

(2010) 05 DEL CK 0069

In the Delhi High Court

Case No : Writ Petition (C) No. 0305 of 2009

Commissioner of Police

APPELLANT

Vs

Sh. Farman Singh

RESPONDENT

Date of Decision : 20-05-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Delhi Police (Punishment and Appeal) Rules, 1980 — Rule 15(2), 15(3), 16

Citation : (2010) 05 DEL CK 0069

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

Bench : Division Bench

Advocate : V.K. Tandon and Parul Sharma, for the Appellant; G.S. Rana, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner, Commissioner of Police has challenged the order dated 9th September, 2008 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 470 of 2008, titled as "HC Farman Singh v. Government of NCTD and Ors.", allowing the application of the respondent and setting aside his punishment of withholding one future increment without cumulative effect by order dated 27th November, 2007 and the order of dismissal of his appeal.

2. A departmental enquiry was initiated against the respondent on the allegation that a complaint of theft on behalf of Smt. Shobha Sharma was marked to him and he had brought a person namely Prince s/o Sh. Samsung Leshey to the police post and had illegally detained him for 12 hours and during this period he had beaten the accused mercilessly and he was released after taking an illegal gratification of Rs. 3,000/- which amount was later on returned when the mother of the said person Smt. Nishi Leshey had complaint to the Commissioner of Police. During the enquiry seven witnesses were examined, namely ASI Sunder Singh, SI Jaswant Singh, Smt. Rita @ Jasphin, SI Narender Kumar, Smt. Nisha

Leshey, Sh. Samsung Leshey and Prince Leshey. On behalf of the respondent, the witnesses examined were Sh. Deepak & Sh. Praveen Kumar. The enquiry officer on the basis of the statements made by the witnesses during the enquiry proceedings held that there was sufficient evidence to establish the culpability of the respondent. The disciplinary authority agreed with the findings of the enquiry officer and passed an order dated 26th June, 2007 imposing the punishment of withholding one future increment without cumulative effect and the appeal filed by the respondent was also dismissed by order dated 27th November, 2007.

3. The respondent had challenged the punishment order dated 26th June, 2007 and the appellate order dated 27th November, 2007 on the ground that Rule 15(2) of Delhi Police (Punishment & Appeal) Rules, 1980 had been violated as no prior approval was sought from Additional Commissioner of Police. The respondent also alleged violation of Rule 16 of the said Rules on account of taking the preliminary enquiry on record. The respondent also challenged the punishment on the ground that there was no evidence against him as even the accused and his mother and father did not implicate him in the allegation of beating and detaining the accused illegally.

4. The petitioner had opposed the pleas and contentions of the respondent before the Tribunal contending that in the enquiry though the charge of accepting Rs. 3,000/- as illegal gratification was not proved, however, the charge of bringing accused of theft namely Prince to the police post Raghurib Nagar on 4th September, 2005 at 10:00 am and releasing him at 10:30 pm after illegally detaining him for 12 hours and beating him mercilessly was made out. The petitioner had relied on the statement of SI Narender Kumar, I/C PP Raghurib Nagar to contend that the complaint of Smt. Shobha Sharma was marked to ASI Dharam Singh on 1st September, 2005 and later the same was entrusted to the respondent, but he failed to take proper action and kept the complaint with him unnecessarily and also detained prince illegally and had beaten him mercilessly.

5. The Tribunal after considering the pleas and contentions held that since no preliminary enquiry was held and it was only vigilance enquiry and as investigations or vigilance enquiries are not covered under the expression preliminary enquiry used in Rule 15(2) and Rule 15(3) of Delhi Police (Punishment & Appeal) Rules, 1980, therefore, the plea of violation of Rule 15(2) of the rules on behalf of the respondent was not made out.

6. Regarding the pleas of the respondent that there was no evidence against him in respect of bringing Prince Leshey to the police post and detaining him for 12 hours, the Tribunal considered the statements of witnesses and held that considering the testimonies of all the witnesses, it is apparent that no one had implicated and took the name of respondent for either detaining the accused illegally or beating him or demanding illegal gratification from him. Reliance was especially placed on the statement of Sh. Samsung Leshey, Prince Leshey, accused and Smt. Nishi Leshey and it was inferred that none of the witnesses implicated the respondent in any manner. Consequently, it was held that orders

dated 26th June, 2007 and 27th November, 2007 are based on no evidence against the respondent and therefore, quashed and set aside the same.

7. Learned Counsel for the petitioner has contended that there is evidence against the respondent and it is not a case of no evidence against the respondent. He referred to the statement of PW4, SI Narender Singh. Perusal of the statement of SI Narender Singh reveals about the complaint dated 30th August, 2005 from Smt. Shobha Sharma. The said witnesses have only deposed about the photocopy of the complaint. Rather he has also deposed that Prince Leshey was not brought to the police post and he was not beaten. The said witness has been cross-examined on behalf of the petitioner, however, from his cross examination the inferences that the person accused of theft was brought to the police post and beaten cannot be drawn at all as there is nothing in the statement of the said SI Narender Kumar to implicate the respondent. Smt. Nishi Leshey PW 5 in reply to a specific question that when with her husband she went to police post twice whether the respondent was present or not, she answered that the respondent was not present at the police post and she and her husband had no talk with him. She did not depose that the respondent had illegally confined the person accused of theft, namely Prince, her son or had beaten him mercilessly, nor any such deposition has been made by PW6 Sh. Samsung Leshey and Prince Leshey. The allegation against the respondent is that he had illegally detained the person accused of theft namely Prince and had mercilessly beaten him. However, the said person accused of theft deposed as PW7 and categorically denied that the head constable Sh. Farman Singh/respondent had beaten him. If the person who was allegedly detained and was beaten up, before the enquiry officer denied that he was beaten by the respondent, the inferences which have been drawn by the enquiry officer and disciplinary authority that there is sufficient evidence against the respondent is inconceivable. This Court has perused the statements of these witnesses and do not find any evidence against the respondent and in the circumstances, the learned Counsel for the petitioner is unable to show any ground on which the findings of the Tribunal can be faulted setting aside the punishment order of the Disciplinary authority and Appellate authority's order dismissing the appeal of the respondents in the facts and circumstances of the case.

8. In totality of the facts and circumstances, there is no such illegality, irregularity or perversity in the order of the Tribunal, which would require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

9. The writ petition in the facts and circumstances of the case, is without any merit, and it is therefore, dismissed.