

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH****OA No. 060/00024/2016**

Pronounced on : 01.02.2018
Reserved on : 19.01.2018

CORAM: HON'BLE MR.SANJEEV KAUSHIK, MEMBER(J)
HON'BLE MRS. P. GOPINATH, MEMBER(A)

S.I. Jagan Nath, No. 867/CHG (Retd.), aged 59 years, Chandigarh Police, resident of House No. 4275 A, Sector 46-D, Chandigarh.

.....Applicant

BY ADVOCATE: **Sh. R.K. Sharma**

VERSUS

1. Union Territory, Chandigarh Administration, Chandigarh through Administrator, U.T. Civil Secretariat, Sector 9, Chandigarh.
2. Home Secretary, Chandigarh Administration, UT Secretariat, Sector 9, Chandigarh.
3. Inspector General of Police, Union Territory, Chandigarh Police Headquarters, Sector 9, Chandigarh.
4. Deputy Inspector General of Police, Union Territory, Chandigarh Police Headquarters, Sector 9, Chandigarh.
5. Senior Superintendent of Police, Union Territory, Chandigarh Police Headquarters, Sector 9, Chandigarh.

.....Respondents

BY ADVOCATE: **Sh. Arvind Moudgil**

ORDER**MRS. P. GOPINATH, MEMBER(A):-**

1. Applicant has filed this OA seeking the following relief(s):-
 - (i) Quash order No. 2034-42/UT/RD/Des Centralized/SSP dated 28.08.2014, passed by Respondent No. 5 (Annexure A-1) vide which applicant was imposed a harsh and disproportionate penalty of forfeiture of five years of approved service for increment purpose with immediate effect.
 - (ii) Quash Order No. 61975-79/UT/E-I dated 15.12.2014, passed by Respondent No. 4 (Annexure A-2) vide which appeal of the applicant against the impugned order dated 28.08.2014 was rejected.
 - (iii) Quash order No. 18380-84/UT/E-1 dated 13.04.2015 passed by respondent No. 3 (Annexure A-3) to the extent whereby instead of accepting revision petition of the applicant by setting aside the penalty, the penalty has been reduced to forfeiture of three years of approved service for increment purpose with permanent effect.
 - (iv) Quash order No. 43449/UT/E-I dated 13.10.2015, passed by Respondent No. 2 (Annexure A-4), whereby revision petition filed by the applicant against the orders passed by Respondent No. 3 Inspector General of Police, Chandigarh dated 13.04.2015 was rejected.
 - (v) Issue directions to the respondents to release all the three increments illegally stopped by them with all the consequential benefits including revision of pension and revised pensionary benefits with interest @ 18% per annum to the applicant as if no punishment was imposed upon him.
2. Applicant started his career as a Constable in Chandigarh Police. Subsequently, he was promoted as Head Constable, Assistant Sub Inspector (ASI) and Sub Inspector (SI). He retired from service on 30.06.2014 on superannuation. Applicant submits that while working as SI, he was deployed on 03.02.2013 at a Traffic Naka on the road dividing Sector 17/9 Madhya Marg. A Tata Sumo Taxi was stopped at the Naka for checking and thereafter was allowed to drive away. One Inspector Jaswinder Singh stopped the vehicle No. HP01C-3301 again and verified the facts from the driver. The driver stated that he was stopped by the Traffic

Police for violation of high beam. On request and pleading, the Traffic Constable let off the driver after taking Rs. 300 without issuing challan. Inspector Jaswinder Singh submitted a special report on the basis of which a departmental inquiry against the applicant and Constable Baljeet Singh was initiated. The Inquiry Officer issued a charge sheet to the applicant on 25.07.2013 in which allegation leveled was that a sum of Rs. 300 was taken from the driver of Tata Sumo. There was also an allegation of misbehavior with Inspector Jaswinder Singh. The Inquiry Officer gave a finding against the applicant and held him guilty.

3. Applicant was issued a Show Cause Notice proposing to dismiss him from service. Applicant submitted a representation and enclosed with it a statement given by one Vishal Kumar, driver of the vehicle on the basis of which the entire case was forwarded against the applicant. Applicant argues that the statement was given in the manner dictated by Jaswinder Singh. The applicant also argues that receipt was issued for challan of Rs. 300 and he had not taken any other money from the driver of the Tata Sumo Vehicle. He was falsely implicated by Inspector Jaswinder Singh in the case which has resulted in a charge sheet.

4. Statements of as many as 8 prosecution witnesses were recorded during the course of inquiry. During the examination, Inspector Jaswinder Singh recorded his statement narrating the incident. In his statement he is reported to have asked the applicant to record the statement as narrated by the Driver. The statement of the Driver Pawan Kumar was got recorded by H.C. Mohinder Kumar No. 2514/CP, which was directed to be endorsed by the applicant.

5. During the course of inquiry, the applicant tried to prove his innocence, but the inquiry officer gave a finding based on the statement of Inspector Jaswinder Singh. The Disciplinary Authority overlooking the factual position and without considering contradictions in the statements of the prosecution witnesses agreed with the findings of the Inquiry Officer and imposed a punishment of forfeiture of five years of approved service for increment purpose with permanent effect. The impugned order did not take into consideration the clean record of service of the applicant which was brought to the notice of the Disciplinary Authority at the time of hearing before him. The punishment imposed, argues the applicant, was excessive and was not commensurate with the charge. Taking money was also not proved qua the applicant. In the impugned order, no reference was made to the points raised by the applicant while replying to the Show Cause Notice served upon him. The Appellate Authority has also not considered the points raised by the applicant in his appeal. The Appellate Authority was required to consider the appeal and deal with the points raised and pass a speaking order thereon.

6. The appellate authority, argues applicant, has to follow the principles of natural justice and not only do justice, but should appear to do justice and should not allow the opinion of other persons to operate on his mind and has to form an independent opinion of its own without relying on the opinion/merits expressed by others. Although Revisionary Authority reduced the penalty, he did not go into depth about the episode resulting in issue of charge sheet.

7. The respondents submit that a departmental inquiry under PPR 16.24 was ordered against the applicant and Constable Baljit Singh on the allegation that on 03.02.2013 at 7.45 pm, vehicles were being checked by the Traffic Police personally at the traffic naka deployed on the road dividing sector 17/9 Madhya Marg. A Tata Sumo was stopped at the Naka and was thereafter allowed to go. Inspector Jaswinder Singh stopped the vehicle and after disclosing his identity, sought facts from the driver. The driver informed him that he was stopped for violation of high beam and was allowed to go after taking a sum of Rs. 300 without issuing a challan. Inspector Jaswinder Singh called the Traffic Marshal and the applicant and enquired about the matter. The applicant was called by Inspector Jaswinder Singh to record the statement of the Driver Pawan Kumar in the presence of Traffic Marshal and some passengers. The applicant refused to do so. Thereafter, the statement of the driver was recorded by HC Mohinder Kumar and the applicant refused to verify the statement. The driver of the Tata Sumo Sh. Pawan Kumar informed Inspector Jaswinder Singh that after he was let off, Constable Baljeet Singh stopped him and took the license of one of the passengers Sh. Vishal Kumar and issued a challan and collected fine. The departmental inquiry held the applicant guilty of the charge. The applicant was called to show cause vide Show Cause Notice dated 21.04.2014 proposing a punishment of dismissal from service.

8. As regards the inquiry held, Bench notes that Show Cause Notice was issued. Applicant submitted reply to the Show Cause Notice. The competent authority heard the applicant in person, examined the inquiry report and perused the service record of the applicant. The competent

authority agreed with the findings of the Inquiry Officer and taking into account the service record of the applicant modified the punishment proposed from dismissal from service to forfeiture of five years of approved service for increment purpose with permanent effect. The applicant filed an appeal on 26.09.2014. The Appellate Authority after perusing records and hearing applicant in person, found no grounds to interfere with the order of the disciplinary authority.

9. Applicant filed a revision petition. The revisionary authority perused the records, heard the applicant in person and considering the unblemished 34 years of service of the applicant, reduced the quantum of punishment of forfeiture of five years' approved service to three years.

10. The Bench notes that the Disciplinary Authority had reduced the proposed punishment of dismissal from service to forefeiture of five years of approved service for increment purpose. Thus, it cannot be stated that the Disciplinary Authority had not applied its mind while disposing the disciplinary case. The Disciplinary Authority had recorded the reduction in the proposed punishment after taking into account his previous service record. Thus, it is evident that the Disciplinary Authority had not only gone through inquiry report, but also perused the service record of the applicant before recording the punishment order. The Appellate Authority while recording his four page order observed that the appellant had been afforded ample and substantial opportunity to present his case in defence in the disciplinary proceedings. He also noted that no procedural irregularity was found in the conduct of the inquiry and the findings of the inquiry officer and the punishment orders stand supported and substantiated by the evidence

on record. He also recorded that there has been full compliance with the principles of natural justice, equity and fair play while dealing with the applicant departmentally. There has also been no infraction of rules while conducting the departmental inquiry. The Appellate Authority disposed of the appeal by rejecting it and gave no relief to the applicant. The Revisionary Authority in his four page order recorded that he had perused the applicant's petition. He noted that there was no material irregularity in the proceedings nor had any fresh or new evidence been brought forth by the applicant. In view of 34 years of unblemished service of the applicant, the Revisionary Authority reduced the quantum of punishment from forfeiture of five years of service to three years of service for the purpose of increment.

11. The inquiry report and connected documents have been perused. The Inquiry Officer in his report, has recorded that Constable Baljeet Singh in his statement to Inspector Jaswinder Singh on 04.04.2013 had stated that he had told the Inspector Jaswinder Singh that the driver has been challaned for failing to lower the headlight beam and Rs. 300 had been accepted as fine and receipt issued for the same. The Inquiry Officer also recorded the statement of Sh. Suresh Kumar Sharma, Driver and Marshal during the departmental inquiry. Neither Sub Inspector Jagan Nath nor Constable Baljeet Singh made a mention about any challan issued to the Driver and the matter of issuing a challan appeared to be an afterthought. The Inquiry Officer also records that during the course of inquiry, it had come out that before the arrival of Inspector Jaswinder Singh, the driver of the vehicle had not been challaned and hence the issuance of challan would not arise. The Inquiry Officer also notes that the recording of statement of

one of the passengers of vehicle other than driver cannot be accepted, as the conversation regarding the issuance of challan would only be with the driver of the vehicle and not any random passenger of the vehicle. The inquiry report also contains details regarding the place and time of offence in challan No. 43, thereby substantiating the conclusion that the challan was issued subsequent to the departure of Inspector Jaswinder Singh.

12. This is not a case wherein the subject matter of the inquiry was brushed aside with a cursory finding. The Inquiry Officer appears to have gone into detail about the incident and based on evidence, substantiated his conclusion. We do not find any reason to interfere with the inquiry report on any technical grounds. We also note that the Revisionary Authority has also reduced the quantum of punishment from five years to three years. Hence, it cannot be said that the officers who dealt with this disciplinary proceeding, did so without application of mind.

13. The jurisdiction of the Tribunal to interfere with a disciplinary matter or punishment cannot be equated with an appellate jurisdiction. Tribunal cannot interfere with the findings of the Inquiry Officer or the competent authority except if they are arbitrary or utterly perverse. The power to impose penalty on a delinquent officer is conferred by the competent authority either by an act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an inquiry consistent with the rules, and in accordance with principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty is one which can lawfully be imposed and is imposed on a proven misconduct, the

Tribunal has no power to substitute its own judgement on the action taken by the competent authority. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on recorded evidence as in this case.

14. Judicial review is not an appeal from a decision, but a review of the manner in which a decision is made. Whereas the Tribunal can sit in judgement on the correctness of decision making process, the correctness of the decision is generally left to the appropriate authority, unless a perversity is noted. The punishment is not one which would shock the conscious or one which cannot be lawfully imposed.

15. Whereas, the issue of malafide on the part of Jaswinder Singh has been alleged by the applicant, we find that the applicant has not argued out the case for malafide in a strong enough manner to establish it in a manner as to merit judicial review of the disciplinary proceedings. From the documents placed before us, there appears to be no conclusive evidence of bias of the Inquiry officer or those who were the Disciplinary Authority, Appellate Authority and the Revisionary Authority. The outcome of the disciplinary proceedings is not an outrageous defiance of logic. When an inquiry is conducted on charges of misconduct by a public servant, the Tribunal is required to look into whether the inquiry was conducted by a competent officer, whether the principles of natural justice are complied with, whether the authority entrusted with inquiry had jurisdiction, power and authority to reach a finding of fact or conclusion. The Tribunal, in its power of judicial review, cannot re-appreciate the evidence or arrive at its own independent finding on the evidence adduced.

16. For the reasons recorded above, the OA is dismissed. No order as to costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:
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