
(2018) 09 CAT CK 0016

In the Central Administrative Tribunal

Case No : Original Application No. 3838 Of 2014, Miscellaneous Application No. 3330 Of 2014

HC Shri Chand

APPELLANT

Vs

Govt. Of NCTD And Ors

RESPONDENT

Date of Decision : 28-09-2018

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Delhi Police (Punishment & Appeal) Rules, 1980 — Rule 15(3), 16(3)
Constitution Of India, 1950 — Article 226, 227

Citation : (2018) 09 CAT CK 0016

Hon'ble Judges : K.N. Shrivastava, Member (A), Ashish Kalia, J

Bench : Division Bench

Advocate : Sachin Chauhan, Sumedha Sharma

Final Decision : Dismissed/Disposed Of

Judgement

K.N.Shrivastava, Member (A)

1. Through the medium of this Original Application (OA), filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following main reliefs in the OA:

"i) To quash and set aside the order dated 21.12.2010 whereby the punishment of withholding of next increment for a period of five years with cumulative effect is being imposed upon the applicants and order dated 22.06.2011 whereby the statutory appeal of the applicants has been rejected but till the punishment has been reduced i.e. withholding of next increment for a period of two years without cumulative effect instead of five years with cumulative effect thus causing great prejudice to the applicant and to further direct the respondent that withheld increment be granted to applicant as it was never withhold with all consequential benefits including seniority & promotion and pay & allowance.

ii) To quash and set-aside the finding of Enquiry Officer.

iii) To quash and set-aside the order of initiation of D.E."

2. The factual matrix of the case, as noticed from the records, is as under:

2.1 The applicant joined Delhi Police in the year 1980 and thereafter was promoted to the rank of Head Constable (HC) in the year 1998. On 17.08.2009, Annexure A-1 order came to be issued by the Additional Deputy Commissioner of Police, South-East District, making the following allegations against him and three other police officials, namely, HC Rampal, Constable Vinod Kumar and Constable Satbir:

"It is alleged that during night patrolling on the night intervening 24/25.06.2009, Inspr. Hans Ram, ATO, PS Lajpat Nagar reached at Rubina Chowk, Central Market, Lajpat Nagar at about 3.45 AM and found one Truck No.HR-55F-6201 parked in front of Diwan Automobiles. A Govt. Motor Cycle No. DL-1SN-8304 was parked near the truck and its Rider Const. Vinod, no.1582/SE and pillion Rider HC Ram Pal, No.202/SE were taking to the truck driver Iqbal S/o Ali Mohd. R/o Village Kathole, PS Pahadi, Distt. Bharatpur, Rajasthan. Inspr. Hans Ram called the truck driver and enquired into the matter. The truck driver informed that he got loaded the motorcycle in his truck on 22.06.2009 from Puna and came to Diwan Automobiles to give delivery. As he parked his truck in front of showroom of Diwan Automobiles, the policemen riding on above mentioned motorcycle came there and demanded entry money. The truck driver offered them Rs.30/- but they demanded Rs.100/-. When Inspr. Hans Ram questioned the above mentioned police personnel, they could not reply satisfactorily. In the meantime, the then ACP/Lajpat Nagar, Shri Ranbir Singh, who was the night GO also reached there and inquiries were conducted from truck driver Iqbal. The truck driver reiterated his earlier version and further informed that he had also paid Rs.100/- to policemen at VinobaPuri Picket. ACP/Lajpat Nagar accompanied the truck driver Iqbal and his service mechanic Nitesh More S/o Shri 3 OA No.2287/2014 Basant More R/o VPO Shivtar, PS Khed Laxmi Narayan Badi, Distt. Ratnagiri, Maharashtra to VinobaPuri Picket. Where they identified HC Sri Chand, No.197/SE and Const. Satbir, No.1550/SE who took Rs.100/- from the truck driver. Thus HC Ram Pal, No.202/SE and Const. Vinod Kumar, No.1582/SE demanded illegal gratification from the truck driver Iqbal and HC Sri Chand, No.197/SE and Const. Satbir Singh, No.1550/SE demanded and accepted Rs.100/- as illegal gratification from truck driver Iqbal. The above said act on the part of HC Ram Pal, No.202/SE (PIS No.28827460), HC Sri Chand, No.197/SE (PIS No.28883539), Const. Vinod Kumar, No.1581/SE (PIS No.28893593) and Const. Satbir, No.1550/SE (PIS No.28860508) amounts to gross misconduct and dereliction in the discharge of official duties and unbecoming a police officers which renders them liable for departmental action under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980."

2.2 The order also appointed Shri Harish Chander, Inspector (Investigation) as Enquiry Officer (EO) to investigate the charges. The applicant and other co-accused participated in the enquiry proceedings. The EO submitted his report (p.

29-45) to the Disciplinary Authority (DA). The relevant portion of the EO's report, wherein he has discussed the evidence and drawn conclusion, is extracted below:

"Discussion of evidence Out of 07 PWs so examined in this DE, PWs one and five are Public/Star Witnesses, but both of them turned hostile. PWs 3, 4 & 7 are formal witnesses who disposed above the duties of all the four delinquents. PW-2 i.e. Insp. Hans Raj who initially visited Rubina Chowk Central Market on that night confirmed that Const. Vinod, No.1581/SE & HC Ram Pal, No.202/SE were demanded illegal gratification as "Entry. This PW further confirmed that the said Nitesh More "PW-1" pointed towards HC Shri Chand and Const. Satveer who accepted Rs.100/- as illegal gratification from the said Nitesh More. He also confirmed his report which has been testified as Ex PW2A. Further PW-6 i.e. Sh. Ranbir Singh, ACP (now retired/the then ACP/Lajpat Nagar) also corroborated the version of PW-2. Remaining three PWs i.e. PWs 3, 4 & 7 stated about the duties of all the 04 delinquents which is not disputed.

Conclusion

On the basis of testimony of all the 07 PWs, Exhibits and other material evidence on record, the charged framed upon (1) HC Ram Pal, No.202/SE, (2) HC Sri Chand, No.197/SE, (3) Const. Vinod Kumar, No.1582/SE and (4) Const. Satbir, No.1550/SE stands proved."

2.3 Acting on the report of the EO, the DA vide its Annexure A-2 order dated 21.12.2010 imposed the penalty of withholding of next increment for a period of five years with cumulative effect on all the four accused police officials, including the applicant.

2.4 The accused police officials, including the applicant, filed appeal before the departmental Appellate Authority (AA), namely Joint Commissioner of Police, Southern Range, who vide his Annexure A-3 order dated 22.06.2011, while upholding the order of DA, reduced the punishment imposed on them. The operative part of the order of the AA is extracted below:

"I, therefore agree with the decision of the Disciplinary Authority to punish the appellants. Demand of illegal gratification is a serious form of misconduct and needs to be curbed with an iron hand. However, keeping in view of overall circumstances of the case, the punishment imposed upon the appellants appears to be on the harsher side, and I reduce it to withholding of their next increments for a period of two years without cumulative effect instead of five years with cumulative effect."

(Emphasis supplied)

2.5 Aggrieved by the Annexure A-2 and A-3 orders passed by the DA and AA respectively, the applicant has filed the instant OA praying for the reliefs, as indicated in para-1 supra.

3. In support of the reliefs claimed, the applicant has pleaded the following

important grounds:

3.1 The EO has placed reliance on the submissions of the PW-1 and PW-5, which they had given prior to the institution of the DE proceedings.

3.2 In terms of Rule 15 (3) and 16 (3) of the Delhi Police (Punishment & Appeal) Rules, 1980, previously recorded statement can be relied in respect of only those witnesses who fail to appear in DE proceedings. In the present case PW-1 and PW-5 appeared in the enquiry proceedings and hence their deposition during the enquiry proceedings has to be relied upon and not their statements earlier to that.

3.3 PW-1 Nitesh Morey and PW-5 Iqbal were extensively cross-examined by the EO, which is not permissible under the Delhi Police (Punishment & Appeal) Rules, 1980.

3.4 PW-1 and PW-5 have completely exonerated the applicant of the charge in their respective deposition before the EO.

3.5 The EO report is flawed for the reason that the EO has relied upon the deposition of PW-2 Inspector Hansraj which is based on the earlier statements of PW-1 and PW-5 recorded prior to the commencement of the enquiry proceedings.

3.6 There is no eye witness account that the driver and his colleague Morey had identified the applicant to be the person who had demanded and accepted money. No recovery of money was made from the applicant either.

3.7 The orders of the DA and AA are bad in law as they are non-speaking orders.

4. Pursuant to the notices issued, the respondents entered appearance and filed reply in which broadly they have made the following important averments:

4.1 During the night patrolling on the night intervening 24/25.06.2009, Inspector Hansraj reached at Rubina Chowk, Central Market, Lajpat Nagar at about 3.45 AM and found one truck parked in front of Diwan Automobiles. A Government motor cycle was parked near the truck and its rider constable Vinod Kumar and pillion rider HC Rampal were talking to the truck driver Iqbal. Inspector Hansraj called the truck driver and enquired in the matter, who inter alia, told him that the policemen riding the motor cycle were demanding entry money from him and he has offered Rs.30/- but they demanded Rs.100/-. When Inspector Hansraj questioned the police officials they did not reply satisfactorily.

4.2 Shri Ranvir Singh, ACP, Lajpat Nagar, who was the night GO also reached there and enquired about the same from the truck driver Iqbal who further informed that he has paid Rs.100/- to policemen at Vinoba Puri Picket and identified the recipients as Constable Satbir and the applicant.

4.3 All the four police officials, including the applicant were proceeded against departmentally and finally the EO in his report has proved the charges against them.

4.4 The PW-1 Nitesh Morey (Mechanic of the truck) and PW-5 Iqbal (driver of the truck) were star witnesses but they have turned hostile during the enquiry. The official witnesses, however, have corroborated the charges.

5. The applicant has filed a rejoinder to the reply filed on behalf of the respondents in which, more or less, he has reiterated the averments made in the OA.

6. On completion of the pleadings, the case was taken up for hearing the arguments of the learned counsel for the parties on 28.08.2018. Arguments of Shri Sachin Chauhan, learned counsel for the applicant and that of Mrs. Sumedha Sharma, learned counsel for the respondents were heard.

7. The main thrust of the arguments of Shri Sachin Chauhan, learned counsel for the applicant was that PW-1 and PW-5 who were the crucial witnesses have not supported the charge against the applicant. He submitted that the EO has tried to prove the charge on the strength of the deposition of the official witnesses and has ignored the depositions of PW-1 and PW-5 who were the most important witnesses.

8. Mrs. Sumedha Sharma, learned counsel for the respondents, on the other hand, submitted that the co-accused Constable Satbir Singh who had also been punished by the impugned Annexure A-2 and A-3 orders had challenged the said order in OA-3012/2011 before this Tribunal and that the said OA was dismissed by the Tribunal vide order dated 31.07.2015, as the Tribunal did not find any merit in it. She also raised the issue of limitation, submitting that the appeal of the applicant was dismissed on 22.06.2011 whereas the OA has been filed on 28.10.2014. She further argued that the other two co-accused HC Rampal and Constable Vinod Kumar had also challenged the orders of the DA and AA, which were common to all, in OA No.2287/2014 before this Bench of the Tribunal and that OA was also dismissed vide order dated 22.08.2016, as the Tribunal found it bereft of any merit. She thus argued that this OA also deserves to be dismissed on the line of the dismissal of OA No.3012/2011 and OA No.2287/2014.

9. Responding to the arguments of Mrs. Sumedha Sharma, Shri Sachin Chauhan, learned counsel for the applicant stated that the grounds 5.2 and 5.5 taken by the applicant in this OA have not been covered in the order of the Tribunal in Satbir Singh (supra).

10. We have considered the arguments of the learned counsel for the parties and have also perused the pleadings. The scope of judicial review in disciplinary proceedings is highly limited, as laid down by the Hon'ble Apex Court in the case of Union of India v. T. Gunasekaran, [(2015) 2 SCC 610]. Defining the scope of judicial intervention in such matters, the Hon'ble Apex Court has laid down the following principles:

"13. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-

appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;
- b. the enquiry is held according to the procedure prescribed in that behalf;
- c. there is violation of the principles of natural justice in conducting the proceedings;
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- i. the finding of fact is based on no evidence.

Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii). go into the adequacy of the evidence;
- (iv). go into the reliability of the evidence;
- (v). interfere, if there be some legal evidence on which findings can be based.
- (vi). correct the error of fact however grave it may appear to be;
- (vii). go into the proportionality of punishment unless it shocks its conscience."

11. In the instant case, we find that a common enquiry had been conducted against the applicant and three other co-accused, as per the prescribed procedure and in accordance with principles of natural justice. The applicant has participated in the enquiry proceedings and has been given ample opportunities to defend himself. The EO, after assessing the evidence adduced, has concluded

that the charges against the applicant and other three co-accused are proved. The DA on the basis of the EO's report has imposed the penalty of withholding of next increment for a period of five years with cumulative effect on the applicant and similar penalty on other three co-accused police officials. The AA has correctly observed that the punishment imposed by the DA was disproportionate to the misconduct committed and has reduced it to the effect that future increment of the applicant has been ordered to be postponed for only two years instead of five years as ordered by the DA. We are of the view that the punishment awarded by the AA is quite reasonable and is commensurate with the misconduct committed by the applicant.

12. In the conspectus of the discussions in the foregoing paras, we do not find any reason to interfere with the order of the AA. Accordingly, this OA is dismissed as we find it bereft of any merit.

13. There shall be no order as to costs.

14. Consequently, no separate order is required to be passed on MA No.3330/2014, which accordingly stands disposed of.