

(2008) 02 DEL CK 0273
In the Delhi High Court
Case No : WP (C) No. 5080 of 2001

Ex. Constable Tika Ram

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-02-2008

Acts Referred:

Citation : (2008) 2 ILR Delhi 744 : (2009) 3 SLR 631

Hon'ble Judges : Veena Birbal, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : G.D. Gupta and S.K. Gupta, for the Appellant; Arvind Nayar, for Respondents Nos. 2 to 4, for the Respondent

Judgement

Manmohan Sarin, J.—Petitioner through this Writ Petition assails the order dated 30.11.2000 passed by Central Administrative Tribunal (hereinafter referred to as "The Tribunal") in OA No. 1089/2000. The Tribunal while dismissing the OA of the petitioner against the penalty of dismissal from service, held that petitioner had admitted the factum of recovery of currency. Further that the orders passed by the Disciplinary Authority and report of the Enquiry Officer took into account and dealt with all the contentions raised by the petitioner. The Tribunal declined to interfere with the orders of dismissal from service.

2. Before considering the grounds raised by the petitioner, facts culminating into the filing of the petition may be noted briefly.

(i) Petitioner, a constable with Delhi Police, was posted at Palam Airport. On 18.5.1997 he was deputed at the X-ray machine belt at customs area. At about 6.30 a.m. Sh. Brahma Singh, ACP in charge, Shift "B" NITC, allegedly noticed the movement of the petitioner to be suspicious. He directed Inspector Shiv Kumar to search the petitioner. On search, Indian/foreign currency to the tune of 1 dinar and Rs. 455/- was allegedly recovered from the right pocket of the pant of petitioner. It was further alleged that the petitioner had accepted that the money was taken by him from passengers. Deputy Commissioner of police, Vide

order dated 20.8.1997 held that the above act on part of the petitioner amount to grave misconduct and taking of illegal gratification was unbecoming of a police officer and ordered a regular departmental enquiry under Delhi Police (Punishment and appeal) Rules 1980 against the petitioner.

(ii) In the enquiry conducted by Mr. B.M Chopra, ACP/Palam, IGI Airport, six witnesses were examined. Charges of gross misconduct, accepting of illegal gratification and dereliction in discharge of official duties were framed against the petitioner. The charge was explained to the petitioner and he was asked to produce defense witnesses, if any and submit his written statement. Petitioner submitted his written statement but did not produce any defense witness. Charges against the petitioner were found proved and vide order dated 17.2.98 he was dismissed from service.

(iii) Subsequently, petitioner filed an appeal which was dismissed on 5.5.1998. Petitioner filed a Revision Petition, which was also rejected on 8.3.1999. Vide OA No. 1089/2000, petitioner challenged the imposition of extreme penalty of dismissal from service before the Tribunal. The said OA was dismissed. Hence, present petition.

3. Learned Senior Counsel Mr. G.D. Gupta, appearing on behalf of the petitioner while assailing the judgment of tribunal and findings of enquiry officer, submitted that there has been violation of Rule 15(2) of Delhi Police (Punishment and Appeal) Rules 1980 and Departmental Enquiry was ordered without obtaining the prior approval of Additional Commissioner of Police. He further submitted that the finding of guilt against the petitioner was perverse and there was no evidence proving the misconduct or obtaining illegal gratification from passengers. It was further submitted that no evidence of any passenger is available on record to prove the demand and receipt of illegal gratification. He also contended that there has been discrepancy with regard to the amount of foreign currency found in the search.

4. Learned Counsel for the respondent while countering the submissions of the petitioner, relying upon the judgment passed by the Tribunal, submitted that all the contentions raised by the petitioner have been dealt with extensively in the order of the Tribunal. He submitted that the Rule 15(2) relied upon by the petitioner does not apply in this case. He submitted that the petitioner, who was on official duty at the Airport, was in a position to obtain foreign currency from the international passengers. Learned Counsel for the respondent further submitted that the petitioner has not produced any defense witness and further that the orders of the Enquiry Officer, Departmental Authority and Tribunal were reasoned ones and should not be interfered with in writ jurisdiction simply because another view was possible.

5. The court would interfere in writ jurisdiction when it finds that either it is a case of no evidence or the findings are perverse or such as could not be arrived at on the evidence available on record. In support of the above proposition,

reference may be invited to Kuldeep Singh Vs. The Commissioner of Police and Others, wherein it was held "the findings in a domestic enquiry, can be characterized as perverse if it is shown that such a finding is not supported by any evidence on record or is not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of evidence". It was further held that "normally the high court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny".

6. We have heard counsel for both the parties and have perused the evidence, depositions and documents on record. We need to consider whether there is any evidence on record proving recovery from petitioner as claimed. Further, whether there is any evidence to demonstrate the demand or receipt of illegal gratification from the passengers. We may note at the outset that there has been no evidence of demand by the petitioner from any passenger. We further notice that in the deposition of ASI Jai Bhagwan Sharma (PW-1), Rs. 415/- and 2 Dinars were allegedly found in the search. Although, the statement of Ms. Poonam suggests that amount of Rs. 435/- and 2 Dinars were found but she states that the search was not conducted in her presence. Hence, her statement cannot be relied on. Shri Shiv Kumar, working as an Inspector at IGI Airport, in his statement stated that the ACP asked him to take the search of the petitioner. He states that Rs. 455/- and 2 Dinars were recovered from the pocket of the petitioner. It can Therefore be seen that there are glaring inconsistencies in the statements of witnesses relied upon by the respondents. We, Therefore find that there has been total non application of mind by the tribunal in arriving at a conclusion that currency was recovered from the petitioner and further that he had himself accepted the fact of recovery. There is no evidence for the latter.

7. We further find that Sh. Brahma Singh, ACP/IGIA New Delhi, deposed in departmental enquiry that he observed petitioner feeling fearsome and his movements becoming suspicious. On perusal of Seizure Memo, we find that it records that petitioner was found arguing with passengers. We find the above two versions contradictory. It is also not clear whether one Dinar or two Dinars were recovered from the petitioner. There was no signature of the accused on the Seizure Memo. It is also found that statements of two of the witnesses, namely Ms.Poonam and Head Constable Pyare Lal, relied upon by the respondents, were actually not present during the search and were called upon later and directed by ACP Shri Brahma Singh to depose and sign the seizure memo. Ms.Poonam and Head Constable Pyare Lal submitted in their statements that the recovery was not made in their presence. It is thus seen that there was no credible evidence of recovery. There was no evidence of demand and receipt of illegal gratification from passengers. The findings of the Enquiry Officer, Disciplinary Authority and the Tribunal are riddled with inconsistencies and contradictions that go to the root of the matter. The finding of misconduct in alleged demand and receipt of gratification stands vitiated.

8. It may also be noted that the circular dated 16.8.1994 of the Dy. Commissioner of Police clearly envisaged that the Seizure Memo of money/ material recovered from the defaulter should be prepared in accordance with law and the signature of the defaulter and the witnesses should also be obtained on it. This was not complied with as there was no signature of the petitioner on the Seizure Memo. The directions stipulated in the circular have to be complied with meticulously and there should be no laxity on behalf of the concerned authorities. We find that the stipulations in the circular have not been followed in accordance with law. Further, there is no evidence of the petitioner demanding or soliciting and further, no complaint has been filed by any passenger or officer concerned in this regard.

9. In view of the aforesaid, it may be seen that the punishment awarded to the petitioner is not sustainable and it is also arbitrary, disproportionate and excessive. Reference may be invited to the case of "Dhujender Pal Singh v. Govt. of NCT of Delhi and Ors." reported at 2002 V AD (DELHI) 485 wherein it was held that "demand is an essential ingredient for proving the charges of corruption". It was further held that "no amount was demanded by the petitioner by way of illegal gratification and in view of the matter, he cannot be said not have committed the alleged misconduct". Reference may further be invited to the decision of Division Bench of this Court in which one of us (Manmohan Sarin J) was a member in the case of K.B. Kumar v. Union of India and Ors. WP(C) 450/1998 decided on 13.7.2007 where petitioner was dismissed from service due to failure to perform proper technical check on issue of cement to contractor resulting in misappropriation of cement. The court observed "there has been no evidence produced regarding connivance with the perpetrators of alleged fraud and that the petitioner could not be visited with the extreme punishment of dismissal from service and the punishment is grossly disproportionate so as to shock the judicial conscience". In the present case before us, there has been no evidence of any demand made by the petitioner from the passengers by way of illegal gratification or otherwise. The Enquiry Officer did not analyze the evidences adduced in the departmental enquiry at all. The Tribunal, Therefore, in our opinion could not have arrived at its finding that the charges of misconduct have been proved only because there had been alleged recovery of amount. In our view there is no cogent evidence available by which imputations leveled against the petitioner are proved.

10. In view of the foregoing discussion, Impugned orders passed by the Tribunal and Departmental Authority being unsustainable are quashed. Petitioner is allowed to be reinstated forthwith but without back wages. Mr. G.D. Gupta , Counsel for the petitioner has no objection with regard to the non payment of back wages. However, the period from date of dismissal till reinstatement shall be counted for purposes of seniority and retiral benefits.