

(2002) 05 DEL CK 0179
In the Delhi High Court
Case No : C.W.P. No. 1836 of 2002

Braham Singh and Another		APPELLANT
	Vs	
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 31-05-2002

Acts Referred:

Constitution of India, 1950 — Article 227, 311(2)
Delhi Police (Punishment and Appeal) Rules, 1980 — Rule 16, 16(3), 25
Delhi Police Act, 1978 — Section 47
Penal Code, 1860 (IPC) — Section 34, 384

Citation : (2011) 182 DLT 350

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : Shyam Babu Adv, for the Appellant; Aditya Madan, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—A judgment and order dated 8th October 2001 passed by the Central Administrative Tribunal, Principal Bench (in short "Tribunal") in O.A. No. 2696 of 2000 is in question in this writ petition.

2. A Criminal case was instituted against the original applicants viz. SI Brahm Singh and H.C. Anand Singh and Constable (Driver) Kailash Chand on the charge of forcibly snatching a sum of Rs. 40,000/- from a tray passenger, Chandresh Kumar by name, in the wee hours on 30th September 1993. Both departmental proceedings and Criminal cases were instituted against them. A first information report was lodged against the petitioner and one Kailash Chand for alleged commission of an offence u/s 384/34 of the Indian Penal Code (hereinafter referred to as "IPC"). The petitioners were placed under suspension. They were dismissed from services by an order dated 21st October 1993 in terms of the provisions of Article 311(2)(b) of the Constitution of India. They preferred an appeal before the Additional Commissioner of Police who was the designated appellate authority. The said appeal was allowed.

3. Thereafter a regular department proceeding was initiated. According to the petitioners they applied for supply of certain documents which were given to them after PWs were examined in the departmental enquiry.

4. On or about 14th September 1998 the Enquiry Officer submitted his report finding the petitioners guilty of the charges leveled against them. As against the said finding representations were asked for and the petitioners submitted the same on 25th September 1998. Upon consideration of the materials on record the Disciplinary Authority dismissed the petitioners from services on 2nd December 1998 where against they preferred a statutory appeal, which was also dismissed by an order dated 14th September 1999. Against the said appellate order a revision petition was filed. In the meantime, the petitioners were acquitted by the Criminal Court by a judgment dated 7th December 1999. A copy of the said judgment had been submitted to the Commissioner of Police with a representation on 22nd December 1999. Allegedly as the Commissioner of Police did not dispose of the revision petition within the reasonable period the petitioners filed an Original Application before the learned Tribunal which was disposed of by any order dated 3rd August 2000 directing the Commissioner of Police to dispose of the revision petition within a period of three months. The said revision petition was dismissed on 16th November 2000. Aggrieved thereby the petitioners filed another Original Application before the learned Tribunal in December 2000 which was marked as O.A.No.2696/00. By reason of the impugned judgment the said Original Application was dismissed.

5. Mr. Shyam Babu, learned counsel appearing on behalf of the petitioners has raised two contentions in support of this petition. The learned counsel would contend that having regard to the fact that the judgment of acquittal was passed during the pendency of the revision petition the same ought to have been taken into consideration having regard to the fact that the charges both in the criminal proceedings as also the departmental proceedings were the same.

6. Learned counsel in support of the said contention has strongly relied upon the decision of the Apex Court in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, . Alternatively the learned counsel would contend that the complainant himself had not been examined and keeping in view the provisions contained in Rule 16(iii) of Delhi Police (Punishment and Appeals) Rules, 1980 the said complaint ought not to have been taken into consideration. The petitioners, learned counsel would urge, were prejudiced inasmuch as in absence of the complainant the Enquiry Officer ought to have come to a decision that there was no sufficient evidence, in the event, the statement of the complainant, which was proved by PW-4, was discarded.

7. Learned counsel appearing on behalf of the respondent on the other hand, would contend that finding of fact had been arrived at by both Disciplinary Authority as also the learned Tribunal, upon consideration of the materials brought on record that the petitioners were guilty of the charges proved against them.

8. In the instant case, admittedly, the petitioners were dismissed from services much prior to the judgment of acquittal passed by the Criminal Court. The contention of Mr. Shyam Babu to the effect that the petitioners could not have been dismissed from services having regard to the judgment of the Criminal Court, in our considered opinion, is misconceived.

9. This Court in *Vinod Kumar v. Govt. of NCT of Delhi and Ors.* (CWP No. 4116 of 1998) disposed of on 27th April has considered the question in detail and rejected such a contention inter alia on the ground that in terms of the Delhi Police Act, 1978 or Delhi Police (Punishment and Appeal) Rules, 1980 simultaneous departmental proceedings and the criminal proceedings are not prohibited.

10. In *Capt. M. Paul Anthony's case* (supra), the Apex Court upon consideration of various decisions which have been referred in paras 14 and 22 of the said judgment opined that the following conclusions are deducible:

"22. The conclusion which are deducible from various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.

11. The Apex Court, however, in the facts of that case observed that as therein the evidence in both the proceedings were the same without there being any iota

of difference a distinction which is usually draw as between a departmental proceedings and the Criminal case on the basis of approach and burden of proof, would not be applicable therein.

12. In the instant case the judgment of the Criminal Court was not rendered even at a point of time when the Appellate Authority considered the statutory appeal preferred by the petitioner. Only a representation had been filed before the Commissioner of Police which was not contemplated in law. In fact the provisions of Rule 25(a) and 25(b) at the instance of delinquent police officials themselves had been held to be ultra virus the rule making power contained in Section 47 of the Police Act was discussed in CWP 2537/00. This Court in that case has also taken a note of the fact that administration itself having regard to the decision of the Tribunal had issued a circular to the effect that Rule 25(a) and 25(b) shall not be taken recourse to. The order of dismissal passed against the petitioner had attained finality and the same could not have been reopened at the instance of the petitioners on the basis of a subsequent event.

13. Re: Contention No. 2.

So far as the question relating to supply of the document is concerned, no written request by the petitioner had been brought on record as has been noticed by the learned Tribunal.

The learned Tribunal upon analysis of the material on record inter alias held that even if the statement of the complainant had not been taken into consideration evidence of PWs 3 and 4 were sufficient to bring home the charge of guilt as against the petitioners. In the instant case, the amount extracted from the complainant had been recovered from each of the three delinquent officials to the extent of rs. 13,000/-. Such recoveries were made at the instance of he delinquent officials themselves. No prejudice for non-examination of the complainant or non-supply of the documents had been established. Learned Tribunal has arrived at a finding of fact that upon appreciation of the evidence and upon applying the doctrine of "preponderance of probability" the charges against the delinquent officials was held to have been proved. Furthermore, from the records of the matter it appears that despite more than four attempts were made by the Enquiry Officer to serve notice upon the complainant but he could not be contacted. Having regard to the fact that inordinate delay would occur if the enquiry is stayed till he is examined and the same would prejudice the interest of justice, the departmental proceedings were continued. In this view of the matter requirements of Rule 16(3) of the Rules have also been complied with.

14. Furthermore, in the instant case, the delinquent officials had committed an offence, which was cognizable. Thus the statement made in the First Information Report could be proved for the purpose of showing that a complaint was made whereupon a cognizance had been taken.

15. It is true the power of judicial review of this Court is limited. The scope of judicial review has been considered in various judgments of this Court as also of

the Apex Court, which may be summarized in the following terms:-

- (1) The High Court is not an appellate authority over the decision of the Administrative Tribunals;
- (2) While exercising the power of judicial review, the High Court cannot be oblivious to the conceptual difference between appeal and review;
- (3) The petition for a judicial review would lie lonely on grounds of grave errors of law apparent on the face of the record and not on the ground of error of fact, however, grave it may appear;
- (4) When the Tribunal renders a decision after determining the facts, an application for judicial review could be maintainable only on the ground that the Tribunal committed an error of fact, however, grave it may appear; unless it is shown that such a finding of the Tribunal is based on no evidence and the error of fact itself can be regarded as error of law in the sense that admissible evidence was rejected and inadmissible evidence was relied on;
- (5) The orders passed by the Tribunal by exercising discretion which judicially vests in it cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal in the sense the Tribunal did not follow an earlier decision of the Tribunal on binding authority of the High Court or the Supreme Court with reference to finding of facts and law;
- (6) When the Tribunal disposes of the original application by applying the binding precedents of the High Court as well as the Supreme Court, it cannot be said that the Tribunal has committed any error of law apparent on the face of the record; in such cases the limited review before the High Court would be whether the binding principle has been appropriately applied or not; the Tribunal's decision which is rendered in ignorance of the statutory law including subordinate legislation as well as the law laid down by the Supreme Court must be held to suffer an error apparent on the face of the record and requires judicial review;
- (7) Whether or not an error is error of law apparent on the face of the record must always depend upon the facts and circumstances of each case and upon the nature and scope of legal provision which is alleged to have been misconstrued or contravened.
- (8) The three parameters of judicial review of administrative action - illegality, irrationality and procedural impropriety with necessary changes are equally applicable to cases of judicial review of the Tribunal's decision; and
- (9) A mere wrong decision without anything more is not enough to attract jurisdiction of High Court under Article 227 the supervisory jurisdiction conferred on High Court is limited to seeing that Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice."

16. Applying the above principles in the instant case and having regard to the fact that issuance of writ of certiorari is discretionary in nature, in our opinion, it

is not a fit case where the petitioners can be said to be entitled to any relief.

For the reasons afore-mentioned there is no merit in this writ petition, which is accordingly dismissed.