

(2009) 11 DEL CK 0158

In the Delhi High Court

Case No : Writ Petition (C.) No. 6919 of 2008

Jagmohan Singh

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 05-11-2009

Acts Referred:

Delhi Police (Punishment and Appeal) Rules, 1980 — Rule 16(3)

Citation : (2009) 11 DEL CK 0158

Hon'ble Judges : Vipin Sanghi, J;Anil Kumar, J

Bench : Division Bench

Advocate : Anil Singal, for the Appellant; Rohit Madan, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has impugned the order dated 20th July, 2007 in O.A No. 1443/2006, Ct. Jagmohan Singh v. Government of NCT of Delhi and Ors. holding that there was no procedural infirmity in the enquiry conducted by the respondents and partly allowing the petition to the extent directing the respondent to make the punishment order dated 11th March, 1996 consistent with Shakti Singh's case and to issue a corrigendum in respect thereof.

2. The petitioner is a constable in Delhi Police and a major penalty of permanent forfeiture of three years service with reduction in pay and also the loss of increment and postponing all future increments was awarded to him pursuant to an enquiry conducted against him. The petitioner while posted in VI Battalion Delhi was temporarily deputed to E Block, Security Police line to perform the personal security officer (PSO) duties. The petitioner was posted along with another constable Somvir Singh and on 3rd October, 1994 when it was checked by Inspector Bhom Singh, checking officer, constable Somvir Singh was found absent from duty. It had transpired that he had not reported for duty and absented himself unauthorisedly, however, the petitioner got the pistol of constable Somvir Singh issued from the malkhana of P.S. Vasant Vihar along with his own weapon. Constable Somvir Singh for whom the pistol was got issued by

the petitioner, when contacted had contended that he had gone with Ms.Radhika Kapoor to her school, however, it had also transpired that it was a holiday in the school on that day. In the circumstances, the statements made by the petitioner were found to be false and the falsity of the statement could also be inferred from the entries made in the daily diary. The allegation against the petitioner was that he tried to misguide the checking officer by telling lies and he also tried to shield his colleague constable Somvir Singh. Issuance of pistol of Constable Somvir Singh in addition to his own along with 24 cartridges also could not be doubted.

3. The departmental enquiry was thus initiated against the petitioner for major penalty and on the basis of the evidence recorded and the documents, the charges against the petitioner were established and punishment order dated 11th March, 1996 was issued. From 1996 till 2005 no appeal was filed by the petitioner and after about 9 years he filed the appeal on 6th June, 2005.

4. During the pendency of the appeal, the petitioner filed a petition being O.A. No. 2750/2005 before the Central Administrative Tribunal, Constable Jagmohan Singh v. Government of NCT of Delhi contending that his appeal is not being considered. In the appeal the petitioner had not disclosed grounds for not filing the appeal from 1996 till 2005. The petitioner had, however, contended that the copy of the punishment order was not handed over to him till 2005 and, therefore, he was prevented to file any appeal before the statutory authority.

5. Since the appeal was filed after 9 years and was pending before the appellate authority, the Central Administrative Tribunal disposed of the petition without expressing any opinion on the merit of the case and directed the respondents to dispose of the appeal within the period of three months by order dated 14th December, 2005.

6. Pursuant to the order passed by the Central Administrative Tribunal the appeal of the petitioner was dismissed by order dated 2nd March, 2006 holding inter-alia that the petitioner was hand in glove with the absentee constable Somvir Singh. While dismissing the appeal of the petitioner, the appellate authority also noted that the petitioner has not come out with anything relevant except seeking mercy and in the circumstances appellate authority did not interfere with the punishment order passed by the disciplinary authority imposing the penalty of permanent forfeiture of three years service with reduction in pay and also with loss of increment and postponing all future increments.

7. The petitioner challenged the order of the appellate authority dated 2nd March, 2006 by filing the petition being O.A. No. 1443/2006 before the Central Administrative Tribunal, titled Jagmohan Singh v. Government of NCT of Delhi and Ors. which has also been dismissed by the Tribunal by order dated 20th March, 2007 holding that though the report of the Inspector Bhom Singh was allegedly not served upon the petitioner but that report concerns only with the statement made by PW.5 according to which the petitioner himself got issued two

revolvers and he had not seen constable Somvir Singh and the version given by constable Somvir Singh that he had abruptly fallen ill and left the place is not countenanced by the entries in the daily diaries. In the circumstances, it was held that even in the absence of the report of Inspector Bhom Singh, the testimonies of PW.5 and PW.10 clearly indict the petitioner and misconduct on the part of the petitioner is established and such a misconduct does not stand negated on account of non supply of alleged documents and did not prejudice the petitioner in any manner and consequently on this plea the punishment imposed against the petitioner cannot be quashed.

8. The learned Counsel for the petitioner has emphasized that the whole enquiry proceeding are vitiated as the copy of the report of Inspector Bhom Singh was not given which has been proved as exhibit PW.6/A which was prepared by the said constable prior to departmental enquiry. It is asserted that the said document was not incorporated in the list of documents nor any depositions mentioned in the list of DWs to be relied on and consequently the material which was not relied on has been imported during the course of departmental enquiry and the mandatory provisions of police rules applicable to Delhi police officials have been violated and consequently there is deprivation of right of reasonable opportunity to the petitioner and the principles of natural justice have been violated.

9. The learned Counsel for the petitioner has also relied on a decision of Central Administrative Tribunal reported as 2000(3) CAT 40, Sh. Vijay Singh v. Government of NCT of Delhi and Ors. holding that if the enquiry officer disposes a case by a generalized statement and rejects the statement of defence without considering it, the enquiry report shall be vitiated and on the basis of such report, punishment cannot be awarded.

10. Having heard learned Counsel for the parties and perused the record, including the original record of the Departmental Enquiry, which has been produced by learned Counsel for the respondents, we find no merit in the submissions of the petitioner. The case of the petitioner is distinguishable, from that of Vijay Singh (Supra) as the enquiry officer has considered the cogent evidence which is sufficient to prove the guilt of the petitioner and, consequently, on the basis of the ratio of the precedent relied on by the petitioner, it cannot be held that the order awarding punishment is vitiated in any manner. The reliance has also been placed by the learned Counsel for the petitioner on Kuldeep Singh Vs. The Commissioner of Police and Others, holding that Rule 16(3) of Delhi Police (Punishment and Appeal) Rules, 1980 can be invoked only when the presence of the witness cannot be procured without undue delay, inconvenience or expenses. However, in the case of the petitioner the witnesses were examined in the presence of the petitioner and those witnesses have also been cross examined on behalf of petitioner and on the basis of the testimonies of the said witnesses, a probable finding has been arrived at which cannot be said to be vitiated on the ground that the copy of the report which was proved by the

witness PW.6, had not been supplied to him.

11. This is not disputed that the punishment order was passed on 11th March, 1996. For about 9 years no plea was raised by the petitioner that the enquiry against him was vitiated on account of non supply of report prepared by PW.6. This has also not been disputed that when the appeal was filed by the petitioner in 2005, it was found that from the record of the enquiry proceedings, certain papers were missing. This Court has also perused the statement of Inspector Bhom Singh recorded on 19th August, 1995. He deposed that he had filed the report prepared by him pursuant to the checking done at the residence of P.P, Mrs. Kapoor. He reiterated all the statements made by him and he also verified the report which was on the file which was exhibited as PW.6. He stated that the said report was written on 3rd October, 1994. The said witness was cross examined by the defence assistant on behalf of petitioner. In the cross examination of said witness he deposed categorically that the petitioner had accepted his guilt before him. It was not suggested to the said witness that the copy of the report had not been given to him or that the contents of the report were not correct or not within his knowledge. In the written statement dated 11th December, 1995 filed by the petitioner before the enquiry officer after the evidence of the respondents had been recorded, he did not contend that the report of Inspector Bhom Singh cannot be relied on as the copy of the same was not given to him. The petitioner had rather contended that during the course of departmental enquiry eight witnesses were examined, however, their testimony is not sufficient to establish the alleged misconduct of the petitioner. The enquiry officer in his report dated 1st January, 1996 has not relied on the report exhibit PW.6 and has rather relied on the statement of Constable Kasim PW.5 who had deposed that the petitioner got the pistol plus twelve cartridges of Constable Somvir Singh also issued to him, apart from his own pistol and cartridges. Reliance was also placed on the statement of PW.10 that when Constable Somvir Singh did not report for duty and when the checking officer had asked the petitioner he had misguided the checking officer by telling that the defaulting constable Somvir Singh has gone to school with his P.P, Ms.Radhika Kapoor. On checking Radhika Kapoor was found to be present at the residence. Relying on the testimonies of PW.5 and PW.10 the enquiry officer inferred about the misconduct of the petitioner.

12. From the perusal of the report of the enquiry officer and the order passed by the disciplinary authority and the appellate authority it is apparent that the petitioner is not prejudiced on account of alleged non supply of the report of Inspector Bhom Singh and in the circumstances the petitioner cannot succeed on the ground, taken after 9 years of punishment order passed against him that the copy of the report was not supplied to him and, therefore, the principles of natural justice have been denied and he has been prejudiced. The production of the earlier report by Sh. Bhoom Singh was neither essential to prove that the charge, nor was it so considered by the Enquiry Officer, in view of the fact that PW5 and PW 10 had independently been examined in the enquiry reproceedings.

The fact that the papers from the file of the enquiry officer were also found missing after the appeal was filed by the petitioner after 9 years and an enquiry was initiated against him also cannot be ignored.

13. The tribunal has considered this plea of the petitioner and has rejected the same and in the facts and circumstances the observation of the tribunal that since the report concerns only the defence statement made by PW.5 and consequently the petitioner was not prejudiced cannot be faulted. In the totality of facts and circumstances the petition, is, therefore, without any merit and it is therefore dismissed. Parties are however, left to bear their own costs.