

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.2601/2012

Reserved on 21st August 2018

Pronounced on 29th August, 2018

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

Ct. Dalbir Singh (PIS No.28862452)
r/o Box No.1368/New Delhi
Distt. Lines, New Delhi
Parliament Street, New Delhi

..Applicant

(Mr. Gyanendra Singh, Advocate)

Versus

1. Commissioner of Police
Delhi, Police Headquarters
ITO, New Delhi
2. Joint Commissioner of Police
New Delhi Range, Delhi
3. DCP,
New Delhi District
New Delhi

..Respondents

(Mr. Amit Anand, Advocate)

O R D E R

Mr. K.N. Shrivastava:

This case has got a chequered history. The applicant is working as a Constable in Delhi Police. For alleged scuffle with his service colleague, HC Munshi Ram and thus creating nuisance at a public place, he was issued Annexure A-6 charge memo dated 24.01.2011 and was also placed under suspension. Subsequently, he was reinstated in service w.e.f. 18.09.2007. The charge memo reads as under:-

“Charge

I Inspr. Surender Singh No.D-3012 (EO) hereby charge you Const. Dalvir Singh No.1368/ND (Now 420/ND) that on 17.05.07 at about 10.30 PM, a PCR call was received at P.s. Chankaya Puri that Const. Dharambir of P.S. Mandir Marg was under the influence of alcohol and making quarrel with HC Munshi Ram in Security Picket, Ashoka Police Lines. This PCR call was endorsed vide DD No.22A and marked to SI Chander Pal No.D-3925 for enquiry. After some time SHO/Chanakaya Puri also reached there and conducted enquiry. According to the enquiry report of SHO/Chanakaya Puri received vide endst. No.1258/SHO/Ch. Puri dated 19.05.2007, there was altercation quarrel and scuffle between HC Munshi Ram No.21/ND and Cons. Dalvir No.1368/ND (Now 420/ND) Const. Mukesh Kumar No.585/ND was also a party of it who had taken side of HC Munshi Ram No.21/D and fled away from the spot after incident. HC Munshi Ram No.21/ND was got medically examined vide MLC No.52563/07 after the doctor the opined “No fresh external injury seen and no smell of alcohol” whereas upon MLC No.52564/07 of Const. Dalvir No.1368/ND, the doctor opined “no fresh external injury and smell of breath alcohol (+)”. In view of above it had been established that HC Munshi Ram No.21/ND and you Const. Dalvir No.1368/ND (Now 420/ND) created nuisance and quarrelled at public place, for which you have been placed under suspension vide order No.2471-2505/HAP/NDD (D-1) dated 19.05.2007 pending enquiry in to your conduct.

The above act on the part of you Ct. Dalvir Singh No.1368/ND (PIS No.28862452) amounts to gross misconduct, carelessness and negligence which renders you liable for departmental action under the provision of Delhi Police (Punishment & Appeal) Rules 1980 read with Section 21 D.P. Act 1978.”

2. Pursuant to the issuance of charge memo, inquiry was conducted. The inquiry officer submitted his Annexure A-8 report dated 17.02.2011 stating therein that the charge against the applicant stood proved. The disciplinary authority, namely Additional Deputy Commissioner of Police, New Delhi District, vide his impugned Annexure A-1 order dated 31.03.2011, imposed the punishment of “stoppage of next increment for a period of two years with cumulative effect” on the applicant. His suspension period from 19.05.2007 to 17.09.2007 was decided as period ‘not spent on duty’ for all intents and purposes.

3. The applicant preferred his statutory appeal before the departmental appellate authority, namely, Joint Commissioner of Police, New Delhi Range, Delhi, who, vide his Annexure A-2 order dated 16.12.2011, dismissed the appeal and confirmed the punishment awarded to the applicant by the disciplinary authority.

4. The applicant challenged the orders of disciplinary and appellate authorities before this Tribunal in the instant O.A. and prayed for the following main relief:-

“a) set aside the impugned order dated 31.03.2011 and order dated 16.12.2011 wherein the Appellate Authority dismissed the Appeal of the applicant and affirmed the punishment of stoppage of next increment for a period of two years with cumulative effect and the suspension period of the applicant from 19.05.2007 to 17.09.2007 is decided as period not spent on duty for all intents and purposes.”

The O.A. was adjudicated by the Tribunal and was dismissed vide order dated 30.08.2013.

5. The applicant assailed the *ibid* order of the Tribunal before the Hon'ble Delhi High Court in W.P. (C) No.6950/2016, which was disposed of by the Hon'ble High Court vide order dated 14.09.2016 remitting the matter back to the Tribunal. The relevant portion of the *ibid* order is extracted below:-

“On perusal of the pleadings and documents filed along with the writ petition, we find that the Inquiry Officer has relied upon the testimonies of witnesses who had appeared at the first stage but has failed to consider the testimonies of witnesses who had appeared after the matter was remanded back, which aspect has been ignored by the Tribunal.

Resultantly, we set aside the order dated 30.08.2013 passed by the Tribunal and remand the matter back to the Tribunal.”

6. Arguments of Mr. Gyanendra Singh, learned counsel for applicant and that of Mr. Amit Anand, learned counsel for respondents were heard on 21.08.2018.

7. Mr. Gyanendra Singh, learned counsel for applicant submitted that HC Munshi Ram perennially used to indulge into scuffle with his service colleagues. He said that even on an earlier occasion, he had quarrelled with the applicant as well as one Constable Mukesh Kumar and that the applicant, along with HC Munshi Ram & Constable Mukesh Kumar, was proceeded against departmentally on the allegation of being under influence of liquor and abusing HC Munshi Ram and was held guilty of the charge and was, thus, punished by the disciplinary and appellate authorities. The applicant challenged the punishment orders passed by the said two authorities in O.A. No.2233/2010. The said O.A. was allowed by the Tribunal vide order dated 07.05.2010 whereby the orders of the disciplinary and appellate authorities were quashed and the applicant was awarded all consequential benefits, as admissible under the law.

8. Mr. Gyanendra Singh further submitted that as observed by the Hon'ble Delhi High Court, in its order dated 14.06.2017 in W.P. (C) No.6950/2016, this Tribunal in dismissing the O.A. on 30.08.2013 had failed to consider the testimonies of two PWs, who had appeared after the matter was remanded back.

9. Elaborating further, Mr. Singh submitted that the testimonies of HC Kushal Malik, PW-1 (p.41) and that of Constable Raj Kumar, PW-2 (p.42)

were not considered by the Tribunal. He submitted that both these PWs have affirmed that the applicant's behaviour was good.

10. Concluding his arguments, the learned counsel submitted that HC Munshi Ram is a quarrelsome person and that the applicant has exhibited good behaviour, as testified by the PWs, and he has been wrongly punished by the disciplinary and appellate authorities. He, thus, pleaded that the relief claimed may be allowed.

11. *Per contra*, Mr. Amit Anand, learned counsel for respondents submitted that the charge levelled against the applicant has been duly proved during the course of inquiry. He further submitted that the applicant was given sufficient opportunity to defend himself in the inquiry, and that the disciplinary and appellate authorities have passed the impugned orders in accordance with law and after taking into consideration the findings of the inquiry officer.

12. Mr. Anand, learned counsel for respondents drew our attention to the judgments of Hon'ble Delhi High Court in **S.K. Tyagi v. Union of India & others** (W.P. (C) No.4421/2000) decided on 04.07.2011, wherein the scope of judicial review has been delineated and the following judgments of Hon'ble Apex Court have been relied upon:

- (i) **H.B. Gandhi v. Gopi Nath & Sons**, 1992 Supp (2) SCC 312,
- (ii) **Moni Shankar v. Union of India & another** (2008) 3 SCC 484;
and
- (iii) **State of U.P. & another v. Johri Mal** (2004) 4 SCC 714.

13. Concluding his arguments, Mr. Amit Anand contended that the charge against the applicant has been conclusively proved during the course of inquiry, principles of natural justice have been followed in the conduct of the inquiry and the impugned orders at Annexures A-1 & A-2 have been passed by the disciplinary and appellate authorities respectively in accordance with the rules, and hence this O.A. deserves to be dismissed.

14. We have considered the arguments of learned counsel for the parties and have also perused the pleadings.

15. We notice from the inquiry officer's report as well as from the orders of disciplinary and appellate authorities that the testimonies of two PWs, namely, HC Kushal Malik, PW-1 (p.41) and Constable Raj Kumar, PW-2 (p.42) have been taken into consideration by them. It is settled law that the scope of judicial review in disciplinary proceedings is highly limited. Judicial review is normally resorted to only in following circumstances:

- (a) Principles of natural justice have not been followed in the conduct of DE proceedings,
- (b) Incompetent authorities have issued the charge memorandum and passed the penalty orders,
- (c) The penalty orders have been passed in violation of relevant laws/rules; and
- (d) The punishment inflicted is disproportionate to the offence committed.

16. The above principles have been enshrined in the following judgments of Hon'ble Supreme Court:

- (i) **Union of India v. P. Gunasekaran**, (2015) 2 SCC 610
- (ii) **Ranjit Thakur v. Union of India & others**, (1987) 4 SCC 611; and
- (iii) **Kuldeep Singh v. Commissioner of Police & others**, JT 1998 (8) SC 603.

17. In the present case, we find that the disciplinary proceedings were conducted against the applicant in accordance with the principles of natural justice. The applicant was given sufficient opportunity to defend himself during the inquiry. The impugned orders have been passed by the competent authorities. The punishment awarded to the applicant is not at all disproportionate to the charge levelled. Hence, relying on the ratio laid down by the Hon'ble Apex Court in **P. Gunasekaran, Ranjit Thakur and Kuldeep Singh** (supra), we do not find any merit in this O.A.

18. Accordingly, the O.A. is dismissed without any order as to costs.

(S.N. Terdal)
Member (J)

(K.N. Shrivastava)
Member (A)

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