
(2015) 01 DEL CK 0266

In the Delhi High Court

Case No : Writ Petition (C) No. 5484/2004

Jagdish Ambedkar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-01-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226, 311(2)

Citation : (2015) 01 DEL CK 0266

Hon'ble Judges : Vipin Sanghi, J.;S. Ravindra Bhat, J.

Bench : Division Bench

Advocate : Raj Kumar Bhartia, for the Appellant; Akshay Makhija, CGSC and Rohitendra Deb, Advocates for the Respondent

Final Decision : Allowed

Judgement

Vipin Sanghi, J.—The present Writ Petition, preferred under Article 226 of the Constitution of India assails the order dated 16.01.2002 in M.A. No. 273/2001, order dated 24.01.2001 in R.A. No. 07/1999 and order dated 24.11.1998 in O.A. No. 514/1993, whereby the Tribunal dismissed the applications.

2. The Petitioner was appointed as Sub-Inspector (Executive) [SI (E)] on 30.06.1979 in Delhi Police on the recommendations of the Staff Selection Commission (SSC) in the pay scale of Rs. 425-15-530-EB-15-560-20-600. The Deputy Commissioner of Police, Special Branch (DCP, SB) posted the Petitioner in the communist section of the Special Branch in 1982.

3. The DCP, SB directed, vide order no. 5681-90/Z dated 16.11.1982, all Special Branch staff, except the ones at Jawahar Lal Nehru National Stadium to report for duty to Special Branch Control Room on 19.11.1982, which was a gazetted holiday in view of ASIAD 82. The Petitioner wrote on that order that he would attend office only when orders for grant of compensatory leave or payment of compensatory pay will be issued. Thereafter, the Assistant Commissioner of Police (ACP) personally called the Petitioner, asking him to comply with the

orders of the DCP; he was informed that if he failed to come on duty then he would be considered as absent. Regardless of these orders, the Petitioner is alleged to have been absent from office on 19.11.1982.

4. On 18.12.1982, the Petitioner was allegedly found distributing cyclostyled copies of papers in Hindi amongst the staff of Special Branch. The copies highlighted the demands of the Delhi Police Personnel.

5. The Petitioner was placed under suspension on 18.12.1982 vide order no. 9263-83/CR(SB) . On 20.12.1982, he was allegedly found writing objectionable things at the entrance of the Police Headquarters (PHQ) . Thereafter, the DCP, SB ordered for a preliminary inquiry under Rule 15 of the Delhi Police Punishment and Appeal Rules, 1980 (Rules of 1980) vide order no. 9433-40/CR(SB) dated 22.12.1982 into the conduct of the Petitioner. The preliminary inquiry was conducted and a report was submitted to the DCP, SB.

6. On the basis of the preliminary inquiry, the DCP, SB issued orders for holding a regular inquiry into the conduct of the Petitioner vide order no. 9433-40/CR(SB) dated 24.12.1982. The Inquiry Officer framed a charge- sheet with the approval of the Disciplinary Authority and it was served upon the Petitioner on 22.03.1983. In response, the Petitioner first submitted his resignation and stated that since he ceased to be a police officer he could not be charge sheeted. He then wrote a letter stating that what was alleged against him was correct and he may be removed from service. Later, he pleaded not guilty. The inquiry report dated 04.04.1983 was submitted by the inquiry officer, holding the Petitioner guilty of the charges.

7. On the basis of the said inquiry report, the DCP eventually dismissed the Petitioner from service with immediate effect on 24.08.1983. It further held that the suspension period would be treated as not having spent on duty. The Petitioner made representations and revisions, which were rejected. Hence, he approached this court in Writ proceedings which were transferred to the CAT and registered as TA404/86. The Tribunal by order dated 02.01.1987 held that once an officer pleads "not guilty", the inquiry officer is bound by Rule 16 (iii) of the Rules of 1980 to record evidence in support of the charge. The Respondents were directed by the Tribunal to initiate fresh inquiry in accordance with the Delhi Police Act, 1978 (DP Act) , along with the direction to reinstate the Petitioner from the date of dismissal, but to consider whether to keep him under suspension till the disciplinary proceedings are completed.

8. On 25.03.1987, an inquiry was ordered to be held in accordance with the order of the Tribunal in TA 404/86. The summary of allegations levelled against the Petitioner on 01.04.1987 read as follows:

"It is alleged that you SI Jagdish Ram Kataria, No. D/1774(under suspension) while posted in Com. Section at Special Branch, Delhi in November, 1982 were asked to report for duty in the Special Branch Control Room at 10 AM on November 17, 1982 you wrote back that you would attend the office during the

holiday i.e. November 19, 1982 only if clear instructions regarding the grant of compensatory leave or compensatory pay for the holiday were issued. On the same day Shri K.K. Chhabra, the then ACP/IV called you and directed you to comply with the orders of the DCP/SB-i issued vide his order no. 3681-99/Z, dated 16-11-82 issued this respect. In spite of noting the DCsP/Orders to report on duty in the Special Branch Control Room on November 19, you wilfully absented yourself from the duty on November 19. Besides on December 18, 1982 you were found circulating Cyclostyled copy of leaflets in Hindi among the staff of Special Branch highlighting the demands of Police Personnel and instigating them to form Union of Delhi Police Officers and men."

The Petitioner submitted his defence statement on 02.09.1987. After consideration of his reply, the inquiry was held. The report of the inquiry officer was submitted on 07.09.1987, and he was found guilty of the charges. A show-cause notice (No. 9030/CR-SB) dated 18.09.1987 was issued to the Petitioner, conveying tentative agreement with the report of the inquiry officer- a copy whereof was also enclosed. The DCP, Special Branch proposed the punishment of dismissal from service. The Petitioner submitted his reply dated 06.10.1987 in this regard on 09.10.1987, requesting for a personal hearing. Even before any punishment being imposed, he preferred OA no. 1396/87 against the proposed punishment of dismissal. Another OA No. 1370/87 pertaining to another inquiry against the Petitioner was filed by him. Both the OAs were dismissed as being devoid of merit.

9. The DCP, who was the Disciplinary Authority passed an order dated 04.06.1991 dismissing the Petitioner from service. The suspension period was directed to be treated as not spent on duty. Thereafter, the Petitioner approached the Appellate Authority. The contentions raised before the Appellate Authority were that the relied upon documents were not furnished to him, time of 7 days was not given to the Petitioner to submit his defence statement, and; the report of the inquiry officer was submitted before recording of the evidence. He alleged violation of Rule 14(4) of the Rules of 1980 by the inquiry officer. His appeal was dismissed on the ground that the inquiry was initiated by the competent authority i.e. DCP and therefore, there was no violation of Rule 14(4) . He filed a revision against the order of the Appellate Authority, which was also dismissed on same grounds.

10. The Petitioner approached the Tribunal vide OA No. 514/1993 against the order of the Appellate Authority. The Tribunal dismissed the OA holding that the inquiry held was in accordance with the procedure prescribed. The CAT did not find any ground to interfere with the findings of the Disciplinary Authority and the Appellate Authority. Consequently, the Petitioner has preferred the present Writ Petition.

11. Learned Counsel for the Petitioner submits that the Disciplinary Authority initiated the inquiry proceedings without allowing the Petitioner an opportunity to reply to the show-cause notice, and appointed an Inquiry Officer without

issuance of charge-sheet. He further submits that the Inquiry Officer violated Rule 16(i) of the Rules of 1980 as he did not grant the Petitioner 7 days time to deal with and refute the allegations.

12. Learned Counsel submits that the departmental inquiry, according to the Rule 14(4) of Rules of 1980, should be initiated by the competent authority under whose disciplinary control the concerned police officer is working. Rule 14 (4) reads as:

"14(4) The disciplinary action shall be initiated by the competent authority under whose disciplinary control the police officer concerned working at the time it is decided to initiate disciplinary action."

The Petitioner submits that he was, at the time, working under the disciplinary control of the DCP, therefore, the DCP was authorised to not only initiate the proceedings, but also to sign the summary of allegations and issue the memorandum of inquiry. However, the Inquiry Officer himself signed and issued memorandum of inquiry, summary of allegations, etc, without having competent jurisdiction, he had violated Rule 14(4) of the Rules of 1980.

13. Ld. Counsel further submits that the charges against the Petitioner were framed by the Inquiry Officer when there was no evidence available in the enquiry proceedings files in support of the allegations, which is in violation of Rule 16 (iv) (b) of the Rules of 1980. He further submits that the Inquiry Officer denied summoning of the Defence Witnesses(DWs) and, as such, violated the right of defence of the Petitioner and infringed the fundamental rights protected under Articles 14, 16, 21, and also Article 311(2) of Constitution of India.

14. Ld. Counsel further submits that the Appellate Authority dismissed the appeal of the Petitioner after considering the comments of the Disciplinary Authority. The said comments were not provided to the Petitioner and hence, no opportunity was given to him to reply to the comments. The Petitioner has relied upon Nathaniel Ghosh vs. Union Territory of Arunachal Pradesh, 1980 (2) SLR 733; and Municipal Committee, Dharamshala, Distt. Kangra vs. State of Himachal Pradesh, 1979 (2) SLR 17 on this aspect. The Petitioner submits that the Appellate Authority passed the order of dismissal without applying its own mind and without consideration of his representation.

15. Learned Counsel of the Respondents has supported the impugned order. He submits that as per procedure there is no requirement to provide the Petitioner with time of 7 days for him to reply at the time of serving of the summary of allegations. The Petitioner was served with the charge-sheet on 12.08.1987 against an acknowledgment and he was given a time of 7 days to submit his list of DWs, of which he availed. He submits that the enquiry was conducted in accordance with the rules of 1980, as found by the CAT.

16. Ld. Counsel further submits that the departmental inquiry was ordered by the competent authority- viz. the DCP, SB. Initially, Sh. K.C. Behl (ACP, SB) and

subsequently, Sh. Sukhdev Singh (ACP, SB) were appointed as the Inquiry Officer by the DCP. Both the Inquiry Officers were competent and had jurisdiction and, therefore, there was no violation of the Rules.

17. Ld. Counsel submits that the Inquiry Officer framed the charges against the Petitioner after consideration of the record available and the statements of the witnesses, on 07.09.1987. Thereafter, the same was also tentatively approved by the competent authority i.e. the DCP on 18.09.1987. He further submits that the Appellate Authority decided the appeal after due consideration of the records and statement of witnesses, and the report of the Disciplinary Authority.

18. Having heard the learned counsel for the parties, perused the documents on record and order of the Tribunal, this Court is of the opinion that the order of the Tribunal cannot be found fault with and does not call for interference in these proceedings. The original records of the enquiry proceedings were produced in the Court by the Respondents and retained by the Court. The same has been perused.

19. It is well settled that finding of facts recorded in Departmental proceedings would not be interfered with by the Courts/Tribunals except on certain well established grounds, including the violation of the principles of natural justice, or where the finding is based on no evidence, or the finding is arbitrary i.e. it cannot be arrived at on the basis of the evidence on record. The Supreme Court in *State Bank of India Vs. K.C. Tharakan and Others*, ; held as follows:

"23.....As it has been finally held in the earlier Writ Petition that the charge was maintainable, all that was required to be seen was whether the principles of natural justice had been followed and whether there was sufficient evidence to show that the charge was proved. In this case, there was no question of violation of principles of natural justice. The Respondent had been given the charge-sheet. He had been given an opportunity to appear before the Inquiry Committee. He chose to stay away from the inquiry proceedings. He was thereafter given a show- cause-notice. He replied to that show-cause-notice. His reply was considered and he was thereafter discharged. He has then filed an Appeal. The Appeal filed by the Respondent was also dismissed. Even before the Industrial Tribunal he remains absent without any just cause. Thus there was no violation of the principles of natural justice. In the inquiry proceedings evidence had been lead to show that the Respondent had mis- conducted himself. It is on the basis of the material available that the Inquiry Officer had submitted his report. It is on the basis of material available that the Industrial Tribunal passed its Award. Thus, the interference by the High Court was uncalled for."

20. The main contention of the Petitioner is that the enquiry proceedings are vitiated, as they were not conducted according to the procedure established under the Rules of 1980. He submits that the illegality began from the appointment of the Inquiry Officer. He claims that the competent authority had not signed on the summary of allegations, and only a provisional list of witnesses

was provided to him. He submits that the memorandum of inquiry was issued without issuance of a charge-sheet.

21. During the proceedings before the Tribunal, or, even before this Court, the Petitioner has not challenged the competence of the DCP to initiate the proceedings. From the records, it is evident that the inquiry proceedings were initiated by the competent authority i.e. the DCP, thereby authorising the inquiry officer to conduct the inquiry. Rule 16 (i) of the Rules of 1980 states that the accused has to appear before the Disciplinary Authority, or the inquiry officer, if appointed. It reads as follows:

"Rule 16(i) : A police officer accused of misconduct shall be required to appear before the disciplinary authority, or such Enquiry Officer as may be appointed by the disciplinary authority. The Enquiry Officer shall prepare a statement summarising the misconduct alleged against the accused officer in such a manner as to give full notice of him of the circumstances in regard to which evidence is to be regarded. Lists of prosecution witnesses together with brief details of the evidence to be led by them and the documents to be relied upon for prosecution shall be attached to the summary of misconduct. A copy of the summary of misconduct and lists of prosecution witnesses together with brief details of the evidence to be led by them and the documents to be relied upon for prosecution will be given to the defaulter free of charge. The contents of the summary and other documents shall be explained to him. He shall be required to submit to the enquiry officer a written report within 7 days indicating whether he admits the allegations and if not, whether he wants to produce defence evidence to refute the allegations against him."

According to Rule 16(i) , the inquiry officer is authorised to prepare the summary of allegations, etc. Therefore, the inquiry officer was authorised and had the jurisdiction to issue the charge memorandum and sign the summary of allegations. The argument that the inquiry proceedings were violative of Rule 14(4) of the Rules of 1980- as the Inquiry Officer was not competent to sign the summary of allegations and to issue memorandum of inquiry, has no merit.

22. It is alleged by the Petitioner that the Inquiry Officer denied the opportunity to the Petitioner to summon of DWs, and that he selected 7 witnesses at random from the list of DWs submitted by the Petitioner. Rule 16(v) of the Rules of 1980 gives discretion to the Inquiry Officer to hear the DWs he considers relevant and refuse the ones irrelevant or unnecessary. Rule 16(v) is enumerated as follows:

"16(v) : The accused officer shall be required to state the defence witnesses whom he wishes to call and may be given time, not exceeding two working days, to prepare a list of such witnesses together with the summary of the facts they will testify and to produce them at his expense in 10 days. The enquiry officer is empowered to refuse to hear any witness whose evidence he considers to be irrelevant or unnecessary in regard to the specific charge."

(Emphasis Supplied)

The aforesaid rule states that the accused is to produce his DWs and bear the expenses of the same.

23. The records make it abundantly clear that the Petitioner was given sufficient/ ample opportunity to produce his DWs. He even requested the Inquiry Officer to summon them and, accordingly, they were asked to be present for the proceedings. The DWs did not present themselves for the examination as they did not know of the facts of the case, or even the Petitioner. The order sheet dated 26.08.1987 of the inquiry proceedings establishes that the DWs were summoned by the inquiry officer. It reads as follows:

"The defaulter is present. None of the 7 Dw"s who were summoned by the E.O has come. All of them have declined to appear as DW"s on the grounds, that they have no knowledge about the facts of case and do not want to oblige thee defaulter. The defaulter has submitted an application requesting the E.O to summon all the DW"s. He has already been informed in writing that all other witnesses have got no relevance whatsoever with the DE. The request of the defaulter has been considered and rejected on the grounds already....."

The claim of the Petitioner that he was not given opportunity to examine DWs is not established. The abovementioned order sheet shows that the DWs were summoned, but they refused to participate as they had no knowledge of the facts of the case. He also submits that the inquiry officer selected the DWs at random from the list which he gave, but he has nowhere specified which witness/ witnesses, who were not summoned by the Inquiry Officer, were relevant to his case and how it would have made a difference to his case. The Petitioner, while making the above submissions, has not shown that any prejudice has been suffered by him as the DWs did not produce themselves for the examination.

24. The Petitioner also claims that he was not given an opportunity to submit a reply- his defence statement. From the perusal of the record, it is apparent that the Petitioner was served with the charge on 12.08.1987; 7 days were given to submit his defence statement, list of DWs and the documents he wants to produce in his defence. Thereafter, on 20.08.1987, he submitted his defence statement along with a list of 27 DWs and demanded for three documents from the department. The three documents which the Petitioner asked for were not record with the Inquiry Officer. They were:

- i. The daily diary dated 19.11.1982: which was not available, as the life of the daily diary is only three years (maximum) .
- ii. The photo copy as well as negative of writing of 20-12-82 which was not available as the objectionable writing on the Pillar of PHQ gate were with chalk and it could not be stored for any period.
- iii. The affidavit of the Petitioner. The Petitioner was required to give reasons justifying his request for supplying of the copy of the affidavit. There is nothing to show that he gave any justification for the same. Even before us, the

Petitioner has not advanced any specific argument in this regard. This issue was not perused by the Petitioner after the response of the DCP, SB-I.

25. After the defence evidence was closed, the Petitioner was provided an opportunity to submit a defence statement; the same was submitted on 02.09.1987. The order sheet dated 02.09.1987 of the Inquiry Officer records that the Petitioner submitted his defence. After consideration of the defence statement, the Inquiry Officer submitted his report to the DCP on 07.09.1987 holding him guilty. DCP, SB tentatively agreeing with the findings of the Inquiry Officer, issued a show-cause notice dated 18.09.1987. The Petitioner submitted his reply dated 06.10.1987 on 09.10.1987, availing the opportunity to make his defence statement. The show-cause notice states as:

"Tentatively, agreeing with the findings of the EO (copy of the finding enclosed) I provisionally propose to dismiss SI Jagdish Ram Kataria No.D/1774(under suspension) from the force. SI Jagdish Ram Kataria No.D/1774(u/s) is, therefore, called to show cause as to why the proposed punishment of dismissal should not be inflicted upon him and his suspension period from 24.08.1983 to the date of final order may not be treated as not spent on duty. He should submit his reply within 15 days of the receipt of this notice, failing which it would be presumed that he has nothing to say in his defence and the case would be decided on merits."

The above establishes that the Petitioner was given an opportunity to submit his defence at every stage of the Disciplinary Enquiry (DE) proceedings. He was given an opportunity before the Inquiry Officer submitted his report and, thereafter, again when the DCP found him tentatively guilty of charges and show-cause notice was served. Therefore, the claim of the Petitioner that he was not provided with adequate opportunity to represent himself cannot be accepted.

26. The findings of the Inquiry Officer dated 07.09.1982 are detailed, duly supported by evidence led by all the departmental witnesses. During the DE proceedings, the Inquiry Officer examined 10 witnesses to establish the charges against the Petitioner. The charges in respect of distribution of cyclostyled copies of leaflets and disobedience towards the order of the DCP had been proved beyond doubt; statement of the police officer, who had seen the Petitioner writing objectionable things on the entrance of the PHQ, was also recorded. Hence, the Inquiry Officer established the charges on the basis of the evidence recorded by him. The Petitioner's contention that the charges levelled against him were not proved with any evidence is baseless, as there was sufficient evidence on record to return the finding of guilty of the Petitioner of the aforesaid charges. It is well settled that it is sufficient, if there is some evidence, to establish the charge levelled against the delinquent. The standard of proof in a departmental proceeding is not as high as that in a criminal trial. The standard of proof applicable in a DE is that the charge should be established on preponderance of probability and not "beyond all reasonable doubt".

27. The Petitioner has further argued that the Appellate Authority dismissed his appeal on the basis of the comments and the records of the DE. While making his submission he relied on Nathaniel Ghosh (supra) and Municipal Committee, Dharamshala, Distt. Kangra (supra) , wherein the Courts ordered the Appellate Authority to give detailed reasoning while dismissing an appeal, and not just a report consenting with the DE report. In the Oriental Bank of Commerce and Another Vs. R.K. Uppal, , the Supreme Court held as follows:

"29. Having discussed the matter as above, the appellate authority held that on consideration of the inquiry record and facts and circumstances of the case, the findings and the order dated February 14, 2004 passed by disciplinary authority are based on evidence brought on record of inquiry and not founded on past record or any other matter not connected with inquiry as alleged by the delinquent in the appeal. Consequently, the appellate authority concurred with the view of the disciplinary authority and found no justification to interfere with the penalty awarded by the disciplinary authority.

30. The order of the appellate authority, by no stretch of imagination can be said to suffer from vice of lack of reasons. We answer Question (2) in the negative.

31. In our view, the High Court was clearly in error in setting aside and quashing the order dated June 4, 2004 passed by the appellate authority and in directing the appellate authority to pass a reasoned order after giving an opportunity of hearing to the Petitioner (Respondent herein) "

28. The Supreme Court, in R.K. Uppal (supra) , has held that if the Appellate Authority has agreed with the findings of the DE after considering DE's report and perusal of the evidence on record, it is not required to give any reasoning while dismissing the appeal. The dismissal of the appeal will not suffer for the lack of giving reasons. In the present case, the Appellate Authority after considering the comments and the record of the inquiry proceedings had dismissed the appeal. Following the decision of R.K. Uppal (supra) , this argument of the Petitioner cannot be sustained and is, accordingly, rejected.

29. From the above discussion, we conclude that there is no arbitrariness in order of the Disciplinary Authority and, principles of natural justice have been adhered to by the Inquiry Officer. The Disciplinary Authority has proved both the charges on preponderance of probability, for which sufficient evidence had been led during the DE proceedings.

30. Accordingly, we find no reason to interfere with the order of the Tribunal, which is, hereby, upheld. The Writ Petition is dismissed in above terms.