

(2011) 02 DEL CK 0326

In the Delhi High Court

Case No : Writ Petition (C) No. 7164 of 2010

Ex. Head Constable Dev Dutt

APPELLANT

Vs

Commissioner of Police and Others

RESPONDENT

Date of Decision : 01-02-2011

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (2011) 02 DEL CK 0326

Hon'ble Judges : Veena Birbal, J;Anil Kumar, J

Bench : Division Bench

Advocate : Sanjeev Mahajan, for the Appellant; Mohd. Sajid, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar , J.—The Petitioner has challenged the order dated 31st May, 2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in Ex. Head Constable Dev Dutt v. Union of India and Ors. O.A No. 289/1997 titled dismissing his application filed against imposition of the punishment of dismissal by the disciplinary authority and dismissal of his appeal by the appellate authority.

2. Brief facts to comprehend the disputes are that the Petitioner Head Constable Dev Dutt and Constable Shish Ram were deputed for motorcycle patrolling duty and when they were present at the police picket at Rani Jhansi Road on 9th June, 1992 where Head Constable Ajaib Singh and Constable Majid Khan had stopped Sh. Mahabir Prasad, complainant, and his friend Virendra Nath. Constable Shish Ram who was on patrolling duty with the Petitioner was inside the police picket where Constable Majid Khan had taken Virendra Nath and Mahabir Prasad. They searched the complainant Mahabir Prasad and Virendra Nath and threatened them by saying that they were coming from Kamal Restaurant, a notorious joint in that area and threatened to arrest them. Constable Shish Ram took Rs. 4000/- in the denomination of Rs. 500/- notes (eight notes) from the complainant and

his friend on the pretext that if they would be arrested they would have to pay Rs. 10,000/- each for bail and for their release. Both, the complainant and his friend were allowed to go after taking Rs. 4000/- from them by Shish Ram. Ajaib Singh and Majid Khan also extorted money from the complainant.

3. On reaching the Hotel Vikrant, Sh. Mahabir Prasad informed the PCR about the incident which was brought to the notice of DCP/C who directed night GO, Sh. Deependra Pathak, IPS, ACP/UT to go and look into the matter. The complainants with Sh. Deependra Pathak came at the picket at Rani Jhansi Road, Police Station Deshbandhu Gupta Road where complainant, Sh. Mahabir Prasad identified HC Ajaib Singh and Constable Majid Khan. Personal search of HC Ajaib Singh led to the recovery of 8 notes of Rs. 500/- denomination from his left pocket and another Rs. 1600/- were also recovered from his other pocket which could not be accounted for satisfactorily. HC Dev Dutt, the Petitioner and Ct. Shish Ram were also called to the police station where they were identified by the complainant, Mahabir Prasad as the persons who had also extorted money from him and his friend. The acts of the Petitioner and other police personnel were construed to be serious and grave misconduct and after an oral enquiry at the spot and thereafter, a preliminary enquiry by Sh.D.S. Sanga, ACP/ Pahar Ganj, a regular departmental enquiry was conducted where the Petitioner and other police personnel were given a chance to lead evidence. The opportunity to lead the evidence was availed by the Petitioner and the other delinquents and they submitted their defense statement.

4. On the basis of the evidence led before the enquiry officer the enquiry officer concluded that from the statements of the complainants and other evidence, it had been established that Constable Shish Ram who was with the Petitioner had taken away 8 notes of Rs. 500/- denomination from the complainant who was stopped at the police picket Rani Jhansi Road for checking purpose, on a flimsy ground that the complainants were coming from Kamal Restaurant, while the Petitioner who was at motorcycle patrolling duty in the area of Police Station Deshbandhu Gupta road and he was standing outside the police booth at the time others had been extorting money from the complainant. The ACP Sh. Deependra Pathak who had reached there on the information given by the complainant had searched HC Ajaib Singh and had recovered Rs. 4000/- (8 notes of Rs. 500/- each). The enquiry officer also concluded that the defense witnesses did not say that the personal search of the delinquent police official had not been carried out or that the money was not recovered. The defense witnesses had merely deposed that the complainants were saying that they will teach the police personnel a lesson on account of the harassment done to them and money extorted from them. In the circumstances it was held by the enquiry officer that the testimonies of the defense witnesses do not provide any help to the Petitioner and the other police personnel. Regarding the role of the Petitioner it was categorically inferred that the Petitioner kept a general watch outside the police booth so that his pillion rider could extort the money from the complainants in connivance with each other on the false threat of arresting them.

5. The Disciplinary Authority accepted the report of the enquiry officer in accordance with law and by order dated 9th June, 1994 imposed the punishment of dismissal from service on the Petitioner and the other police personnel and also ordered that the period of suspension with effect from 10th June, 1992 to the date of punishment would be treated as not spent on duty. The disciplinary authority while awarding the punishment had noted that on the basis of the oral statements and the record, the charges against them were proved and he agreed with the findings of the enquiry officer that the Petitioner and the other police personnel individually and collectively extorted money from the complainants and thereby grossly misused they being policemen in uniform and on duty and in the circumstances Petitioner and others behaved in no way better than criminals and they could not be allowed to continue in the disciplined force of police.

6. Aggrieved by the order of dismissal, the Petitioner filed an appeal before the Appellate Authority which was dismissed by order dated 21st February, 1995. The Petitioner with two others filed original applications in the Tribunal which was dismissed by common order dated 29th May, 2000. Thereafter the Petitioner and another co-delinquent filed writ petitions before the High Court which were disposed of by common order dated 12th October, 2009 holding that there was no discussion of facts of the case apart from a broad mention thereof by the Tribunal and remitted the matter to the Tribunal for reconsidering the issues raised by the Petitioner. Consequent to the remand of the matter, the Tribunal heard the parties again and dismissed the original application of the Petitioner by order dated 31st May, 2010 which is impugned before us.

7. The Tribunal had noted the pleas and contentions of the Petitioner inter-alia that the departmental enquiry was ordered without obtaining the prior approval of the Additional Commissioner of Police/Northern Range as per Rule 15(ii) of the Delhi Police (Punishment and Appeal) Rules, 1980 and that the approval if given was without application of mind; that the Petitioner was also not permitted to take the help of a defence assistant; that the Petitioner and other delinquents were not given all the relevant documents; ; the evidence of material witnesses namely ACP Deependra Pathak, PW2-B, Virendra Kumar PW2-C and Mahabir Prasad PW2-D could not be brought on record as ACP Deependra Pathak was available though he was posted out of Delhi and the other two witnesses namely Mahabir Prasad and Virendra Nath were also at Jodhpur in Rajasthan and that the Petitioner Sh. Dev Dutt was not present inside the police picket but was at a distance and so no case is made out against him.

8. The Tribunal has considered the objections and the pleas raised by and on behalf of Petitioner and repelled them and dismissed his petition. We have heard the learned Counsel for the parties in detail and have also perused the record of the case. Mr. Sanjeev Mahajan the learned Counsel for the Petitioner has very emphatically contended that Sh. Dev Dutt, the Petitioner was not present inside the police picket and from the evidence of the witnesses it is apparently clear that he was at a distance and in the circumstances, the facts as established do

not reflect the culpability of the Petitioner.

9. This cannot be disputed that Petitioner and Constable Shish Ram were deputed for motorcycle patrolling duty. At the time of the incident motorcycle rider Ct. Shish Ram was inside the police picket whereas HC Ajaib Singh and Ct. Majid Khan had carried out the search of the complainant and had extorted the money along with Ct. Shish Ram from the complainants, on the flimsy ground that they were coming from Kamal Restaurant and that they would be arrested, in which case they would have to spend Rs. 10,000 each for their bail and for their release. On the information given by the complainants after reaching their Hotel, ACP Deependra Pathak had come to the police picket where not only HC Ajaib Singh and Ct. Majid Khan were identified by Sh. Mahabir Prasad, but, an amount of Rs. 4000/- was also recovered from HC Ajaib Singh and afterwards when Ct. Shish Ram and HC Dev Dutt, Petitioner were called they were identified by the complainant, Mahabir Prasad. The Tribunal considered the testimonies of the various witnesses and has inferred that Ct Shish Ram, who was the motorcycle rider had indeed taken away Rs. 4000/- from Mahabir Prasad, and though the Petitioner was a pillion rider, however, he was standing outside the picket. Merely because it has been alleged by the Petitioner that he was standing at a distance, it would not absolve him of his complicity that his motorcycle rider and other two constables had extorted the money from the complainants and he was oblivious of all this while standing outside. The Tribunal has noted as under:

What is thus proved from the records is that all four delinquents were posted for duty at one place. Two of them, namely, HC Ajaib Singh and Const. Majid Khan stopped Mahabir Prasad and Virendra Nath. Three out of four, namely, Ajaib Singh, Majid Khan and Shish Ram were inside the police post searching the complainants, while Dev Dutt who was one of the motorcyclist on duty along with Shish Ram, was standing outside the police post with the motorcycle. The mere presence of Dev Dutt outside the police post, in totality of the facts and circumstances of the case, as mentioned above, would not absolve him of the charges. Concurrent findings of the enquiry officer, disciplinary and appellate authorities are that robbery by policemen was done in connivance and conspiracy with each of them. Dev Dutt was standing outside the police post. The complainants could see him standing there along with the motorcycle. Surely, if the witnesses could see him standing outside the police post, Dev Dutt also must have been in a position to see what was going on inside the police post. He could not be silent spectator. Shish Ram, with whom he was on motorcycle patrolling duty of the area, was inside the police post extorting money, along with other co-delinquents. The circumstances of the case lead to an irresistible conclusion that Dev Dutt would be standing outside the police post to see that some higher officer or some other may not come, and if they were to come, he would signal to those inside the police post, so that they could stop what they were doing. He may not have committed an overt act, but his intention appears to be the same as that of his co-delinquents.

10. After perusal of the testimonies of the witnesses though this Court has not to re-appreciate the evidence while considering a petition in exercise of its jurisdiction under Article 226 of the Constitution of India, however, the testimonies were perused in order to appreciate the tenor of the testimonies and whether the findings are perverse or not. After perusal of the testimonies of the witnesses and the complainant it is apparent that merely because some of the witnesses have deposed that Dev Dutt, the Petitioner was standing at a distance does not mean that he was oblivious to what was going on inside the picket or it was not with his connivance. If the complainants have stated that they could see Dev Dutt, Petitioner, standing outside, the inference that even the Petitioner could see what was going on inside the picket cannot be faulted. The complainants have identified the Petitioner. No suggestion had been given to the witnesses that the Petitioner was standing at such a distance from where the picket could not be seen or that he could not see as to what was going on inside the picket. It was for the Petitioner to have deposed as to what distance he was standing from the picket, which would have incapacitated him from knowing as to what was going on inside the picket. In the circumstances, the findings of the Tribunal cannot be held to be perverse or unsustainable so as to entail any interference by this Court. In any case if the enquiry officer has reached findings on the basis of evidence before him which findings are plausible, this Court in exercise of its jurisdiction under Article 226 of the Constitution of India will not substitute its inferences, if other inferences are feasible, with the inferences arrived at by the authorities below. However, this Court on the basis of the testimonies of the witnesses is of the opinion that money was extorted from the complainant by other police personnel including the other motorcycle rider in connivance of the Petitioner.

11. The next point raised by the learned Counsel for the Petitioner is that in the case of Petitioner there is a violation of Rule 15(ii) of the Rules of 1980 on the ground that no prior approval of the competent authority envisaged under Rule 15(ii) was obtained. Perusal of the record reveals that permission under Rule 15(ii) was obtained by the disciplinary authority vide additional CP/Northern Range memo No. 1507-8/P. Section (NR) dated 10th June, 1992. The Tribunal has also relied on the observations made by the appellate authority regarding compliance of Rule 15(ii). The Tribunal had noted the observation made by the Appellate authority, that:

...the procedure laid down in criminal proceedings for seizure in an anti-corruption case are not applicable in this incident and it was precisely for such reasons that permission was obtained under Rule 15(ii) of Delhi Police (Punishment & Appeal) Rules which states that in cases where a preliminary enquiry discloses the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public, departmental enquiry shall be ordered after obtaining prior approval of the Addl.C.P. concerned as to whether a criminal case should be registered and investigated or a D.E. should be held. In view of the fact that a criminal case may not have succeeded on such

evidence in the court, a conscious decision was taken to deal with the Appellants in the departmental enquiry.

12. The Tribunal has also noted that the learned Counsel for the Petitioner had changed his plea, that no order was passed under Rule 15 (ii) of the rules of 1980, to the plea that approval was given without application of mind. It was noticed that there was no pleading that permission/approval under Rule 15(ii) was given without application of mind. Reliance has also been placed on the order dated 24th April, 2008 in Rohrash Singh v. Government of NCT of Delhi and Ors. O.A No. 94/2007 HC of the Tribunal holding that no reasons are required to be recorded for preferring one course of action over the other. The Tribunal had also noticed that after failing to raise the plea of Rule 15(ii) approval/permission not being taken, the learned Counsel had changed his plea contending that there had not been any application of mind while permitting the departmental enquiry without raising the plea before the authorities and without taking any such ground in the original application. The plea of the learned Counsel was also repelled on the ground that the authorities had clearly mentioned that a conscious decision was taken to deal with the objection in a departmental enquiry for the reason that the charge against the Petitioner might not be sustained in the criminal trial. In the circumstances we do not find any such illegality or unsustainability in the reasoning of the Tribunal which would impel us to interfere with its order in the facts and circumstances of the case.

13. The next point urged by the learned Counsel for the Petitioner is that the evidence of witnesses namely Mahabir Prasad, Virendra Nath and Deependra Pathak recorded in the preliminary enquiry could not be brought on record in the facts and circumstances of the case under Rule 16(iii) of 1980 Rules. The learned Counsel for the Petitioner has also relied on Kuldeep Singh Vs. The Commissioner of Police and Others, holding that Rule 16(iii) of Delhi Police (Punishment and Appeal) Rules, 1980 permits bringing on record statement of a witness without producing him at the domestic enquiry. However, condition precedent for invoking this rule can be only that the presence of the witness cannot be procured without undue delay, inconvenience or expense. In Kuldeep Singh (Supra) the plea taken for not producing the witnesses whose testimony was sought to be produced in the regular enquiry, was on the ground that delinquent had managed the disappearance of such witnesses and had settled them somewhere in the specified place D. It was noticed that there was no material to substantiate the said ground nor was any attempt made to contact the witnesses at place D or to bring them to the enquiry proceedings from place D. Thus it was held that condition precedent for invoking Rule 16(iii) were not satisfied and the enquiry officer could not rely on the statements of the witnesses recorded during the preliminary enquiry. However, in the case of the Petitioner what transpires is that the regular departmental enquiry proceedings were first recorded on 8th July, 1992 and Inspector H.C. Batra and Sh.D.S. Sangha, ACP/Paharganj were examined and thereafter on 10th August, 1992 the statement of ASI Ram Kumar and Constable Kulvinder Singh were recorded. Later departmental enquiry file

was sent to HAP/C as the enquiry officer Sh.S.B.K. Singh had been transferred to Arunachal Pradesh and in his place the enquiry was entrusted to Sh.R.S. Krishnia. The notings of the enquiry officer clearly reveal that summons were issued to witnesses many times by the then ACP Karol Bagh and even DCP/C was asked whether the departmental enquiry proceedings should be continued or held in abeyance on account of non availability of Sh. Deependra Pathak, IPS on whose report the departmental enquiry was initiated and because the complainants were also residents of a distant place in Rajasthan. In the circumstances, the DCP had known that this would cause undue delay and inconvenience and expenses incurred would also be substantial as witnesses were no longer available and relying on the provision of Rule 16(iii) of the Rules of 1980, the statements recorded during preliminary enquiry were taken on record.

14. From the record it is apparent that the attempts were made to serve witnesses, Mahabir Prasad, Virendra Nath and Deependra Pathak and the efforts to serve them continued for more than six months as after the transfer of enquiry officer the departmental enquiry was entrusted to Sh.R.S. Krishnia on 7th October, 1992 and finally he had made enquiries after making attempts to serve the witnesses from DCP/C on 17th April, 1993. In the circumstances it does not appear that the condition precedent for invoking Rule 16(iii) of the Rules, 1980 were not complied with. Even the appellate authority had noted that the complainant Mahabir Prasad and Virendra Nath were residents of Rajasthan and their presence could not be secured without undue delay and expenses and, therefore, the enquiry officer had sufficient reason to dispense with their personal presence and to rely on their testimonies recorded in the preliminary enquiry. Even the copies of the testimonies of these witnesses were given to the Petitioner and other delinquents. Tribunal has also noted that the statements, which were recorded in the preliminary enquiry which have been considered in the regular enquiry were recorded and attested by an officer superior in the rank to that of the Petitioner. The testimonies are also signed by the persons who gave the statements. Even unsigned statements could be brought on record but these statements were rather brought on record at the instance of the Petitioner and other delinquents.

15. In the circumstances, the statements which have been brought on record at the instance of the Petitioner and other delinquent themselves and which are signed by the concerned witnesses and attested by D.S. Sangha, an officer superior in rank than the Petitioner and his co-delinquents and it had been held that securing the presence of said witnessed will cause undue delay and expenses, such testimonies have been rightly considered by the enquiry officer under Rule 16(iii) of 1980 Rules and the decision of the Tribunal on this count also cannot be faulted nor can it be held that it suffers from any such perversity which will entail any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

16. No other ground has been raised on behalf of the Petitioner. In the circumstances this Court finds no ground to interfere with the order of the Tribunal dismissing the original application against the order of the disciplinary authority and appellate authority dismissing the Petitioner from service. The writ petition is, therefore, without merit and it is dismissed. The parties are, however, left to bear their own costs.