
(2009) 04 DEL CK 0234

In the Delhi High Court

Case No : Writ Petition (C) No. 3714 of 2003

Mithilesh Kumar Singh

APPELLANT

Vs

Lok Sabha Secretariat

RESPONDENT

Date of Decision : 20-04-2009

Acts Referred:

Citation : (2009) 04 DEL CK 0234

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : R.K. Saini, for the Appellant; Maninder Acharya, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shali, J.—In this matter notice was issued on 29th May, 2003 on the point as to whether the principle of natural justice have been violated while issuing any show cause notice to the petitioner by the disciplinary authority while disagreeing with the report of the Inquiry Officer.

2. Rule

3. I have heard the learned Counsel for the parties and perused the record carefully. With the consent of the parties, the writ petition is disposed of.

4. The petitioner was a Class-IV employee in the Lok Sabha Secretariat, he was charge sheeted for having violated the Rules of the Lok Sabha Secretariat (Recruitment and Conditions of Service) Rules, 1955. The allegations as per the charge sheet was that the petitioner was found to be in possession of certain official documents at his residence. In addition to this, there was another charge against the petitioner that he was having clandestine meetings with the agents of the enemy country.

5. Be that as it may, out of two charges the Inquiry Officer gave a report exonerating the petitioner of the first charge pertaining to his meeting with the agents of the enemy country, however, so far as the second charge with regard

to being in unauthorized possession of confidential and official documents is concerned, the Inquiry Officer held that the said charge was proved. However, with regard to the charge No. 1 pertaining to the meeting with the agents of the enemy country, the disciplinary authority issued a disagreement note at page 89 the reasons of disagreement with the report of the Inquiry Officer are given as under:

(i) The Inquiry Officer (IO) has not taken cognizance of the document mentioned at Sl. No. 3 of Annexure III of the Charge memorandum dated 05.01.1998 and later substituted with Charge Memorandum dated 04.08.1998 i.e. the written statement dated 19.08.1997 given by the Charged Officer (CO) before the police, that he used to pass on the papers to some persons whose real identity was not known to him and that he was paid some money for the same.

(ii) The IO has maintained that the statements made by the CO in police custody do not have any evidentiary value in disciplinary cases. However it need not be so in terms of the decision of the Supreme Court in CWP No. 14895, Civil Appeal No. 12313 of 1996 arising out of SLP (e) No. 12770 of 1994 D/16.09.1996 in the case of *Kuldip Singh v. State of Punjab and Ors.*

(iii) The IO has also not taken cognizance of the written statement dated 15.01.1998 given by the CO to the disciplinary authority in response to the original charge Memo wherein he had stated more or less the same thing as cited in (i) above except that the used to receive money from persons in exchange of those papers. The CO had, in fact, at that stage appealed for condonation of his ? first and last mistake?.

(iv) The inconsistencies in the evidence given by police witnesses regarding the Boat Club incident and the surveillance on which the IO has entirely based his findings, are not the only parameters by which Article I of the chargesheet could be proved or disproved. In any case the written statements given by the CO to the police and in reply to the chargesheet regarding the Boat Club incident are quite in tune with the police version except for inconsistencies in dates.

(v) There was no motive for the Police to implicate Shri Mithilesh Kumr Sisngh, as has been observed by the IO while upholding Article II of the chargesheet. In consistency, inaccuracy or even contradictory statements of the witnesses have to be considered and evaluated in their proper and overall perspective which has not been done in this case. The five officials from the Delhi Police cited as witnesses in Annexure IV to the Charge Memorandum were never meant for corroborating the surveillance theory. They were produced 2because they were members of the raiding party. In fact in the statement in imputation against the charged officer, it was never claimed that these people were actually carrying out the surveillance.

(vi) The charge at Article I & II of the chargesheet relating respectively to passing on of official papers to Pak IOs and unauthorized possession of official documents are not entirely mutually exclusive. They emanate from the same

statement of imputation and have some bearing on each other. The facts and circumstances of the case on which the Article of Charge No. II has been upheld should have also been an important factor in deciding Charge No. 1.

6. The petitioner (at page 132 of the paper book) had also submitted a reply to the said show cause notice and the disagreement notice. A perusal of the aforesaid representation submitted in response to the show cause notice having been issued to the petitioner itself shows that not only the inquiry report but also the disagreement note of the disciplinary authority along with the findings was given to him.

7. Further the representation of the petitioner submitted on 18th May, 2001 gives a detail response in para 4(i) with regard to the disagreement which are reproduced as under:

(a) In para 4(i), there is reference of my statement dated 19.8.97. The IO has not agreed to the contents of this statement because of the reasons:

(b) That in it, the Police Staff had dictated me to write that I had allegedly passed the documents and took money. But the enquiry, no Police staff confirmed that they allegedly saw me taking money from any Pak staff or they saw me passing documents. The Police PWs even failed to give the dates, car No. time of incident and any document. So it was correct on the part of worthy IO to ignore the contents of statement dated 19.8.97 while drawing findings.

(c) In statement dated 19.8.97, the Police Staff dictated me to write that ?Sh. Vinod had come to my house on 18.8.97 and had left message with my wife that he will come again in the evening. As soon as Sh. Vinod came to my house and when I was passing documents to him, Police came to my house and arrested both of us.

(d) But in the enquiry, all the 5 Police witnesses have clearly admitted that they raided my house after 10 PM on 18.8.97, I was alone and no person was seen with documents or arrested from my house. Hence this statement dated 19.8.97 (Ex.P-3) is not correct. Why I would have accepted of my own in it that Sh. Vinod was at my house. This means the Police first dictated me Ex. P-3 to make out some false case but later on changed their plan for the reasons best know to them. Hence the objection No. 4(i) of worthy DA is untenable and has no basis. The IO is correct to ignore its contents. Perhaps the DA wants to accept only that position of Ex P-3 which suits him to punish me against the law of natural justice.

(e) The other point of disagreement of DA and IO In Para 4(ii) is that this statement dated 19.8.97 in Police custody has evidentiary value when IO disagrees with the same. The DA in support of his version has quoted the judgment of Supreme Court in CWP No. 14895, Civil Appeal No. 12313 of 1996 arising out of SLP (C) 12770 of 1994 dt. 16.9.96 in the case of Sh. Kuldeep Singh v. State of Punjab and Ors.

8. These facts from the record clearly shows that although the notice in the

instant case was issued only limited to the extent to see as to whether the principle of natural justice have been complied with, with regard to the report of the inquiry officer. A perusal of the aforesaid documents or the extracts which has been annexed along with the writ petition clearly shows that the principle of natural justice have been fully complied with. The learned Counsel for the respondent have also drawn my attention to the order dated 8th October, 2001 passed by the competent authority of the respondent dealing with the points which were submitted by the petitioner with regard to the disagreement notice to represent against the disagreement note.

9. In the light of the aforesaid factual matrix, I feel that there is no merit in the submissions of the learned Counsel for the petitioner that there was a violation of principles of natural justice so far as the disagreement note being given by the respondent to the petitioner concerned.

10. It has been strenuously urged by the learned Counsel for the petitioner that although the notice was issued to the respondents on 29th May, 2003 limited to the point of compliance on principles of natural justice but that does not preclude the petitioner to urge other points which have been raised by the petitioner in the writ petition. The petitioner in this regard specifically raised the question of proportionality of punishment which has been imposed on the petitioner. It was sought to be urged by the learned Counsel for the petitioner that even though it is assumed that the charge with regard to the possession of official document was established against the petitioner but these documents, were not in any manner confidential and they were to be published immediately after they were recovered from the response of the petitioner himself. In any case, the imposition of punishment on the petitioner wherein he was deprived of livelihood was shocking in nature and grossly disproportionate to his proved misconduct. For this purpose he sought to reliance in the case titled Bhagat Ram Vs. State of Himachal Pradesh and Others, and Ranjit Thakur Vs. Union of India (UOI) and Others,

11. Per contra, the learned Counsel for the respondent has vehemently contested this plea of the petitioner for two reasons. Firstly, the notice was issued limited to the extent of seeking violation of principles of natural justice in giving disagreement note and any other point could not be raised by the petitioner. Secondly, even on merits, there was nothing on record to show that the punishment was shockingly disproportionate.

12. I have carefully considered the submissions made by the learned Counsel for the petitioner and gone through the record. I am in full agreement with the learned Counsel for the respondent that once the notice is issued limited to a particular point it is only with regard to that point that the matter can be considered. In the instant case admittedly the notice was issued on 29th May, 2003 limited to the extent as to whether there was compliance with regard to the compliance of principle of natural justice with regard to the issuance of disagreement note. No doubt, the petitioner might have raised other points in

the writ petition but since notice was confined only to this point and therefore, it can reasonably be assumed that the Court at the point of time when the notice was issued, did not find favour on issuing notice on other counts on which the petitioner wants this Court to make an inquiry at this belated stage. This is further fortified from the facts that after issuance of notice on 29th May, 2003 the petitioner filed a review application dated 13th December, 2004 wherein one of the prayer of the petitioner was that the respondent should be directed to file the counter affidavit on all points including the merits of the case. This review application was also rejected by the learned Single Judge of this Court by a detailed order on 29th March, 2007. No appeal either against the original order of 29th May, 2003 or against the rejection of review application dated 29th March, 2007 has been taken out by the petitioner to the Division bench, therefore, this matter has been concluded so far as the question or the scope of inquiry by this Court is concerned. On inquiry as has been observed hereinabove there is ample evidence on record that the principle of natural justice with regard to the issuance of disagreement have been fully complied with in as much as in the show cause notice dated 27.4.2001 the points have been specifically incorporated and they have been replied by the petitioner on his representation dated 18.5.2001 have been thereafter considered by the respondents.

13. For the forgoing reasons, there is no merit in the writ petition. So far as the proportionality of punishment is concerned, that cannot be gone into as the notice is confined to only one issue as stated hereinabove. The writ petition is without any merit and accordingly the same is dismissed.