
(2013) 07 DEL CK 0033
In the Delhi High Court
Case No : Writ Petition (C) 3587 of 2013

Anil Kumar

APPELLANT

Vs

Commissioner of Police and Others

RESPONDENT

Date of Decision : 11-07-2013

Acts Referred:

Citation : (2013) 07 DEL CK 0033

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Ajesh Luthra, for the Appellant; Zubeda Begum and Ms. Sana Ansari, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The present writ petition challenges the order dated May 03, 2012 passed by the Central Administrative Tribunal rejecting OA No. 2514/2010 upholding the penalty levied upon the petitioner, being forfeiture of five years" service permanently with cumulative effect and also directing that the period with effect from November 14, 2008 on which date petitioner was suspended be treated as period not spent on duty. The petitioner was employed as a Constable (Mounted) with the Delhi Police. On September 29, 2008 two calls from the Police Control Room were received by the Duty Officer at Police Station Alipur which were noted vide DD No. 33-A and 34-A. They pertained to a complainant informing through the Police Control Room that a police official had taken Rs. 500/- from him.

2. As per the respondents the complainant named Pardeep reached the Police Station accompanied by his friend Surinder Kumar and identified the petitioner as the police official who had taken Rs. 500/- from him. The petitioner was placed under suspension vide order dated November 14, 2008. Thereafter vide order dated March 09, 2008 a disciplinary proceeding was initiated against him by issuing a Summary of Allegation, as required by the Delhi Police (Punishment & Appeal) Rules, 1980, which reads as under:-

It is alleged that, on 29.09.2008 two PCR calls were received vide DD No. 33-B & 34-B at PS Alipur regarding snatching of Rs. 500/- by a police official, which were marked to SI Bharat Bhushan for enquiry. SI Bharat Bhushan contacted the complainant Sh. Pradeep s/o. Angad R/o. H. No. 93, Nayi Basti, Village Lampur, Delhi. SI Bharat Bhushan along with a witnesses named Sh. Surinder Kumar R/o. Village Mohmad Pur (Mobile No. 981 8358 193) visited the spot where the complainant Sh. Pradeep identified the snatcher as a Constable Anil Kumar No. 912/L of Mounted Police PS Alipur. During his (Ct. Anil Kumar) personal search a note of Rs. 500/- was recovered from his pocket, which was returned to the complainant. Statement of Sh. Pradeep (complainant) was recorded by SI Bharat Bhushan, in which he alleged that Ct. Anil Kumar No 912/L had snatched Rs. 500/- which he got back to decline to get a criminal case registered. SI Bharat Bhushan prepared a report on this matter and sent it to this unit through his senior for taking further necessary action.

The above action the part of Ct. Anil Kumar No. 912/L amounts to cross misconduct, misuse of authority unbecoming of a police officer/public servant which renders him liable for departmental action under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980.

3. Since the petitioner denied the allegation an Inquiry Officer was appointed before whom the prosecution/department examined six witnesses; namely, Ct. Rajesh Kumar, Inspector Surender Kumar, HC Ramesh Chander, Sh. Pradeep, Sh. Surinder Kumar and SI Bharat Bhushan.

4. Ct. Rajesh Kumar PW-1 deposed that he was working as a Chitha Munshi at the Mounted Police P&L from February 2008 to December 2008 and as per the record the petitioner was deputed for duty at PS Alipur from the month of March, 2008. On being cross-examined he admitted being present at the Mounted Police P&L on September 29, 2008 and that he was unaware whether petitioner came to Mounted Police P&L on September 29, 2008.

5. Inspector Surender Kumar PW-2 deposed that he was working as the SHO, PS Alipur and that DD No. 33-B, 34-B and 57-B dated September 29, 2008 were registered at the Police Station. They pertained to a complaint made by Pradeep son of Angad regarding petitioner taking Rs. 500/- from him and in connection therewith on October 17, 2008 vide Ex. PW-2/A he had submitted a report. Relevant would it be to note that as per Ex. PW-2/A Inspector Surender Kumar recommended disciplinary proceedings against the petitioner. On being cross-examined he stated that the complainant had evidenced an intention not to pursue the matter and therefore he did not register a case of robbery against the petitioner. This was the reason he gave for not drawing up a seizure memo pertaining to Rs. 500/- being recovered from the petitioner.

6. HC Ramesh Chander PW-3 deposed that he had brought the relevant record as per which Ct. Anil Kumar was transferred from PS Narela to PS Alipur on May 15, 2008.

7. The complainant, Sh. Pradeep, examined as PW-4, deposed that he was an electrician and on September 29, 2008 he was proceeding from Narela to Azadpur to purchase goods and when he reached Palla Mode he felt the necessity to answer the call of nature and as he returned after answering the call of nature a police man in uniform who was on a motorcycle started questioning him and took his purse and mobile phone and dropped him a little before PS Alipur and returned his purse and mobile phone to him. Upon checking the purse he found Rs. 500/- short and thus he rang up the Police Control Room at number 100. After some time he rang up the police once again. Two policemen came on a motorcycle and took him to PS Alipur where he was questioned and his statement was recorded. He was asked to leave but was called back and made to write another statement which bears his signature and the same was Ex. PW-4/A.

8. When cross-examined he stated that he did not remember the registration number of the motorcycle and even when he dialed 100, all he remembered was that it was a silver Victor motorcycle. He further stated that he was alone when he gave his initial statement at PS Alipur and that there were many officers present when he gave the same. When questions were put as to his relationship with Surinder Kumar PW-5, he replied that they worked at the same shop and that when he was called to the police station once again the said Surinder Kumar also accompanied him. When asked as to whether he remembered the name and the PIS number of the policeman on the motorcycle he answered in the negative. When asked as to whether the name of the petitioner found mention in his statement Ex. PW-4/A the stated that it did not. Lastly, question was put as to whether the officer who had taken the money from him was present at PS Alipur during either of his two visits he replied that the officer was present and that he was required to identify him.

9. Surinder Kumar PW-5, deposed that he worked at the same shop where the complainant worked and on September 29, 2008 he went to PS Alipur on the direction of the shop owner. Sh. Pardeep gave a written statement (Ex. PW-4/A) in his presence and handed over the same to the police. He also penned a note Ex. PW-5/A thereon recording therein that the statement of his friend, the complainant, was written in his presence. On being cross-examined he stated that his signature bore no date and that the complainant was not questioned by SI Bharat Bhushan in his presence.

10. SI Bharat Bhushan PW-6, deposed that on September 29, 2008 he was posted at PS Alipur on emergency duty and he recorded information as per DD Nos. 33-A and 34-A. He reached Tikri Khurd Bus stand on GTK Road where he was informed by the public that the complainant had been taken to PS Alipur by the police on a motorcycle. He reached the police station and met the complainant Pradeep. The complainant called his colleague Surinder and gave a written statement referring to DD Nos. 33-A and 34-A, wherein he recorded that he did not wish to take any action against the officer concerned. The complainant then identified the petitioner in front of the gate of the police station.

11. During cross examination when asked whether the complainant had identified the petitioner by name, belt number or PIS number he replied that the complainant named the petitioner but could not recollect the belt number or the PIS number. When asked as to why he had written the name of the petitioner in DD No. 57-B he replied that the complainant had gestured to him that Ct. Anil Kumar was present at the Mount Barrack and therefore his name and PIS number was mentioned. Lastly, he stated that no identification memo was prepared and that he had not attested the statement of the complainant Ex. PW-4/A.

12. In view of the evidence led by the prosecution, as required by the Delhi Police (Punishment & Appeal) Rules, 1980 a charge was framed against the petitioner which reads as under:-

I, Nirmla Devi, Inspr. D.E. Cell Delhi (E.O.) hereby charge you, Ct. Anil Kumar No. 912/L that on 29.9.08 two PCR calls were received vide DD No. 33 B & 34 at PS Ali Pur Delhi regarding snatching of Rs. 500/- by a Police Official which were marked to SI Bharat Bhushan for inquiry, SI Bharat Bhushan contacted the complainant Sh. Pardeep s/o. Angad R/o. H. No. 93, Nayi Bansi, Vill. Lampur, Delhi. SI Bharat Bhushan along with a witness namely Sh. Surinder Kumar R/o. Vill. Mahmad Pur Delhi visited the spot where the complainant Sh. Pardeep identified the snatcher as you Constable Anil Kumar No. 912/L of mounted Police PS Ali Pur. During your (Ct. Anil Kumar) personal search a Note of Rs. 500/- was recovered from your pocket, which was returned to the complainant. Statement of Sh. Pardeep (complainant) was recorded by SI Bharat Bhushan, and complainant stated that you Ct. Anil Kumar No. 912/L had snatched Rs. 500/- from him, which he got back, but complainant declined to get a criminal case registered against you.

The above act on your part (Ct. Anil Kumar No. 912/L) (mounted Police P&L) amounts to gross misconduct, misuse of authority, indulging in criminal activity and unbecoming of a Police Official, which renders you liable for punishment u/s. 21 of D.P. Act 1978.

13. Thereafter, as required by the Delhi Police (Punishment & Appeal) Rules, 1980 the petitioner was called upon to exercise the option to lead defence evidence and since he opted to lead the same he was permitted to examine witnesses in defence being three in number; namely: (i) Ct. Shri Bhagwan, (ii) Ct. Anil Kumar and (iii) Ct. Mukesh Kumar were examined.

14. The three defence witnesses deposed in tandem with each other. They stated in unison that on September 29, 2008 the petitioner was present at the precincts of the Mounted Police. He told them that he had been detailed to perform duties at Ramlila at PS Ashok Vihar. He remained at the barracks till around 3-3:30 PM and then left. Ct. Mukesh Kumar DW-3 further deposed that he had asked the petitioner to get the accessories of his mount as well. He returned at 4:00 PM with the accessories of both the Mounts. He and the petitioner provided food and

grain to their respective mounts after 5:00 PM and headed back to their respective homes at about 7:00 PM.

15. The Inquiry Officer held the charge to be proved on account of the following factors: (i) That PW-4 was the material witness who proved that the wallet and mobile phone was snatched by the petitioner on September 29, 2009; (ii) The petitioner was identified by PW-5; (iii) The depositions of PW-2 and PW-6 clearly proved the snatching of Rs. 500/- from PW-4 by the petitioner; and (iv) The depositions of DW-1, DW-2 and DW-3 did not appear to be convincing as they all narrated the same line of defence put forth by the charged officer and did not seem credible when compared with the depositions of the other prosecution witnesses.

16. Supplying the finding of the Inquiry Officer to the petitioner for his response and considering the same, vide order dated February 11, 2010 the Disciplinary Authority impose a penalty of forfeiture of five years approved service permanently with cumulative effect upon the petitioner. The period of suspension with effect from November 14, 2008 till petitioner joined service was directed to be treated as "period not spent on duty".

17. Aggrieved by the penalty order the petitioner submitted an appeal to the Appellate Authority on March 02, 2010 which was rejected vide order dated April 19, 2010.

18. Aggrieved, the petitioner approached the Central Administrative Tribunal by filing OA No. 2514/2010 challenging the order passed by the Disciplinary Authority and the Appellate Authority. He raised a plea of principles of natural justice being violated which was rejected by the Tribunal holding that before imposing the penalty on the petitioner he was served with the summary of allegations and was given opportunity to submit his response thereto. He was heard at every stage and participated in the inquiry.

19. With respect to the pleas urged pertaining to the evidence and the report of the Inquiry Officer the Tribunal held that the complainant had identified the petitioner as the policeman who had removed Rs. 500/- from his purse which was corroborated by PW-6. The Tribunal did not go into the nitty gritty of the merits of petitioner being indicted holding that it was not to re-appreciate the evidence.

20. The petitioner's plea that the complainant could not identify him was rejected in view of the depositions made by PW-4 and PW-6. The petitioner's plea that PW-6 had not examined public witnesses was repelled by the Tribunal on the ground that in disciplinary proceedings charge can be proved even on preponderance of probability. Strict rules of evidence would not apply to procedures of departmental enquiries. The Tribunal referred to numerous judicial decisions and held that the Tribunal could not re-appreciate evidence while exercising power of judicial review. Accordingly, the Tribunal dismissed the Original Application vide order dated May 03, 2012.

21. Aggrieved the petitioner has filed the instant writ petition.

22. At the hearing, notwithstanding all and sundry grounds urged in the memorandum of the writ petition, learned counsel for the petitioner argued on three points. First contention was that neither the Inquiry Officer nor the Disciplinary Authority nor the Appellate Authority nor the Central Administrative Tribunal bothered to consider the defence evidence led by the petitioner and the admissions made by PW-1 to the effect that on the day of the incident i.e. September 29, 2008 the petitioner was physically present in the premises of the Mounted Police. Learned counsel drew attention of the Court to question No. 1 and its answer during cross examination of Ct. Rajesh Kumar PW-1. The question and its answer being as under:-

Question: As per official records dated 29/9/08 were you present at Mounted Police P&L?

Answer: Yes.

23. The submission was that as deposed to by Ct. Rajesh Kumar PW-1 he was working as the Chittha Munshi at the Mounted Police P&L and the answer to question No. 1 during cross-examination by Ct. Rajesh Kumar was an admission by him that the petitioner was present at the Mounted Police P&L on 29/9/08. It was urged that the three defence witnesses; Ct. Bhagwan DW-1, Ct. Anil Kumar DW-2 (not to be mistaken with the petitioner but a different person) and Ct. Mukesh Bharti DW-3 had deposed that they were deputed as constables in the Mounted Police P&L and on 29/9/08 the petitioner was seen by them in the barracks. It was urged that the admission made by PW-1 was ignored and totally overlooked and as regards the three defence witnesses the reasoning in the report of the inquiry to the effect that the three defence witnesses were constables i.e. friends of the petitioner and deposed on same lines rendered their testimony without any creditworthiness was questioned by putting a counter question: If three witnesses deposed on a fact of alibi, what else would the three depose other than having seen the accused at a particular time at a particular place.

24. It was next urged that the complainant, Pradeep examined as PW-4, did not identify the petitioner at the inquiry. Learned counsel was conscious of the fact that it was not a case where the witness failed to identify the petitioner during the inquiry but was a case where the Presenting Officer remained lax by not requiring the witness to dock identify the petitioner, in that, while leading prosecution evidence the Presenting Officer just did not put any question to the witness regarding the identity of the person who had stealthily removed Rs. 500/- from his wallet as alleged by the witness, therefore, the submission was that an adverse inference ought to be drawn against the department for its failure to require its witness who was the victim to identify the culprit for the reason the department knew very well that the petitioner was not the culprit and if the department dared to ask its witness, who was the victim, to answer the

question: Whether the petitioner was the policeman who removed Rs. 500/- from his wallet? The witness would have replied in the negative. The second limb of attacking the conclusions drawn by the Inquiry Officer with reference to the testimony of PW-4 that the same, in conjunction with the testimony of PW-5 and the contents of Ex. PW-4/A as also the testimony of PW-6 and the contents of DD 57-B dated September 29, 2008 pointed the finger of accusation against the petitioner was with reference to the answers given by PW-4 to question No. 12 and 14 during cross-examination. The two questions and the answer read as under:-

Q. 12: Do you remember the name, PIS number etc. of the motorcycle driver?

A: No.

Q. 14: In your statement Ex. PW-2/A (should read Ex. PW-4/A) is the name of Ct. Anil mentioned?

A: No.

25. The submission was that all authorities as also the Tribunal placed unnecessary reliance upon the fact that in Ex. PW-4/A, the statement given in writing by the victim Pradeep Kumar the name of Ct. Anil is mentioned as also the fact that Surender Kumar PW-5, the friend of the victim who claimed that after the incident Pradeep Kumar informed him over the telephone and he reached the police station, stated that Ex. PW-4/A was written by PW-4 and handed over to the police in his presence and he also penned a note thereon that it contained the statement of his friend Pradeep written by him in his presence.

26. The third submission was that as per PW-6 Pradeep identified Ct. Anil as his tormentor in front of the gate of the police station but as per Pradeep PW-4, he had identified the offending constable in the police station Alipur. The answer given by Pradeep PW-4 to question No. 15 during cross examination was highlighted. The question and the answer reads as under:-

Q. 15: Did you see the police constable who took your purse and mobile phone and as per you Rs. 500/- were removed at police station Alipur the first and the second time when you were present at the police station?

A: Yes. He met me. I was required to identify the offending constable.

27. Before dealing with the three contentions urged suffice would it be to state that when witnesses deposed after a few months of an incident some variations are bound to occur and a variation in the deposition of the witnesses inter se or a variation in what a witness deposes on oath vis-?-vis what he stated contemporaneously to a police officer is by itself no ground to hold that the witness is not credible. For example, in a written statement made contemporaneously the witness may name the wrong doer but while deposing after a few months may not recollect whether he did so. From the testimony of the witnesses examined by the prosecution we find that he did not identify the

petitioner as the police officer who had surreptitiously removed Rs. 500/- from his wallet but would highlight that this is a lapse on the part of the Presenting Officer as also the Inquiry Officer who did not even call upon the witness to answer the question whether the police officer who surreptitiously removed Rs. 500/- from his wallet was present and could he identify the person. But, we find name of the petitioner mentioned in Ex. PW-4/A. Further, PW-5 corroborated PW-4 by deposing that the statement Ex. PW-4/A was handed over by PW-4 in his presence and he penned the note Ex. PW-5/A thereon. SI Bharat Bhushan PW-6 has clearly deposed that PW-4 identified the petitioner. Thus, we agree with the finding returned by the Inquiry Officer that there is sufficient evidence to bring home the guilt of the petitioner and would highlight that the contemporaneous written record being DD No. 33A and 34A would note that a complaint was made over the telephone by a person that a police man had extorted Rs. 500/- from him. DD-57B is a record of what transpired at the police station and being contemporaneous written documents, authenticity whereof was not even challenged, we find further corroboration to the testimony of PW-4.

28. Turning to the three contentions urged that Ct. Raj Kumar PW-2 admitted that the petitioner was present at Mounted Police P&L, suffice would it be to state that the submission is premised on the question put during cross-examination to PW-1 and its answer which we have noted in paragraph 23 above. The argument overlooks that the question put to the witness was whether he i.e. the witness was present at the Mounted Police P&L to which he replied in the affirmative and not whether the petitioner was present at Mounted Police P&L. We find that the second question put to the witness during cross-examination was whether on September 29, 2008 Ct. Anil Kumar was present at the Mounted Police P&L to which PW-1 had replied that he was not aware. It may be true that the reasoning of the Inquiry Officer to discard the testimony of the three defence witnesses may not be sound. Merely because all three deposed that the petitioner was present at the Mounted Police P&L on the day of the incident i.e. spoke in unison may not be a good ground to hold that since three persons deposed in unison that by itself is a good reason to disbelieve them. For if three persons see a red car hit a pedestrian all three are bound to state the same thing. But, in view of the overwhelming affirmative evidence led by the prosecution it has to be held that the conclusion arrived at by the Inquiry Officer is correct.

29. As regards the second contention that PW-4 did not identify the petitioner during inquiry, as we have noted above this was the result of an omission by the Presenting Officer and the Inquiry Officer. But from the fact that in the contemporaneous document Ex. PW-4/A being the written complaint made by PW-4 the name of the petitioner is to be found coupled with the testimony of PW-5 and PW-6 we have sufficient evidence that the petitioner was identified by PW-4 as his tormentor. The second limb of the attack that PW-4 during cross-examination stated that he did not mention name of the petitioner in his complaint Ex. PW-4/A and the fact being that he was so named, takes the argument of the petitioner to nowhere because as we have already opined

hereinabove, witnesses tend to forget the nitty gritty of contemporaneous events.

30. As regards the third contention, merely because one witness speaks of the place of identification being the police station Alipur and the other speaks of the place of identification being opposite the gate of the police station, is not a contradiction of a kind which discredits the witnesses.

31. Before parting company with the present decision we must record our displeasure at the fact that the police officers associated with the complaint made by PW-4 did not draw a seizure memo and gave Rs. 500/- to PW-4 after recovering the same from the petitioner and did not lodge an FIR for the reason a police officer extorting money commits a serious offence. The justification given that since the complainant was not interested to pursue the matter any further is not good enough for them to have violated the requirements of the law. We understand the dilemma of the complainant if he would have pursued the complaint because then Rs. 500/- would have become case property and the poor man would have been deprived the use of his hard earned money till the criminal prosecution was over. He had a good justification to say that he does not want to pursue the matter any further, but the police officers were not to act on his course of conduct. The writ petition is dismissed but without any orders as to costs.