

(2018) 01 CAT CK 0072

In the Central Administrative Tribunal

Case No : Original Application No. 1884 Of 2015

Devender

APPELLANT

Vs

Govt. Of NCT Of Delhi And Others

RESPONDENT

Date of Decision : 05-01-2018

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Constitution Of India, 1950 — Article 226

Citation : (2018) 01 CAT CK 0072

Hon'ble Judges : Raj Vir Sharma, Member (J)

Bench : Single Bench

Advocate : Anil Singal, Anmol Pandita

Final Decision : Dismissed

Judgement

Raj Vir Sharma, J

1. The applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:

"1. To quash and set aside the impugned SCN dt.16.5.2013, Order of Censure dt.25.6.2013 and Appellate order dt.22.4.2014 with all consequential benefits.

a. Award cost of the proceedings in favour of the applicant and pass such other and further orders as deemed fit and proper in the circumstances of the case to meet the ends of justice."

2. Resisting the O.A., the respondents have filed a counter reply.

3. No rejoinder reply has been filed by the applicant.

4. I have carefully perused the records and have heard Shri Anil Singal, learned counsel appearing for the applicant, and Shri Anmol Pandita for Shri Vijaya Kumar Pandita, learned counsel appearing for the respondents.

5. Brief facts giving rise to the present O.A. are as follows:

5.1 The applicant, a Head Constable in Delhi Police, and other police staff were deployed in the beat area of Maya Puri during May 2013. They were instructed to keep close vigil over illegal activities in the area.

5.2 On 15.5.2013, during evening hours, a team of Special Staff, West District, Delhi, conducted a raid at the premises bearing no.C-205, 1st Floor, Junk Market, Ph.II, Maya Puri, Delhi, and arrested thirty-five persons and seized a huge sum of Rs.6,35,830/- along with other articles used in gambling from the spot. Accordingly, a case, vide FIR No.131/13, dated 15.5.2013, under various Sections of the Delhi Public Gambling Act was registered at PS Maya Puri.

5.3 The Assistant Commissioner of Police, Tilak Nagar, New Delhi (hereinafter referred to as 'Disciplinary Authority?'), being of the view that the failure on the part of the applicant and others to collect the intelligence and detect the gambling in the beat area of Maya Puri amounts to gross negligence, carelessness and dereliction in the discharge of their official duty, issued notice dated 16.5.2013 to the applicant and others to show cause as to why their conduct should not be censured for the above lapse. In his reply to the show-cause notice, the applicant pleaded, inter alia, that he and others were detailed by the Additional Commissioner of Police, West District, New Delhi, to ensure compliance with the directions of the National Green Tribunal and he was busy in handing over copies of the order passed by the National Green Tribunal to different traders. That is why he was unable to devote full time to detect gambling in the beat area of Maya Puri. Therefore, there was no willful negligence on his part or dereliction in discharge of his official duty.

5.4 After considering the applicant's show-cause reply and upon hearing the applicant in OR, the Disciplinary Authority, vide order dated 25.6.2013 (Annexure A/2), censured the aforesaid conduct of the applicant. Being aggrieved thereby, the applicant made an appeal to the Joint Commissioner of Police, South Western Range, Delhi (hereinafter referred to as 'Appellate Authority?'). After considering the pleas/contentions raised by the applicant in his appeal and upon hearing the applicant in OR, the Appellate Authority rejected the applicant's appeal, vide order dated 22.4.2014(Annexure A/3), the operative part of which is reproduced below:

"HC Devender, No.263/W appeared in OR on 21.03.2014. During O.R. he deposed nothing new except what he has already narrated in his appeal. His plea in the appeal is that the place where the gambling was carried out is located in a congested area i.e. in the Junk Market where the commuter populace is large specially where people visit the area for trading of old parts of the vehicles. This plea is not tenable, being a beat officer it was his duty to have an eye over each and every place falls in the jurisdiction of his beat and he should act as per requirement of the law. As per another plea that he was busy in implementing the orders of Hon'ble National Green Tribunal in the Junk Market area along with his beat staff in Day & Night, this plea is also not maintainable, in case an order has been passed by any authority it does not mean that the local police would

ignore all the illegal activities being carried out by anti-social elements. Besides this, he must have been more vigilant and should have worked in a professional manner. He was asked when the gambling was in the notice of Spl. Cell West District, what he was doing in the beat and why such information was not with him? At this he could not utter anything which indicates that while performing his duties as a beat officer he has failed to carry out his job with utmost sincerity and devotion which is expected from a responsible police officer.

I have gone through the verbal as well as written submission made by the appellant in the form of appeal along with other material placed on record. Keeping in view all the aspects of the case, I arrived at the conclusion that the punishment awarded to the appellant is commensurate to the lapse of appellant and requires no intervention. Therefore, the appeal is hereby rejected."

6. In the above context, it has been contended by Shri Anil Singal, learned counsel appearing for the applicant that there was no charge leveled against the applicant that he deliberately avoided/ignored to detect the gambling in the beat area. The applicant's failure to collect intelligence and detect gambling in the beat area being a negligence simpliciter did not amount to misconduct. It has also been contended by Shri Anil Singal that the lack of efficiency and attainment of highest standard in the discharge of duty depends on the professional competence and the capability of handling a situation more effectively and complexity of a situation itself. Everybody is not equally competent in professional matter. Hence, one cannot be punished for lack of efficiency. It does not amount to misconduct. It does not attract any punishment. Shri Singal also brought to my notice the note dated 13.7.2013 submitted by the S.H.O., P.S. Maya Puri, while forwarding the applicant's appeal to the Appellate Authority, wherein the applicant is mentioned to have been graded as an outstanding officer all through his service career, and the pleas taken by the applicant in his reply to the show cause notice and appeal are supported by the S.H.O, P.S. Maya Puri. To buttress his contentions, Shri Anil Singal relied on the decision of the Hon'ble Supreme Court in Inspector Prem Chand Vs. Govt. of NCT of Delhi, 2007 (4) SCC 566.

6.1 In Inspector Prem Chand's case (supra), the appellant was posted in Anti-Corruption Branch. He was detailed as a raid officer. The complainant lodged a complaint with the Anti-Corruption Branch of Delhi Police that the accused was demanding a sum of Rs.3000/- by way of illegal gratification from him for not challaning the godown of the complainant. The appellant constituted a raiding party consisting of the complainant (P.W.2) and Devender (P.W.4) and other police officers including himself. In the preparation of the said operation, the complainant produced a sum of Rs.3000/- in denomination of Rs.500 each whereupon phenolphthalein powder was applied and the tainted money was handed over to the complainant. When the complainant attempted to pay the said amount to the accused, the latter did not accept the same. The tainted money was, therefore, not seized. It was allegedly given out by him that the

complainant might give the same to P.W.4 and he in turn would accept the money from him. Thereafter, P.W.4 sat on the pillion of the scooter, and they reached at the petrol pump where the accused was arrested. However, the tainted money was returned to the complainant by the I.O. During pendency of the said criminal proceedings, a departmental proceedings was initiated against the appellant on the charge that the tainted money, although not accepted by the accused, was not seized by him, despite the same being an important piece of evidence, and the accused was acquitted by the criminal court. The disciplinary authority imposed on appellant the penalty of forfeiture of one year's approved service, and the appeal filed against the order of the disciplinary authority also failed. The O.A filed by the applicant before the Tribunal was dismissed. The Writ Petition filed against the Tribunal's order was also dismissed by the Hon'ble Delhi High Court. Allowing the appeal preferred by the appellant, the Hon'ble Supreme Court held thus:

"9. Before advertng to the question involved in the matter, we may see what the term "misconduct" means.

10. In *State of Punjab v. Ram Singh, Ex-Constable*, (1992) 4 SCC 54: 1992 SCC (L&S) 793: (1992) 21 ATC 435, it was stated: (SCC pp.57-58, para 5):

"5. Misconduct has been defined in Black's Law Dictionary, 6th Edn., at p. 999, thus:

"A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior; its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness."

Misconduct in office has been defined as:

'Any unlawful behavior by a public officer in relation to the duties of his office, willful in character. Term embraces acts which the office-holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."

11. In *P.Ramanatha Aiyar's Law Lexicon*, 3rd Edn., at p. 3027, the term "misconduct" has been defined as under:

"The term 'misconduct' implies a wrongful intention, and not a mere error of judgment.

* * *

Misconduct is not necessarily the same thing as conduct involving moral turpitude.

The word 'misconduct' is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is becoming construed. ?

Misconduct? literally means wrong conduct or improper conduct."

(See also *Bharat Petroleum Corpn. Ltd. V. T.K.Raju*, (2006) 3 SCC 143: 2006 SCC (L&S) 480.)

12. It is not in dispute that a disciplinary proceeding was initiated against the appellant in terms of the provisions of the Delhi Police (Punishment and Appeal) Rules, 1980. It was, therefore, necessary for the disciplinary authority to arrive at a finding of fact that the appellant was guilty of an unlawful behaviour in relation to discharge of his duties in service, which was willful in character. No such finding was arrived at. An error of judgment, as noticed hereinbefore, per se is not a misconduct. A negligence simpliciter also would not be a misconduct. In *Union of India v. J.Ahmed*, (1979) 2 SCC 286: 1979 SCC (L&S) 157, whereupon Mr. Sharan himself has placed reliance, this Court held so stating: (SCC pp. 292-93, para 11):

"11. Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct. (see *Pierce v. Foster*, 17 QB 536, 542). A disregard of an essential condition of the contract of service may constitute misconduct (see *Laws v. London Chronicle (Indicator Newspapers)*, (1959) 1 WLR 698. This view was adopted in *Shardaprasad Onkarprasad Tiwari v. Divisional Supdt. Central Rly, Nagpur Division, Nagpur*, (1959) 61 Bom LR 1596 and *Satubha K. Vaghela v. Moosa Raza*, 10 Guj. LR 23. The High Court has noted the definition of misconduct in Stroud's Judicial Dictionary which runs as under:

"Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct."

13. The Tribunal opined that the acts of omission on the part of the appellant were not a mere error of judgment. On what premise the said opinion was arrived at is not clear. We have noticed hereinbefore that the Appellate Authority, namely, the Commissioner of Police, Delhi, while passing the order dated 29.8.2003 categorically held that the appellant being a raiding officer should have seized the tainted money as case property. In a given case, what should have been done, is a matter which would depend on the facts and circumstances of each case. No hard-and-fast rule can be laid down therefor.

14. The criminal court admittedly did not pass any adverse remarks against the appellant. Some adverse remarks were passed against the investigating officer, who examined himself as PW 4 as he had handed over the tainted money to the complainant PW 2.

15. A finding of fact was arrived at that the accused did not make demand of any amount from the complainant and thus no case has been made out against him.

This Court in *Zunjarrao Bhikaji Nagarkar v. Union of India*, (1999) 7 SCC 409: 1999 SCC (L&S) 1299 has categorically held: (SCC p. 430, para 42).

"42. Initiation of disciplinary proceedings against an officer cannot take place on information which is vague or indefinite. \Suspicion has no role to play in such matter. There must exist reasonable basis for the disciplinary authority to proceed against the delinquent officer. Merely because penalty was not imposed and the Board in the exercise of its power directed filing of appeal against that order in the Appellate Tribunal could not be enough to proceed against the appellant. There is no other instance to show that in similar case the appellant invariably imposed penalty."

16. We, therefore, are of the opinion that in the peculiar facts and circumstances of this case, the appellant cannot be said to have committed any misconduct."

7. Per contra, it has been submitted by Shri Anmol Pandita, learned counsel appearing for the respondents that the facts and circumstances of Inspector Prem Chand's case (*supra*) are different from that of the present case. The fact that on 15.5.2013 the team of Special Staff, West District, Delhi, after conducting a raid at the premises bearing No.C/205, Ist Floor, Junk Market, Ph.II, Maya Puri, Delhi, arrested thirty-five persons and seized a huge sum of Rs.6,35,830/- along with other articles used in gambling from the spot clearly goes to show that the applicant, as beat staff in Maya Puri area, has failed to discharge his duty with utmost sincerity and devotion. After considering the explanations given by the applicant in his show-cause reply and appeal, both the Disciplinary Authority and Appellate Authority have found the applicant guilty of gross negligence, carelessness and dereliction in the discharge of official duty and have accordingly censured the conduct of the applicant. Therefore, there is no scope for the Tribunal to interfere with the orders passed by the departmental authorities.

8. It is no more *res integra* that the power of judicial review does not authorize the Tribunal to sit as a court of appeal either to reappraise the evidence/materials and the basis for imposition of penalty, nor is the Tribunal entitled to substitute its own opinion even if a different view is possible. Judicial intervention in conduct of disciplinary proceedings and the consequential orders is permissible only where (i) the disciplinary proceedings are initiated and held by an incompetent authority, (ii) such proceedings are in violation of the statutory rule or law, (iii) there has been gross violation of the principles of natural justice, (iv) there is proven bias and *mala fide*, (v) the conclusion or finding reached by the disciplinary authority is based on no evidence and/or perverse, and (vi) the conclusion or finding be such as no reasonable person would have ever reached .

9. In *B.C. Chaturvedi v. Union of India*, AIR 1996 SC 484, reiterating the principles of judicial review in disciplinary proceedings, the Hon^{ble} Apex Court has held as under:

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that

the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice be complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

10. In *High Court of Judicature at Bombay through its Registrar v. Shashikant S. Patil*, (2000) 1 SCC 416, the Hon'ble Supreme Court has held thus:

"...Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such inquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority, (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the inquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed before Article 226 of the Constitution."

11. In *Government of Andhra Pradesh v. Mohd. Nasrullah Khan*, (2006) 2 SCC 373, the Hon'ble Apex Court has reiterated the scope of judicial review as confined to correct the errors of law or procedural error if it results in manifest miscarriage of justice or violation of principles of natural justice. In para 7, the Hon'ble Court has held:

"By now it is a well established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an Appellate Authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error if any resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by appreciating the evidence as an Appellate Authority....."

12. As already noted, the facts and circumstances of the present case are totally different from that of Inspector Prem Chand's case (supra). After having considered the facts and circumstances of the present case as well as the findings recorded by the Disciplinary and Appellate Authorities, I am not persuaded to take a view that the conduct of the applicant was a mere negligence/carelessness on his part. As has been found by the Disciplinary Authority and Appellate Authority, the applicant has failed to carry out his job with utmost sincerity and devotion which is expected from a responsible police officer, and thus, he is guilty of gross negligence, carelessness and dereliction in the discharge of his official duty. Accordingly, the applicant's conduct has been censured by the Disciplinary Authority, and his appeal has been rejected by the Appellate Authority. A perusal of the appellate order reveals that the Appellate Authority has duly considered and rejected all the pleas raised by the applicant in his appeal. It has been observed by the Appellate Authority that being a beat officer it was the applicant's duty to have an eye over each and every place that fell in the jurisdiction of his beat and to act as per law. It has also been observed by the Appellate Authority that in case an order has been passed by any authority, it does not mean that the local police would ignore all the illegal activities being carried out by anti-social elements. It has further been observed by the Appellate Authority that the applicant ought to have been more vigilant and worked in a professional manner. The applicant could not also explain to the Appellate Authority during the hearing in OR as to why information of gambling in his beat area was not with him when the same came to the notice of the Special Cell of the West District. Therefore, the Appellate Authority arrived at the conclusion that while performing his duty as a beat officer the applicant failed to carry out his job with utmost sincerity and devotion which is expected from a responsible police officer. Taking into consideration the materials available on record and the legal position, as discussed herein above, this Tribunal is of the considered opinion that both the Disciplinary Authority and Appellate Authority have recorded cogent reasons and examined the matter in the right perspective. This Tribunal does not find any illegality, or irregularity, or perversity in the impugned orders. Hence, no interference therewith is warranted by this Tribunal.

13. No other point worth consideration has been urged or pressed by the learned counsel appearing for the parties.

14. In the light of what has been discussed above, I have no hesitation in holding that the O.A. is devoid of merit and liable to be dismissed. Accordingly, the O.A. is dismissed. No costs.