

(2010) 03 DEL CK 0059

In the Delhi High Court

Case No : Writ Petition (C.) No. 1357 of 2010

B.C. Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-03-2010

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Central Civil Services (Conduct) Rules, 1964 — Rule 15, 15(2), 3(1)
Constitution of India, 1950 — Article 226
Delhi Special Police Establishment (Subordinate Ranks) (Discipline and Appeal) Rules, 1961 — Rule 8

Citation : (2010) 03 DEL CK 0059

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : K.S. Chauhan, Chand Kiran and Kartar Singh, for the Appellant; A.K. Bhardwaj and Banmali Shukla, for the Respondent

Final Decision : Dismissed

Judgement

Mool Chand Garg, J.—This writ petition has been filed on behalf of the petitioner assailing the order dated 11.9.2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "the Tribunal"), whereby the learned Tribunal has dismissed the OA bearing No. 479/2009 filed u/s 19 of the Central Administrative Tribunal's Act by holding that the allegations leveled against the petitioner in the departmental enquiry stood proved from the evidence which was led on record and that there was no occasion to interfere with the findings returned by the enquiry officer, disciplinary authority or the appellate authority.

2. Briefly stating, the facts giving rise to the present case are:

(i) The petitioner who was working as an Inspector with the Central Bureau of Investigation, Jabalpur was proceeded against departmentally on account of the allegations leveled against him regarding demand of money from an accused

against whom he was holding an enquiry with a view to clear his name from the enquiry.

(ii) The petitioner was served with the memorandum along with article of charge in this regard under Rule 8 of the Delhi Special Police Establishment (Subordinate Ranks) (Disciplinary and Appeal) Rules, 1961 alleging that the petitioner while being posted and functioning as Inspector of Police, CBI, Jabalpur Branch during the period 1999 committed misconduct and failed to maintain his absolute integrity, devotion to duty and acted in a manner unbecoming of public servant inasmuch as he demanded Rs. 1 lakh from Dr. M. Subedar to clear his name from a case bearing No. RC. 10(A)/99/ACB/Jabalpur which was being investigated by him and attempted to obtain reduced amount of Rs. 30,000/- from Dr. M. Subedar.

(iii) As per the statement of imitation of misconduct in support of article of charge it is alleged:

(a) that Shri B.C. Sharma was working as Inspector, CBI in Jabalpur Branch during the year 1999-2000. During the relevant period, one case RC10(A)/99-CBI/JBL was entrusted to him for investigation. Shri B.C. Sharma while investigating that said case failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a public servant inasmuch as he demanded Rs. 1 lakh as bribe from Dr. M. Subedar, CMO, NTPC, Farakka for clearing his name from the said case. Subsequently, Shri B.C. Sharma, Inspector reduced the said demand to Rs. 30,000/- and agreed to accept the same from Dr. M. Subedar.

(b) that Shri B.C. Sharma on 24.01.2000 visited Hotel Rishi Regency at Jabalpur along with Dr. M. Subedar on his scooter and there he demanded Rs. 1 lakh from Dr. M. Subedar. Shri B.C. Sharma contacted Shri M. Subedar from Calcutta on 07.02.2000 and 09.02.2000 for obtaining the bribe amount and also asked Dr. M. Subedar to meet him at Bilaspur between 15.02.2000 to 17.02.2000. Shri B.C. Sharma, Inspector in pursuance of same submitted his tour programme for Bilaspur from 16.06.2000 to 19.02.2000 but the same was not approved by the concerned SP of the Branch and Shri B.C. Sharma had been asked to visit Katni for some other official work.

(c) that Dr. M. Subedar contacted Shri H.S. Binopal, Dy. Genl. Manager, NTPC at New Delhi over telephone from Farraka. Shri H.S. Binopal advised Dr. M. Subedar to come to Delhi and told him not to pay the bribe money to Shri B.C. Sharma, Inspector. Accordingly, Dr. M. Subedar came to Delhi and contacted Shri H.S. Binopal, Dy. GM and Shri G.S. Sodhi, Sr. Manager (Vig.), NTPC. On 13,14,15.02.2000, Dr. Subedar contacted Shri B.C. Sharma over telephone at Jabalpur. The telephone number of Shri B.C. Sharma's residence was dialed by Shri H.S. Binopal and after connecting, the phone was handed over to Dr. M. Subedar. While they were making the call at the residence of the accused from the room of Shri H.S. Binopal, Shri G.S. Sodhi was also hearing the conversation

on the parallel telephone line from the CVO's Secretariat room and also recorded the conversation. The said recorded conversation has been transcribed which prove demand of bribe by Inspector Sharma. The voice of Shri B.C. Sharma in the recorded conversation has been identified by S/Shri N.C. Dutta and S.D. Deosthale, both Inspectors, CBI, Jabalpur Branch who worked with Shri B.C. Sharma while posted at Jabalpur besides confirmation of voice of Shri B.C. Sharma by the expert of CFSL, CBI, New Delhi.

(iv) Thus, Shri B.C. Sharma during investigation of case RC10(A)/99 of CBI, Jabalpur, demanded bribe from Dr. M. Subedar for clearing the name of Dr. M. Subedar and thereby contravened Rule 3(1)(i)(ii)(iii) of CCS (Conduct) Rules, 1964.

3. The enquiry was proceeded in accordance with the Central Civil Service (Conduct) Rules, 1964. Altogether 19 witnesses were cited on behalf of the Disciplinary Authority; however, the Presenting Officer produced only 11 witnesses on behalf of the Disciplinary Authority and dropped the remaining witnesses. All the documents/articles cited were produced by the witnesses and these were taken on record as exhibits. The petitioner examined three witnesses in his defence. Thereafter, the petitioner was generally examined. In the said examination, the petitioner did not dispute the fact that he was investigating RC10(A)/99-CBI/JBR against Shri Jaideep Das, Manager (Finance), NTPC, Korba and also admitted that he called Dr. M. Subedar, complainant, and had a meeting with him in the CBI Office on 24.1.2000. However, he has denied the demand of Rs. 1 lakh from Dr. Subedar to bail him out in this case. He has admitted that it is correct that he had submitted tour programme for Bilaspur for the period 16.02.2000 to 19.02.2000 on 16.02.2000 but the same was scored out and another tour programme was submitted by him on 16.02.2000 itself for Katni in connection with some other official work which was approved by the SP. He has also admitted that Dr. Subedar had contacted him over telephone at Jabalpur residence on 13.02.2000, 14.02.2000, 15.02.2000, and that he (CO) contacted Dr. M. Subedar on telephone on 15.02.2000. He has also admitted recording of his specimen voice. Dr. M. Subedar was examined as PW-9 and he supported the complaint made against the petitioner.

4. Based upon the report given by the enquiry officer who found the article of charge having been proved against the petitioner, the Disciplinary Authority passed the order dismissing the petitioner from the service of the respondents. An appeal against the order of dismissal was filed by the petitioner before the Director, CBI, New Delhi in accordance with Rule 15(2) of the Rules which as per the schedule annexed with those rules was heard by the Director, who was of the rank of Deputy Inspector General of Police and as such was competent to hear the appeal. The Appellate Authority also dismissed the appeal vide order dated 07.02.2007.

5. It is thereafter the petitioner approached the Tribunal as stated above. The Tribunal vide impugned order has dismissed the OA and while doing so, the

Tribunal has observed:

6. It is settled position that when the appellate authority finally agrees with the views taken by the disciplinary authority, it may not be necessary to advert to all the contentions de novo. The applicant has been informed of the decision and the Rules of business permit such practice to be followed. We had also noticed the rules and it is clear that they provide for only one appeal from the orders of the disciplinary authority. Applicant had exhausted his remedy and his contention is that under Rule 15 of CCS (CCA) Rules, a fresh appeal lies to the Government as well may not be legally tenable. The contentions are, therefore, overruled.

7. In matters of disciplinary enquiry, the jurisdiction exercised by the Tribunal mostly concern about the decision making process rather than the actual decision that is forthcoming. In other words, the court is not to unduly look into the justifiability or acceptability of the evidence as such in a case where due opportunity had been given to the officer concerned to defend himself and the procedure prescribed by the Rules had been substantially followed. When there is material to show that indeed prejudice be fallen on the applicant, then alone it may be possible for the Tribunal to interfere. A different conclusion possible on the evidence also does not necessarily require that the finding is to be upset. Only if perversity is apparent, further probe is warranted. Likewise in the matter of imposition of penalty, unless there is disproportionality, Courts are not expected to interfere. By adopting the above yardsticks, we are of the view that the applicant has not shown any valid reason for interfering with the decision and consequential orders passed.

8. The allegation as against the applicant was one of demanding bribe. The statement of imputations indicated the circumstances. The finding of the enquiry officer followed by the decision of the disciplinary authority showed that sufficient materials have been brought in to establish that there was a demand of bribe and the victim had brought the situation to the notice of the higher officers of the Department. The attempt of the applicant is to show that that there was only solitary and, therefore, only feeble evidence to implicate the applicant. It may not be true the circumstances existing as against the applicant are very much substantiated since his conversations have been tape recorded and a method for forensic voice identification disclosed that the applicant was involved in demanding bribe. The attendant circumstances also pointed the finger at the applicant.

9. Mr. Gangwani submits that there was also criminal case charged against the applicant and the Court had convicted him. He has been sentenced to undergo rigorous imprisonment and payment of fine. Although the applicant submits that an appeal has been filed and it is pending, prima facie it shows that legal evidence was there as against him. Of course, for departmental enquiry, the strictness attached to criminal proceedings are not there. This is also indicative of the circumstances that the allegations against the applicant were proved to be found.

10. In the circumstances, we find no merit in the application. The same is accordingly dismissed. Parties to bear their own costs.

6. Before us, the learned Counsel appearing for the petitioner only submitted that the petitioner was entitled to file an appeal to the Secretary, Government of India and did file an appeal to the said authority, a copy of which is available on record. It is also submitted that there was violation of Rule 15 inasmuch as the Secretary, Government of India has not even considered the appeal filed by the petitioner. He also submitted that the petitioner was not even conveyed with the order passed by the Director, CBI.

7. To appreciate the aforesaid submissions of the learned Counsel or the petitioner, it would be appropriate to refer to Rule 15 which reads as under:

15. Appeal against orders imposing penalties:

1. A subordinate police officer may appeal against an order of the Inspector General of Police imposing upon him any of the penalties specified in Clause (iii) to (x) of Rule 6 to the Secretary to the Government of India Ministry of Home Affairs.

2. Subject to the provisions contained in Sub-rule (1), a Subordinate Police Officer may appeal against an order imposing upon him any of penalties specified in Clause (iii) to (x) of Rule 6 to the authority specified in this behalf in the Schedule.

3. No appeal shall lie against an order imposing any of the penalties specified in clause i) and (ii) of Rule 6.

Explanation: In this rule the expression "Subordinate Police Officer includes a person who has ceased to hold any rank or post mentioned in the Schedule.

8. The schedule attached to the Rule is as under:

Schedule Appointing Authority Empowered To Impose Penalties and Description
Authority Penalty Which It May Impose of Rank or Post.

Authority	Penalties	Appellate	Authority
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2.	3.	4.	5.
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(i) Fatigue duty (in the case of Constable only); (ii) Extra Guard Duty (in the case of Head constable and Constable only); (iii) Black Mark; (iv) Censure; (v) Withholding of increments or promotion; (vi) Recovery from pay of the whole or part of any pecuniary loss caused to the Government by negligence or breach of orders; (vii) Reduction to a lower rank or post or a lower time scale of to a lower stage in a time scale, (viii) Compulsory retirement; (ix) Removal from service which shall not be a disqualification for future employment; (x)

Dismissal from service which shall ordinarily be a disqualification for future employment.

1	2	3	4	5
Delhi	Special	Police	Establishment	(Subordinate Ranks)
1. Inspector Dy. Inspr. (1) Supdt. of (iv) to (vii) (i) Dy. Inspector including Technical General of Police/Assistant Genl. Of Police. Inspector, Assistant Police Inspr. General of (2)Inspector Public Prosecutors Police. Genl. Of Police. Grade-I (2)Dy. Inspector All Genl. Of Police.				
2. Sub-Insprs. Dy.Inspr. (1) Supdt. of (iv) to (vii) (1) Dy. Including Technical Gernal of Police/Asstt. Inspector Sub-Inspector, Police Inspector General of Asstt. Public General of Police. Prosecutors Grade II Police. (2) Inspector and Asstt. Sub- (2) Dy. General Inspector Inspector of Police. General of All Police				
3. Head Constables Supdt. of (1) Dy. Supdt. (ii) (1) No Police Asstt. of Police appeal Inspector (2) Supdt. of allowed. General of Police/AIG All (2) Dy. Police. Inspector General of Police				
4. Constable SP/AIG (1) Dy. Supdt. (i) To (ii) (1) No of Police. appeal (2) Supdt. of All allowed. Police/AIG (2) Dy. Inspector General of Police				

9. As per the aforesaid scheme, in respect of any of the punishment awarded to the official by the disciplinary authority below the rank of Deputy Inspector General, the appeal can be filed before the DIG/IG. It is only in the case of an order passed by the IG, appeal can be filed before the Secretary. In this regard, we find that no second appeal could have been filed by the petitioner inasmuch as he availed the remedy of appeal by filing an appeal before the Director, CBI, who was equivalent to Deputy Inspector General of Police and which appeal, as stated above, was dismissed as intimated to the petitioner. It is against the said order the appellant approached the Tribunal.

10. A perusal of the petition filed before the Tribunal shows that the petitioner mentioned the fact of dismissing/rejecting his appeal in paragraph 4.7 of the application filed before the Tribunal. In the aforesaid paragraph, the petitioner has also mentioned about the receipt of letter bearing No. CBI ID No. DPPERS, II/2008/0200/A.20014/742/84 dated 22.01.2008, by him on 15.02.2008. Thus, it is apparent that the appeal remedy was availed by the petitioner, but he was not successful. On perusal of the order passed by the enquiry officer and the disciplinary authority, it is clear that the charges were proved against the petitioner by the enquiry officer, it was also upheld by the disciplinary authority and by the appellate authority. The Tribunal has dealt with all the aspects of the

matter.

11. Thus, we do not find any reason to interfere with the orders passed by the Tribunal while exercising powers of this Court under Article 226 of the Constitution of India. Accordingly, the writ petition is dismissed, of course, with no order as to costs. CM No. 2830/2010 (Stay)

In view of the orders passed above, the application has become infructuous and is accordingly disposed of.