(2012) 12 DEL CK 0166

In the Delhi High Court

Case No : Writ Petition (C) 7680 of 2010

GNCT of Delhi and Others	APPELLANT
Vs	
ASI Rambir Singh and Another	RESPONDENT

Date of Decision : 18-12-2012

Acts Referred:

Citation : (2013) LabIC 417

Hon'ble Judges : Siddharth Mridul, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Ferida Satarawala with Ms. Suman Kukrety, for the Appellant; Anil Singal, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—This writ petition is directed against the order dated 07.05.2010 passed by the Central Administrative Tribunal,

Principal Bench, New Delhi in OA 3261/2009. The said OA had been filed by the respondents challenging the order dated 03.10.2008 passed by

the Disciplinary Authority forfeiting one year''s approved service of the respondents and the Appellate Authority''s order dated 06.08.2009,

whereby the appeal of the respondents was rejected. In brief, the allegation against the respondents was that they were checking vehicles / trucks

coming from Ghaziabad entering into Delhi at the Gazipur Border Traffic Picket in Kalyan Puri Traffic Circle in the intervening night of

14/15.03.2003 at about 3:50 am. The allegation is that at the time of checking, the said respondents were found collecting money from truck

drivers without giving them any receipts or issuing challans. A motorcycle which was parked nearby bearing registration No. DL-ISM-4143 was also checked by the checking staff and it was found to contain Indian currency in the denominations of Rs. 10/-, Rs. 20/-, Rs. 50/- and Rs. 100/-

totalling to Rs. 6,350/-. Consequently, after seizure of the said amount etc., a departmental proceeding was initiated against the respondents and

the respondents were asked to answer the charge against them that the same amounted to gross misconduct, negligence and dereliction in

discharge of their official duties and it rendered them liable to be dealt with departmentally under the provisions of the Delhi Police (Punishment and

Appeal) Rules, 1980.

2. Thereafter, an Inquiry Officer was appointed and he concluded his inquiry by submitting his report of findings dated 11.08.2003. The Inquiry

Officer''s report dated 11.08.2003 indicated that the benefit of doubt be given to the respondents as he was of the view that the charges against

them had not been proved. However, the Disciplinary Authority did not agree and recorded his disagreement and thereafter imposed the penalty of

forfeiture of three years'' approved service permanently. The period of suspension was also treated as not spent on duty. The statutory appeal was

also rejected.

3. At that stage, the respondents filed OA 1604/2005 challenging the said punishment. The Tribunal, by its order dated 23.01.2007, disposed of

the said OA primarily on the ground that the key witness, that is, the Deputy Commissioner of Police Sh. Manoj Kumar Lall had not been

produced as a witness. The Tribunal noted that none of the PWs, who had been produced till then, stated that they had seen the respondents

putting money in the public motorcycle parked there. The Tribunal, at that stage, felt that since the said DCP was the only alleged eye witness, he

was a very material witness and that he ought to have been produced. However, since neither he had been called in the inquiry proceedings nor the

applicants had been given a chance to cross-examine him, reliance could not have been placed on his report and since the Disciplinary Authority

had placed reliance on the said DCP''s report, the inquiry itself got vitiated.

4. Consequently, the Tribunal, by virtue of its order dated 23.01.2007, quashed the impugned orders passed by the Disciplinary Authority and the

Appellate Authority. However, the Tribunal gave liberty to the petitioners herein to resume the inquiry from the stage of calling the Deputy

Commissioner of Police Shri Manoj Kumar Lall as a witness after giving due notice and a chance to the respondents herein to cross-examine him

and then pass orders after following the due process of law.

5. Subsequently, the inquiry was continued from the stage indicated above and the said DCP Shri Manoj Kumar Lall was examined and cross-

examined in the supplementary inquiry.

6. Question Nos. 4 and 9 of the cross-examination were of some significance and they were subsequently taken into account by the Tribunal in the

second round. We shall refer to them at a later stage. For the present it is sufficient to note that after the supplementary inquiry, the Inquiry Officer

submitted the supplementary report dated 26.08.2008. This time the Inquiry Officer found the charges against the respondents to have been

proved. Consequently, the Disciplinary Authority, by virtue of its order dated 3.10.2008, which was impugned before the Tribunal, imposed the

punishment of forfeiture of one year''s service permanently. The respondents'' appeal before the Appellate Authority was also rejected on

06.08.2009. That is how the Original Application No. 3261/2009 came to be filed before the Tribunal which has been allowed by the Tribunal by

virtue of the impugned order dated 07.05.2010.

7. The learned counsel for the petitioners submitted that this was not a criminal case and it was only a case of departmental proceedings and,

therefore, charges need not be proved beyond doubt and it only required the establishment of preponderance of probabilities. She submitted that a

senior officer such as the DCP Sh. Manoj Kumar Lall had testified in favour of the charge and, that was, according to her, sufficient to bring home

the charge against the respondents. She further submitted that there was no allegation of there being any malice on the part of the said DCP nor are

there any allegations that the DCP was inimical towards the respondents. Therefore, the testimony of the DCP, which has been rightly taken into

account by the Inquiry Officer as well as by the Disciplinary Authority and the Appellate Authority, ought to have been sustained by the Tribunal

and should not have been rejected. She also submitted that the position in law is clear that the Tribunal does not have to go into the evidence and

as long as there is some evidence, the question of sufficiency of evidence need not be gone into by the Tribunal or by this Court. She submitted that this was not a case of no evidence and it is only in cases of no evidence that the Tribunal or this Court could interfere with the findings of the

Disciplinary Authority.

8. The learned counsel for the respondents, however, submitted that the Tribunal had rightly held that this was a case of no evidence. He drew our

attention to question Nos. 4 and 9 of the cross-examination of DCP Sh. Manoj Kumar Lall, which are reproduced as under:-

Q.4 Can you explain traffic staff that traffic staff detailed checked the trucks coming from UP side and only no truck destination in Delhi was

allowed otherwise returned back and this was basis of checking for the direction of Hon''ble Supreme Court?

Ans. Police personal in uniform performed their duty for checking, without telling anyone he saw the activity of staff and felt that they were

collecting money from truck Drivers and no receipt was given to them. Later on he reached the defaulters found money and reported the matter,

there was no proportion between cash and challan receipt. Money was kept in the dickey in improper way and ASI Rambir Singh had no

satisfactory reply so he called the area officer and directed him to act as per law. The money which was found in dickey and the concerned officer

was deputed for action.

Q.9 Did you mention in your report that which traffic personnel was keeping money in the Bullet M/Cycle dickey?

Ans. He had seen them receive money from two there truck drivers, then he thought that they were making challaning and received money. On

suspicion he asked ASI Rambir Singh and found the challans were not satisfactory. After it he reached the spot and found money kept in M/Cycle

Dickey in haphazardly. As he told earlier that matter was found to be of illegal collection of money so he gave the information to senior officers of

traffic Police and asked them to take appropriate action vide his office latter dated 17.03.03.

He submitted that on going through these questions, it cannot be said that the said DCP Sh. Manoj Kumar Lall had, in fact, allegedly seen money

collected from drivers being put in the dickey of the motorcycle. Therefore, according to the learned counsel for the respondents, there was no

connection between the motorcycle and the alleged incident.

9. The learned counsel for the respondents also submitted that the Tribunal has rightly placed reliance on the deposition of DW1 Dinesh Kumar

Tomar, who has come forward to state that he is the owner of the motorcycle in question and that the said Rs. 6,350/-, which was found in the

motorcycle, was his.

10. After having examined the matter and heard the counsel for the parties, we are of the view that the Tribunal''s order ought not to be interfered

with for one simple reason. The reason being that DW1 Dinesh Kumar Tomar has not been cross-examined by the petitioners, even though an

opportunity had been given to them. This means that the testimony of DW1 has to be taken as correct as it has gone unchallenged. His testimony is

as under:-

Stated that he was residing at the above address and was doing the business of Kabari. He was the owner of the motorcycle No. DL-1SM-4143

make bullet. On 14.3.03 in connection with his business he had gone to Lal Kuan, Ghaziabad for taking payment. After taking the payment at

about 7.30 PM when he reached near Ghazipur Border his motorcycle got punctured. He parked his motorcycle at the border after bringing it into

the notice of toll tax staff. He searched for the mechanic nearby but could not find it so he returned back to his residence at Chandni Chowk. In the

dickey of the motorcycle Rs. 6350/- were kept. Next day at about 9.30 AM when he reached near the motorcycle and found that money was not

in the dickey. On the other side of the road where he parked his motorcycle, there was a booth of police. He enquired from them and it was told

that during the night DCP/Manoj Lall had conducted the checking, and the amount in the dickey of motorcycle was taken as the money of the

traffic staff and was deposited in the police station. Thereafter he went to Mayur Vihar Phase-II, Traffic office and enquired about his money and

he was told that the money would not be retuned till the finalization of the case of the policemen. Thereafter he returned back to his house. He has

produced the photocopy in proof of the ownership of the motorcycle. The police officers present here had come to him and asked him to give a

statement. He was making this statement without any pressure, fear or greed.

No cross examination was done by the defaulters despite the opportunity given to them. On clarification by the E.O., the witness told that none of the present traffic police official was his relative or acquaintance. When he parked the motorcycle the dickey was locked. When he went next day

the dickey of the motorcycle was opened, it was not broken.

11. We may point out that while in the above extracted portion it has been mentioned that there was no cross-examination done by the ""defaulters

despite opportunity being given to them, this obviously has reference to the prosecution and not the defaulters because DW1 was a defence

witness and could not have been subjected to cross-examination by the respondents. In any event, there is no reference of any cross-examination

having been done by the prosecution. Furthermore, it is pertinent to note that the Inquiry Officer had himself put a question to the said DW1, who

clarified that none of the traffic police officials was his relative or acquaintance.

12. If one were to examine the deposition of DW1 Dinesh Kumar Tomar, it is apparent that he has stated that the motorcycle belonged to him and

that he had parked it on the Ghaziabad border and that the sum of Rs. 6,350/-, that was kept in the motorcycle, was his. Since this testimony has

gone unchallenged, there is no alternative but to accept the same. If that is done, then the petitioners have no case. The writ petition is, therefore,

without merit. The same is dismissed. There shall be no order as to costs.