

CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

Pronounced on : 19.02.2019
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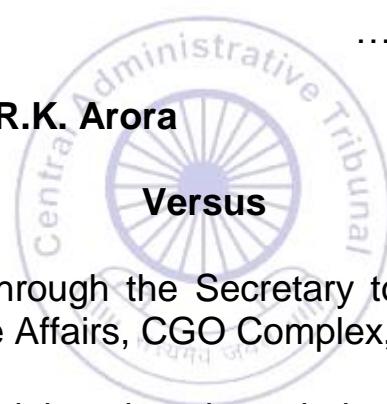
OA No. 060/00195/2018

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

Senior Constable Multan Singh No. 1787/CP, S/o Sh. Man Singh, aged about 44 years, Security Wing, Sector 29, Chandigarh, R/o Village-Sunheri Khalsa, P.O. Salarpur, District-Kurukshetra (Post of applicant is Class-C category)

.....Applicant

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



1. Union of India through the Secretary to Government of India, Ministry of Home Affairs, CGO Complex, New Delhi.
2. Chandigarh Administration through its Home Secretary, U.T. Secretariat, Deluxe Building, Sector 9, Chandigarh.
3. The Director General of Police/IGP, U.T. Chandigarh, Chandigarh Police Head Quarter, Sector 9, Chandigarh.
4. The Deputy Inspector General of Police, U.T. Chandigarh, Chandigarh Police Head Quarter, Sector 9, Chandigarh.
5. The Senior Superintendent of Police, U.T. Chandigarh, Chandigarh Police Head Quarter, Sector 9, Chandigarh.
6. Suresh Kumar ASI No. 1296/CHG S/o Ramu Ram, through Senior Superintendent of Police, U.T. Chandigarh, Chandigarh Police Headquarter, Sector 9, Chandigarh.

.....Respondents

BY ADVOCATE : **Sh. K.K. Thakur for respdts. No. 1-5**
Sh. Pritam Saini for respdt. No.6

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

1. The applicant appeared in the selection to fill up 20 posts of Assistant Sub Inspectors under General Category. Applicant appeared in the physical efficiency and physical measurement test on 15.05.2007. Applicant qualified in the high jump and he qualified in the long jump in the third attempt covering a length of 14.4 feet, which length, he argues, was announced by an official of Chandigarh Police, deputed to make measurements at the test site. In the physical measurement test, his chest was measured as 32"-34". Applicant preferred an appeal availing the remedy of appeal with regard to chest measurement before the Chairman, Selection Board cum Appellate Board. His chest was re-measured as 33"-34-1/2", thereby qualifying the chest measurement test.
2. On the basis of a news report regarding leaking of the written test papers, applicant approached the Tribunal in OA No., 52 of 2008 for quashing the selection and re-initiating the selection process from the stage of written test. In the intervening period, on an internal investigation carried out by respondent No. 3, it was revealed that the question paper had leaked out and FIR No. 31 dated 08.02.2008 u/s 420, 120-B IPC was registered at Police Station Sector 3, Chandigarh and the written test was annulled and a decision was taken to hold the written examination afresh.
3. Due to annulment of the written test, those candidates who were selected for the post, filed OAs No. 160 of 2008, 459 of 2008 and 613 of 2008. The Tribunal in its order dated 26.09.2008 directed the

respondents to review the selection, examine the relevant record, evidence, witness, form a definite opinion by passing a speaking order. Aggrieved by the above, respondent No. 2 filed CWP No. 6340, 7148 and 7251 of 2009 before the Punjab and Haryana High Court. The Hon'ble High Court vide order dated 08.03.2011 set aside the order of the Tribunal that it was not possible to segregate the tainted from the untainted candidates and as such the cancellation of examination was upheld with liberty to proceed with the selection process afresh.

4. Respondent No. 3 conducted written test and interview afresh and the applicant was selected for the post of ASI. The applicant submits that the selection letter was withheld on the ground that a complaint was received alleging irregularities in the physical efficiency and physical measurement test.

5. The applicant approached this Tribunal in OA No. 667/CH/2012 questioning the above action of the respondents. The Tribunal in its order directed that the decision in the matter be taken after giving the affected candidates an opportunity of being heard and the OA was disposed of accordingly.

6. The respondents vide impugned order dated 24.05.2013, cancelled the candidature of the applicant on the ground that he failed to clear the long jump. In the meanwhile, an Inquiry Officer was appointed for the departmental disciplinary proceedings. Applicant filed OA No. 928/CH/2013 for setting aside the order dated 24.05.2013. The OA was dismissed. Applicant then filed CWP No. 25669-CAT of 2014 challenging this order of the Tribunal. The High Court disposed of the writ petition

with directions to the inquiry Officer to examine the record of the inquiry conducted so far, whether the applicant had been denied a fair trial or whether the principles of natural justice had been adequately observed. If so, the inquiry proceedings be re-opened from the stage any procedural lapse was observed and conclude the same in accordance with the law.

7. Fresh inquiry was conducted and report submitted. Applicant argues that the report considered the evidence on record regarding the short chest measurement and non-clearing of the long jump and arrived at the conclusion that despite these shortcomings, applicant had got himself selected to the post of ASI in collusion with the officers/officials of the Chandigarh Police. Applicant was issued a show cause notice alongwith the inquiry report as to why the punishment of forfeiture of one year of approved service for increment purpose with permanent effect may not be imposed upon him. Applicant submitted a detailed reply. Respondent No. 5 passed an impugned order dated 20.03.2017 imposing the punishment of forfeiture of one year of approved service for increment purpose with permanent effect. Applicant filed statutory appeal on 20.04.2017. On 01.12.2017, his appeal was dismissed by the fourth respondent.

8. The prayer of the applicant is for appointment to the post of ASI based on the selection, quashing of departmental proceedings, quashing of the punishment imposed upon the applicant, and quashing of the order dismissing his statutory appeal.

9. The respondents admit the factual position and in support of their contentions, cite **UOI Vs. Parma Nanda, AIR 1989 SC 1215**

wherein it is held that the quantum of punishment in a disciplinary case is within the domain of the competent authority and submit that the penalty imposed is proportionate to the gravity of the charge levelled and proved against the applicant. They also submit that no procedural lapse or irregularity was there in the disciplinary proceedings. **Bank of india and Anr. Vs. Degala Suryanarayana, AIR 1991 SC 2407 and UOI & Ors. Vs. Himmat Singh Chahar, AIR 1999 SC 1980** are cited wherein the jurisdiction under Article 226 would be for the limited purpose of finding out whether there has been any infraction of any mandatory provision of the Act causing gross miscarriage of justice, or violation of principles of natural justice, which would vitiate the disciplinary proceedings or the exercise of any jurisdiction not vested under the Act.

10. Heard counsel for applicant and respondents and perused the written submissions made.

11. The applicant was one of the aspirants for the 20 posts of ASI advertised by respondents in 2007. Before the appointment letters could be issued, a complaint was received from one of the waiting list candidates Sh. Suresh Pal that one Sh. Kamal Verma, a selected candidate and son of Sh. Surinder Verma had not cleared his PET. A committee headed by SP (Operations) was constituted to inquire into the veracity of the complaint. Offer letters were issued on 14.11.2011 to the selected candidates except Sh. Kamal Verma. On receipt of acceptance of the candidates, another complaint was received from one Sh. Anil Kumar alleging that in the selection process of ASI held in the years 2007 and 2009, there were candidates who did not qualify the physical test and

yet were called for interview. This complaint was also marked for inquiry and the selected candidates were not allowed to join.

12. The DIG, CBI, Chandigarh, who was also seized of the matter, summoned the record pertaining to recruitment vide letter dated 09.11.2011. Since CBI was seized of the matter, they examined the videography of the physical test of the candidates and submitted a report to the respondents. As far as the applicant was concerned, it was noted by the investigating officer that he was disqualified at the time of measurement of the chest on the ground that his chest measured 32"-34" which was less than the prescribed measurement. It is also observed from the DVD containing videography of appeal preferred by the candidates before the Appellate Board that, the applicant did not make an appeal before the Chairman. The report also observed that applicant did not clear long jump in his batch and made two more attempts with some other batch but could not clear the long jump in the subsequent attempts. Since the applicant's name figured in the final list of selected candidates for the post of ASI despite the above shortcomings noticed, the CBI report concluded that undue favour was shown by the officials of Chandigarh Police for ensuring the selection of the applicant and some other candidates. It was thus recommended to proceed with departmental proceedings for major penalty against the applicant and some other selected candidates and the officials of the Chandigarh Police who were part of the selection process. It is also recommended that the candidature of the applicant and other similarly placed candidates be cancelled. On the basis of investigating agency's report, the applicant's

selection was cancelled and disciplinary proceedings initiated. The CBI sent its report on 26.03.2012 recording prima facie that there was a commission of gross departmental misconduct and malpractice on the part of the officials/officers of the Chandigarh Police in the above recruitment process and selection of candidates for the post of ASI. The CBI recommended as follows:-

"Regular Departmental action for major penalty against the following erring officers/officials of UT Police, Chandigarh, who remained associated with recruitment process:-

- I. Sh. Om Parkash, the then DSP (Overall Incharge race)
- II. Sh. B.S. Chaddha, the then DSP (Overall Incharge, HJ & LJ)
- III. Sh. Kewal Krishan, the then Inspector (member of appeal board)
- IV. Sh. S.P.S. Sondhi, the then Sub Inspector (member of appeal board)
- V. Sh. J.S. Cheema, the then Inspector (who measured the long jump)
- VI. Sh. Hari Chand, the then Inspector (High Jump Incharge)
Sh. Mahavir, the then Sub-Inspector (High Jump Incharge). Other unknown officials/officers of the UT Police, Chandigarh, if found guilty in further inquiry.

Regular Departmental action for major penalty against the following erring officers/officials of UT Police, Chandigarh, who were ineligible but got themselves selected in collusion with the officers/officials of Chandigarh Police:-

- I. Sh. Kamal Verma S/o Surinder Verma
- II. Sh. Multan Singh S/o Man Singh
- III. Sh. Surinder Singh S/o Randhir Singh
- IV. Ms. Sunita Yadav D/o Mitru Singh
- V. Sh. Yashpal S/o Surinder Mohan
- VI. Sh. Suresh Pal S/o Ram Sarup
- VII. Sh. Pardeep Kumar S/o Raj Bahadur (Not selected).
Any other officers/officials of UT Police who appeared as a candidate for the post of ASI in this recruitment and found guilty in further enquiry.

Cancellation of candidature of the following ineligible but selected/waiting list candidates for the post of ASI:-

- I. Sh. Kamal Verma S/o Surinder Verma
- II. Sh. Multan Singh S/o Man Singh
- III. Sh. Surinder Singh S/o Randhir Singh
- IV. Ms. Sunita Yadav D/o Mitru Singh

- V. Sh. Rinkesh S/o Kushal Pal Singh
- VI. Sh. Paramjit Singh S/o Kuldeep Singh
- VII. Sh. Yashpal S/o Surinder Mohan
- VIII. Ms. Lajjit Kaur D/o Raghubir Singh
- IX. Sh. Suresh Pal S/o Ram Sarup
- X. Sh. Parmveer Singh S/o Vinay Singh

13. In view of the above recommendations of the CBI, the candidature of the applicant was cancelled vide order dated 31.05.2012. This was on the ground of irregularities in the conduct of his PET.

14. The applicant challenges the order of the SSB by filing OA No. 928/2013 in this Tribunal which was dismissed vide order dated 14.11.2013. The applicant challenged this order by filing a CWP in the High Court which was disposed of on 27.03.2015 with the following directions:-

“4. In deference to the observations made by this Court, the authorities have vide their order dated 09.02.2015, appointed Mr. Ram Niwas Meena, IPS, Commandant, IRB, as the new Enquiry Officer.

5. We thus dispose of this writ petition without interfering with the order of the Tribunal but with a further clarificatory direction to the Enquiry Officer to examine the record of the enquiry conducted so far and if he finds that, at any stage, the petitioner has been denied fair trial or if the principles of natural justice have not been adequately observed, he shall re-open the enquiry proceedings from the stage and conclude the same in accordance with law after giving adequate opportunity of defence to the petitioner. The petitioner shall be permitted to inspect the record etc. if such records are relevant with reference to the issues to be gone into by the Enquiry Officer. Similarly, the disposal of this writ petition shall not preclude the petitioner from approaching the competent authority and/or appropriate forum for the redressal of related grievances, as and when need be.

6. The writ petition stands disposed of.”

15. The High Court did not set aside the inquiry, but only directed to give the applicant a fair trial and at the same time, did not preclude the

applicant from approaching the competent authority or the appropriate forum for redressal of his grievances as and when need be.

16. The applicant was a person who was declared qualified in the recruitment process and his name finds a place in the select list. The CBI inquiry held that the applicant was disqualified at the time of measurement of chest by Sub-Inspector Sukhdeep Singh by writing 32"-34" on his chest and marking "D/Q" in the chart. In the remarks column of the same chart, it was recorded that an appeal preferred by the applicant was heard by the Chairman of the Selection Committee and the applicant was subsequently declared qualified. But on the perusal of the videography of the appeal made by candidates before the Appellate Board, it was observed that the applicant did not make an appeal before the Chairman of the Appellate Board. Hence, the short measurement of chest being corrected by the Appellate Board on re-measurement is not a fact corroborated by the evidence of video footage. Applicant also does not have an argument that the video footage was tampered. The applicant also did not clear the long jump in his batch. Despite both these deficiencies, his name found place in the list of finally selected candidates for the post of ASI which was a gross irregularity.

17. The CBI had held an independent inquiry and arrived at the above conclusion and recommended a regular departmental inquiry. A regular departmental inquiry was ordered against the applicant and the Inquiry Officer submitted the inquiry report which is produced as Annexure A-20. In the Inquiry Report, the applicant's reply to the charge has been recorded. The only defence of the applicant to the charges is

that the CBI report is hollow, false, frivolous, baseless and arbitrary and one not based on facts. He also submitted that he was not associated with the CBI inquiry and therefore, the report cannot be relied upon. What applicant fails to mention is that the CBI inquiry was based on investigation and video footage and CBI had directed a full-fledged departmental inquiry be held in the matter. Besides the above statement, he does not have any other defence regarding the manipulated chest measurement of unfit to fit. Besides that, he did not have any other argument to defend himself.

18. Applicant stated in the course of the inquiry that he was disqualified wrongly in the chest measurement and "D/Q" was written in the appropriate column. He preferred an appeal before the selection cum appellate board and his chest was re-measured and in the remarks column, it was recorded that the appeal was heard by the Chairman, re-checked and his chest measurement was re-recorded as 33"-34-1/2". As regards the evidence of DVD of the appeal preferred to the Appellate Board, applicant negates it by saying that no videography of the appeal was made. He admits that eight video cameras were installed at the site and there was no video camera to record the appellate board proceedings.

19. The Inquiry Officer, while concluding the inquiry, recorded as follows:-

"As per the proceedings and documents on record, Constable Multan Singh was disqualified at the time of measurement of chest by SI Sukhdeep Singh by writing 32" & 34" on his chest. He is mentioned as disqualified by marking "D/Q" in the chart and it is further mentioned in the "Remarks" column of the chart that "appeal heard by Chairman and was declared qualified by SI S.P.S. Sondhi." However, in the DVD

containing videography of appeals made by candidates before the Appellate Board, Multan Singh did not appear to have appealed before the Chairman. Even then he attended all other events. He again could not clear long jump event in his batch and made 02 further attempts with some other batch but could not clear the long jump.

In view of the facts and circumstances, scrutiny of the documents collected during verification including DVDs, it has been established that Multan Singh S/o Man Singh clearly seen touching the taking off point (whiteline) as well as landing point (whiteline) of long jump event. This is clear cut sign of disqualification in third/last attempt.

Since he had fallen back therefore distance covered needed to be/should have been measured from the hip marks seen at jumping pit in video.

Insp. J.S. Cheema stated that DSP B.S. Chadda was sitting at a distance of 3 feet from the landing pit whereas DSP B.S. Chadda himself claimed that he was sitting in tent 15 feet away from the landing pit.

The running speed in which Multan Singh is seen in last/third attempt also suggest that under no circumstances or anyone could jump 14 feet without touching taking off and landing point/s.

In view of above, I am of the opinion that constable Multan Singh is guilty of the charge.”

The Inquiry Officer has examined the documents and DVD and has argued out the basis on which he arrived at the conclusion of guilt of the charge. The version of the respondent placed before the Inquiry Officer was more probable, reasonable and acceptable on the basis of evidence of video recording of the physical measurement and physical efficiency test and it cannot be said that the Bench will arrive at a different conclusion. We are not sitting here as appellate authority to reassess the evidence to come to a different conclusion or find out if the respondent had come to the right conclusion based on available evidence. Apex Court in a number of judgements has held that the degree of proof required in a departmental inquiry is not so onerous as

the one required to sustain a charge in a criminal trial. The charge in a disciplinary inquiry can be proved by preponderance of probabilities. Further, unless prejudice is shown, the disciplinary proceedings cannot be simply interfered with. Such an argument against the CBI or the disciplinary authority has not been raised by the applicant.

20. The applicant vide Annexure A-5 series produced some photographs in support of his claim that he had cleared the long jump. This is not a matter where the inquiry report was based on no-evidence or non-examination of evidence. The evidence relied on has been recorded before arriving at a conclusion of guilt. It is not for the Bench to assess the veracity of the facts of the selection process. The respondents who conduct the selection process year after year, are the best judge of the veracity of the video camera proceedings and the selection process. Having detected an error or selection procedural irregularity, the matter was investigated by CBI and also by a departmental inquiry and the conclusion of guilt was arrived at by the inquiry process independently. The Bench exercising the jurisdiction of judicial review, would not interfere with the finding of fact arrived at in a departmental inquiry. The Bench would also not re-appreciate the evidence as done by the disciplinary, appellate or the reviewing Authority before recording their order. There is on record a 16 page CBI report and a 20 page report of the Inquiry Officer. The CBI has made a detailed inquiry, assessed the facts and evidence in the case and submitted its finding to the respondent. The departmental proceeding has recorded its finding as a consequence of recording and analysis of evidence by the

inquiry officer. To set aside both the above findings would be a blot on the all recruitment process where a departmental candidate having the blessings/connivance of the recruitment board, could get away with not complying with the recruitment standards or manipulating records to qualify the recruitment standard. This would also pave the way for future departmental candidates to canvass the favour of the recruitment board to qualify in a selection process. Maybe, such departmental candidates, instead of being assessed by departmental physical test Boards, should be tested by partisan Boards which has persons like the Sports Centre Patiala where the chances of connivance may be less. It is for the respondent to take a view on this matter.

21. We note that the selection procedure was videographed and the videography evidence was assessed by the CBI and separately by the Inquiry Officer who has made his observation after appreciating the documentary evidence and evidence produced in the process of examination of witnesses to establish the charges against the applicant. The inquiry held the applicant guilty of the charge. The selection process is preceded by making offers of appointment to the persons in the select list and based on the order dated 04.04.2016 of the Tribunal in an OA filed by one Sh. Suresh Kumar, the Select List has been recast by including the candidates who are next in order of merit and a replacement of the candidates who were excluded on account of discrepancies in the selection process and the appointment made thereon.

22. The applicant has participated in the inquiry and has also used the appellate and the revisionary rights provided under the disciplinary rules. This is a case where some perversity had been perpetuated which vitiated the selection process in respect of some candidates. This has been established in the form of a CBI inquiry followed by a departmental inquiry and a perusal of the video recording of the physical measurement test. The applicant has been given a chance to defend himself in the inquiry and there is no case that he did not use this opportunity. The cancellation of the candidature of the applicant therefore has been made on the basis of a CBI inquiry followed by a departmental inquiry. The matter was before this Bench earlier as cited in pre-paras which dismissed the OA, and even the High Court did not set aside the recruitment, but only gave an opportunity in the form of re-inquiry, if considered necessary. It is not a case where the applicant has not been given an opportunity to establish his case for appointment. Having used the opportunity, he cannot now turn around and pray for setting aside the cancellation of his candidature and the punishment of forfeiture of one year of approved service for increment purpose with permanent effect.

23. The Tribunal cannot take over the function of the disciplinary authority. The truth or otherwise of the charges or correctness of the findings is a matter for the disciplinary authority to go into. The inquiry was conducted by a competent officer, findings and conclusions are based on evidence, and the authority entrusted with the task of holding the inquiry had the jurisdiction, power and authority to reach a finding of

fact or conclusion. Suffice it is to say that finding or conclusion should be based on some evidence.

24. For the foregoing discussion, this OA, being devoid of merit, is dismissed. There shall be no order as to costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:
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