

(2013) 08 DEL CK 0373

In the Delhi High Court

Case No : Writ Petition (C) 2091 of 2002

Krishan Kumar and Another

APPELLANT

Vs

C.P. and Others

RESPONDENT

Date of Decision : 22-08-2013

Acts Referred:

Citation : (2013) 08 DEL CK 0373

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Anil Singal, for the Appellant; Ruchi Sindhwani, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—Heard learned counsel for the parties. Original record of inquiry perused.

2. Relevant facts to be noted are that on August 20, 1996, Inspector Satyaveer submitted a report to the ACP, Public Grievances Cell, Delhi Police, recording therein that on August 19, 1996, he had made a surprise check of the staff posted at Ghazipur Check Post at 11.30 p.m. and had noted that Ct. Krishan Kumar had parked his motor cycle at the site of the National Highway at a distance of 1/2 kilometre from the Ghazipur Check Post and was seeing collecting money from truck drivers coming from Uttar Pradesh side. He saw three trucks lined up, in a queue, and Ct. Krishan Kumar was in conversation with the drivers. On seeing him, Ct. Krishan Kumar tried to escape but he caught him. Ct. Krishan Kumar told him that Ct. Krishan Pratap was also with him but had run away. In the process, the three truck drivers fled with the trucks. He then proceeded towards Ghazipur Check Post along with Ct. Inderjit Singh and saw Ct. Jaibir and Ct. Bala Krishnan who had put up a barricade in the middle of the road and he saw them dealing with the truck drivers by stopping the trucks.

3. Based on the aforesaid report dated August 20, 1996 submitted by Inspector Satyaveer, the Competent Authority drew up a summary of allegations, as

required by Delhi Police (Punishment and Appeal) Rules, 1980 alleging therein as under:-

SUMMARY OF ALLEGATION

It is alleged against you Ct. Krishan Kumar 1553/E, Ct. Krishan Pratap 1452/E, Ct. Balakrishnana 1756/E and Ct. Jaibir 1588/E that on 19.8.96 a surprise checking was conducted by Inspector Satyaveer Singh (Vigilance) East along with Ct. Inderjeet. During the checking at about 11.30 p.m. it was found that Ct. Krishan Kumar 1553/E had stopped a Government Vehicle i.e. Motor Cycle No. DL-1S-J-5469 at the distance of 1/2 k.m. away from Ghazipur check post. Three trucks were also seen in queue and he was collecting money from the truck drivers, coming from the side of U.P. On seeing the Inspector, he tried to flee but he was followed by the Inspector. On inquiry, Ct. Krishan Kumar told that Ct. Krishan Pratap No. 1452/E was also with him in this malpractice who had run away from the spot. It is also revealed that they were conducting the checking without any duty. Further Ghazipur check post was checked and it was found that Ct. Jaibir No. 1588/E and Ct. Balakrishan No. 1756/E had put the barricades in the middle of the road and both were busy in the dealings with truck drivers, by stopping the trucks unauthorizedly.

The above act on the part of Ct. Krishan Kumar 1553/E, Ct. Krishan Pratap 1452/E, Ct. Jaibir Singh 1588/E and Ct. Balakrishan No. 1756/E amounts to grave misconduct, corrupt activities and unbecoming of a police officer, which renders you liable to be dealt with departmentally under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980.

4. Inspector Ramjanam Singh was appointed as an Inquiry Officer who examined Inspector Satyaveer Singh, Ct. Inderjit Singh as also Ct. Dalvir Singh as witnesses of the department.

5. Inspector Satyaveer Singh PW-1, deposed that he had submitted a report on August 19, 1996 which was correct. Ct. Inderjit Singh PW-2, deposed that he was accompanying Inspector Satyaveer Singh on night patrol at about 11 p.m. on August 19, 1996 both of them were at Ghazipur Check Post. Inspector Satyaveer Singh told him to slow down the vehicle which he was driving and he saw Ct. Krishan Kumar in the company of Ct. Krishan Pratap. Both of them were taken towards the Check Post where he saw Ct. Bala Krishnan. Inspector Sahab spoke to him, but he did not know what the talk was. Ct. Dalbir Singh deposed that he was producing the roster/duty chart as per which Ct. Jaibir and Ct. Bala Krishnan were deputed for duty at the Ghazipur Check Post (E-79) from 10 p.m. to 7 a.m. on August 19, 1996 and Ct. Krishan Kumar and Ct. Krishan Pratap were deputed for general beat duty from 8 p.m. to 8 a.m.

6. It is apparent that the Inquiry Officer was lackadaisical in conducting the inquiry proceedings for the reason Inspector Satyaveer Singh simply deposed that he had submitted a report on August 19, 1996 contents whereof were correct. The Inquiry Officer did not bother to get the report exhibited. Thus, it

could well be argued as to which was the report Inspector Satyaveer Singh spoke about.

7. As required by the Delhi Police (Punishment and Appeal) Rules, 1980 a charge was drawn up, which we find mirrors the summary of allegations. It was followed by defence evidence being recorded and we note that three witnesses were examined in defence. We are not noting the testimony of the three defence witnesses because nothing turns thereon.

8. Inspector Ramjanam Singh submitted a report of inquiry and in view of the evidence led, opined that the charge against the four accused constables were not proved.

9. The Disciplinary Authority considered the report of the Inquiry Officer and on May 21, 1997 opined that there were some irregularities/omissions in the departmental inquiry and hence it did not agree with the findings of the Inquiry Officer. It was directed that a fresh inquiry be conducted. Shri R.S. Kataria, ACP was appointed as the new Inquiry Officer.

10. Record would reveal that Shri R.S. Kataria, ACP did not conduct any fresh inquiry. He did not examine any witness. He never called upon the four delinquent officers to appear before him. He simply recorded that the evidence recorded by the previous Inquiry Officer would reveal that Inspector Satyaveer Singh did not record statements of any truck drivers who were allegedly stopped and from whom money was being allegedly extorted. The registration number of the trucks were not noted. No personal search of either of the four police officers was conducted to recover the allegedly illegal money extorted. Ct. Inderjit Singh has not corroborated the statement of Inspector Satyaveer Singh; and lastly there were no independent witnesses. For reasons best known to him, Sh. R.S. Kataria conducted a secret inquiry and in respect of which he wrote in his report dated June 24, 1998, that even the same revealed no misdemeanour committed by either of the four police constables.

11. The Disciplinary Authority, overlooking the fact, that Sh. R.S. Kataria, ACP had not conducted any inquiry, with reference to the report of the first Inquiry Officer, which report had already been opined to be suffering from technical defects, penned a note of disagreement on January 05, 1998, recording therein that Ct. Krishan Kumar fleeing from the spot was evidence of his mala fide conduct. He recorded that by putting up barricades in the middle of the road Ct. Jaibir Singh and Ct. Bala Krishnan did an illegal act. Recording aforesaid reasons for disagreement on January 05, 1998, the Disciplinary Authority forwarded the same to the four police officers along with the report.

12. Considering their response and rejecting the same, holding all four guilty, penalty of permanent forfeiture of one year approved service for a period of four years entailing proportionate reduction in pay was inflicted. The penalty order is dated May 13, 1998, against which appeal filed by the four police officers was rejected by the Appellate Authority on February 26, 1999.

13. The four delinquent officers filed a common Original Application No. 1165/1999 before the Central Administrative Tribunal which has been dismissed vide impugned decision dated April 09, 2001.

14. Whereas Ct. Bala Krishnan and Ct. Jaibir Singh have joined together in filing W.P.(C) 2145/2002, the other two constables had joined together in filing W.P.(C) 2091/2002.

15. A perusal of the impugned order dated April 09, 2001, would reveal that three contentions were urged to challenge the penalty levied. The first was that as per Rule 8(d)(ii) of the Delhi Police (Punishment and Appeal) Rules, 1980 the penalty levied inasmuch as it amounted to a double penalty. The second contention urged was that Rule 15(2) of the Delhi Police (Punishment and Appeal) Rules, 1980 was violated because the alleged offence amounted to a cognizable penal offence under the Prevention of Corruption Act and thus approval had to be sought from the Additional Commissioner of Police before initiating the departmental proceedings. Lastly it was urged that it was a case of no evidence, for the reason the first inquiry report submitted had already been rejected by the Disciplinary Authority and there was no second report of inquiry as properly understood because the second Inquiry Officer did not examine any witness. The additional limb of the argument was that even with reference to the evidence recorded by the first Inquiry Officer no evidence surfaced to nail the guilt of the four accused persons.

16. The Tribunal had rejected all the pleas urged.

17. At the hearing today, learned counsel for the petitioners has pressed only two arguments. The first pertains to the nature of the penalty in the context of Rule 8(d)(ii) of the Delhi Police (Punishment and Appeal) Rules, 1980 and the second being that it is a case of no evidence.

18. We take up the second argument first for the reason if the same succeeds, no useful purpose would be served in setting aside the penalty and remanding back the matter to the Disciplinary Authority to pass a fresh penalty order. We note that in respect of the first argument, the issue stands concluded against the department and in favour of the petitioners as per the decision of a Division Bench of this Court reported as Shakti Singh Vs. Union of India (UOI) and Others

19. Pertaining to the second contention, which needs to be dealt with as the first contention, from the summary of allegations we find that whereas indictment against Ct. Jaibir Singh and Ct. Bala Krishnan was for putting up the barricades on the road and stopping trucks, the indictment against Ct. Krishan Kumar and Ct. Krishan Pratap was of unauthorizedly stopping trucks 1/2 kilometer away from the check post and extorting money from the truck drivers.

20. As noted above, Ct. Inderjit Singh did not depose a word supporting the indictment. He only deposed being in the company of Inspector Satyaveer Singh and being present at the Ghazipur Check Post at 11.00 p.m. He simply deposed

of having seen Ct. Krishan Kumar in the company of Ct. Krishan Pratap standing together and that when they all reached the check post he saw Inspector Satyaveer Singh speaking to Ct. Bala Krishnan. He has categorically deposed that he did not hear the conversation.

21. The witness has not deposed to the effect that Ct. Krishan Kumar and Ct. Krishan Pratap had stopped trucks, being 3 in number, and were seen by him talking with the truck drivers. He does not depose that Ct. Krishan Kumar ran away and Ct. Krishan Pratap was with him.

22. As regards Inspector Satyaveer Singh, he simply deposed that he had submitted a report on August 19, 1996 which was correct. Unfortunately, he never proved the report and we find that the report is lying in the file of the Inquiry Officer as an un-exhibited document. As regards the third witness of the prosecution, he simply deposed of the duty place and the duty time of the four constables.

23. Even if we were to look to the first report of the first Inquiry Officer, we find that as per Inspector Satyaveer Singh he saw Ct. Jaibir Singh and Ct. Bala Krishnan having put up barricades at the check post. He further deposed that on seeing him the two police officers stopped their dealings with the truck drivers.

24. Now, if barricades are not to be put at the check post, where they would be put up? Ex facie, Ct. Jaibir Singh and Ct. Bala Krishnan were acting lawfully by putting up barricades at the check post. After putting barricades at the check post they were fully justified in checking the trucks which were entering Delhi. The report which is not exhibited simply records that the two were dealing with the truck drivers. Now, what was "dealing" is not stated in the report. That apart, if the two were extorting money from truck drivers we would have expected Inspector Satyaveer Singh to have conducted a personal search and recorded in the search memo whatever he recovered from the person of the two police officers. His not doing so not only discredits Inspector Satyaveer Singh but makes it a case of no evidence for the reason in his deposition Inspector Satyaveer Singh spoke not a word of what he saw or heard. He simply deposed that what he saw and heard was recorded by him in a report submitted by him on August 20, 1996 and we have already noted that he never exhibited the report. The Inquiry Officer did not confront him with the report to question him whether the one lying in the file was the one he had filed and as regards Ct. Inderjeet Singh who was accompanying Inspector Satyaveer Singh, he deposed not a word in support of the indictment.

25. Thus looked at from any angle there is just no just evidence against Ct. Bala Krishnan and Ct. Jaibir.

26. As regards Ct. Krishan Kumar and Ct. Krishan Pratap we find that no personal search of the two was conducted and for parity of reasoning there would be no evidence against said two constables as well; additionally for the reason neither was the number of any truck noted by Inspector Satyaveer Singh.

27. Even the report of the first Inquiry Officer is to the effect that there is no evidence to bring home the charge.

28. The report is correct.

29. As highlighted hereinabove this report, being the first, was rejected by the Disciplinary Authority requiring a fresh inquiry to be conducted. Fresh inquiry was never conducted. The second Inquiry Officer made a reference to the evidence already recorded by his predecessors and submitted a report stating that the charge did not sustain itself in view of the evidence led. The Disciplinary Authority overlooked the fact that he could not rely upon the evidence led at the first inquiry which he had already rejected and based thereon pen a note of disagreement, for the reason on the earlier occasion the same inquiry proceedings was opined to be suffering from material defects.

30. Under the circumstances it has to be held that there is no application of mind by the Disciplinary Authority and it is a case of no evidence.

31. The two writ petitions are allowed.

32. Impugned penalty order dated May 13, 1998 and impugned Appellate Authority's order dated February 26, 1999 are quashed.

33. The penalty which has been implemented would require corrective action to be taken by giving the petitioners the salary, with increments, which they would have earned in normal course. If as a result of the penalty levied promotion of the petitioners stands adversely impacted, corrective action would be taken as required by law. If petitioners earn promotion they would be entitled to consequential benefits except actual differential pay. We clarify, that notionally they would be placed in the scale applicable and salary paid from the date they would assume charge of the promotion post.

34. Compliance be made within eight weeks from today. No costs.