding had been vitiated. According to learned counsel, in this case the PE was done only to enable the DA to

take a tentative view regarding starting of disciplinary proceeding, thereafter that report has not been relied on while imposing the penalty. Therefore, the question of supplying a copy of the PE did not arise. The complainant Sh. Ram Dutt Sharma and his nephew had visited the licensing office on 23.01.2008 when the applicant had assisted them, but after discovery of the fact that the license was tempered with, he did not choose to inform his superior officers. He was expected to act differently after the discovery of the illegality even though it has been stated in the departmental enquiry that handling the license was not the duty of the applicant. The fact is that he was seen moving to the counter along with arms license. To allow Sh. Ram Dutt Sharma to leave the office with the forged license the applicant made him wait till most of the public had left the office. With regard to demand of Rs.50,000/- by the applicant and his co-accused learned counsel submitted that the statement of Sh. Ram Dutt Sharma, and other circumstantial evidence show that the forged license was not produced before the senior officers as should have been done in the circumstances. The charge that he had visited the house of the complainant and had drinks etc. with his nephew has also been established by the enquiry officer. The applicant did not produce any clinching evidence that he was attending a birthday party from 07.30 p.m. to 10.30 p.m. on that day.

5. According to learned counsel, the law was well established that in a departmental proceeding the scope of judicial review is very limited. The Tribunal has to only see that the proceedings have been conducted in accordance with the statutory rules and the principles of natural justice. In this case applicant has not been able to show that he was denied any opportunity to defend himself effectively and his allegations in this regard have already been dealt with by the DA and AA.

6. We have heard the learned counsel for the parties and perused the record. From the sequence of events narrated during the enquiry it is undisputed that Sh. Ram Dutt Sharma and his nephew Devender Sharma visited the licensing office for renewal of their arms license which had a bogus all India validity endorsement. It is also undisputed that the applicant had met them and rendered help by taking them to some counter. The license was not renewed on that day while under normal circumstances licenses are renewed on the same day before lunch. The applicant in his appeal contended that the real reason behind the complaint against him by the complainant Sh. Ram Dutt Sharma was the fact that his brother Dr. Jai Chand Sharma was trying to purchase joint residential property of the applicant located next to their residence. However, the same does not appear to be convincing as there appears no reason why a person

who undisputedly was helped by the applicant would make a complaint against him.

7. The charges against the applicant have been duly enquired into by the enquiry officer and there is no allegation that the enquiry was not conducted according to the rules or that the applicant was denied opportunity to defend himself, except that he was not supplied with the copy of the preliminary enquiry. The DA and AA have dealt with this point and stated that the preliminary enquiry was conducted only to enable the DA to come to a conclusion whether and what type of disciplinary proceeding is to be initiated against the applicant. The respondents have also enclosed with their counter a judgment of Hon'ble Delhi High Court in **Head Constable Ombir Singh vs. Government of NCT of Delhi & ors.**, WP (C) no.7757/2011 dated 31.10.2011 wherein the Hon'ble High Court has held as follows:

"The petitioner challenged the conduct of inquiry on various grounds including the ground that preliminary inquiry report was not furnished to the petitioner inspite of request.

We find from the well written order of the Tribunal that all these grounds are duly considered. The Tribunal has rightly recorded that the Preliminary Inquiry Report was not made part of the chargesheet nor it was relied upon. If full-fledged inquiry was held, and in – inquiry on the basis of evidence produced, charge was established, the preliminary enquiry lost its importance. The Tribunal has relied upon the judgment of Supreme Court in the case of **Narayana Dattaraya Ramateerthakhar vs. State of Maharashtra**, AIR 1997 SC 2184.

We find from the order of the Tribunal that each and every argument raised by the petitioner has been rightly considered and brushed aside. We do not find any merit in this petition which is accordingly dismissed."

8. Another ground raised by the applicant is that the order of the appellate authority is not a speaking order. In the averments, however, there is nothing to substantiate this allegation. On the other hand, the appellate authority has heard the appellant in OR and dealt with the contentions raised by the applicant in the appeal. However, the contention like the motive behind the complaint made by Sh. Ram Dutt Sharma and his brother were regarding his property has not been raised before the enquiry officer and, therefore, the AA is not expected to deal with such contentions.

9. It is trite that the scope of judicial review in a disciplinary proceeding is rather limited. In ***Raibareli Kshetriya Gramin Bank v Bhola Nath Singh*** [1997 SCC (L&S) 80], Hon'ble Supreme Court held that the Tribunal cannot sit as an appellate Court and re-appreciate the findings and take a different view from departmental authorities.

10. In ***Union of India Vs. Sardar Bahadur***, (1972) 4 SCC 618, the Hon'ble Supreme Court held that :-

“...if there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion of the authority that the officer is guilty, it is not -the function of the High Court in exercise of its powers under Art. 226 to review the materials and arrive at its own conclusion. If the enquiry has been properly held, the question of adequacy or reliability of the evidence cannot be canvassed before the High Court. In this case also the Supreme Court held that if the order of the punishing authority can be supported on any findings as to substantial misdemeanour for which the

particular punishment can be imposed, it is not for the Court to consider whether the charge proved alone would have weighed with the authority in imposing the punishment. The Court is not concerned to decide whether the punishment imposed was just and proper, provided it is justified by the ruled and is considered to be appropriate having regard to the misdemeanour established. Unless the Court finds that the punishment inflicted is shocking to Court's conscience, Court does not want to interfere."

11. In the ***State of West Bengal Vs. Anil Kumar Shaw***, AIR 1990 SC 2205, it was held that in a quasi-judicial proceeding, Courts/Tribunals would be slow to interfere with findings of facts unless such findings are based on no evidence or beset with surmises or conjectures.

12. In ***Govt. of Tamil Nadu Vs. A. Rajapandian***, 1995 SCC (L&S) 292, Hon'ble Supreme Court ruled that Tribunal had re-appreciated the evidence and come to its own conclusion that there were no sufficient material to find the employee guilty of misconduct and that the Tribunal fell into patent error and acted wholly beyond its jurisdiction as an Appellate forum which it was not.

13. In ***B.C. Chaturvedi vs. Union of India***, (1995) 6 SCC 749, the Three Judge Bench of Hon'ble Apex Court held that the judicial review is not an appeal from a decision but a review of the manner in which the decision has been made. Powers of judicial review is exercised to ensure that the individual receives a fair

treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court.

14. In ***Ranjit Thakur Vs. Union of India***, (1987) 4 SCC 611, the Hon'ble Supreme Court held that :

“There, the Court laid stress on irrationality and perversity of the decision and said they are the recognised grounds for judicial review. The Apex Court noticed three heads or grounds on which administrative action is subject to control by judicial review. They are “illegality”, “irrationality” and “procedural impropriety”. To these, the Court agreed that the fourth potential ground is “proportionality”. The fact that the principles of “proportionality” is already a recognised ground can be seen from the Supreme Court’s interference in matters of imposition of penalties. However, such interference is sparingly made.”

15. In the light of the foregoing discussion we do not find any illegality in the impugned orders. The OA is therefore is devoid of merit and is dismissed as such.

(V.N. Gaur)
Member (A)

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

‘sd’

August 22, 2016