

(2009) 10 DEL CK 0345

In the Delhi High Court

Case No : Writ Petition (Civil) No's. 5649 and 6216 of 1999 and

Mohinder Singh

APPELLANT

Vs

Lt. Governor and Another

RESPONDENT

Date of Decision : 13-10-2009

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 3
Constitution of India, 1950 — Article 226

Citation : (2009) 10 DEL CK 0345

Hon'ble Judges : Madan B. Lokur, J;A.K. Pathak, J

Bench : Division Bench

Advocate : P.P. Khurana, Tamali Wad, Birender Singh, Seema Pandey, in Writ Petition Civil No. 5649/1999, Sujata Kashyap and Anil Sharma, in Writ Petition Civil No. 6216/199, for the Appellant; Sujata Kashyap, Anil Sharma, in Writ Petition (Civil) No. 5649/1999, Public Prosecutor Khurana Tamali Wad, Birender Singh and Seema Pandey, in Writ Petition (Civil) No. 6216/1999, for the Respondent

Final Decision : Allowed

Judgement

A.K. Pathak, J.—Petitioner was working as a Motor Licensing Officer with the State Transport Authority (STC) during the year 1996. A departmental proceeding for major penalty was initiated against him on the allegations that while working as Assistant Secretary, he changed the route of bus No. DL-1P-8001 (previously bus No. DBP-2465) by unauthorisedly issuing a new route permit being No. 039832 dated 24th December, 1992 with the validity period from 24th December, 1992 to 23rd February, 1993, for the route Shalimar Bagh to Shahdara, in spite of the fact that the permit holder was already holding a subsisting permit bearing No. 088821 dated 14th October, 1992 with the validity up to 23rd February, 1993 for the route Bara Tuti to Sahadara. He committed this act clandestinely by using Mr. Ravi Dutt Sharma, LDC working in the STC. On the basis of this permit bus continued to be plied on the changed route till the Enforcement staff intercepted the same in the year 1991 on the basis of a

complaint.

2. Article of charge served on the Petitioner reads as under:

That the said Shri Mohinder Singh, M.L.O. while functioning as Assistant Secretary (STA) during the year 1992 committed gross misconduct in as much as he changed the route of Bus No. DL-1P-8001 from Bara Tuti - Shahadra to Shalimar Bagh - Regal without the approval of the competent Authority with mala fide intention.

Shri Mohinder Singh, M.L.O. (under suspension) has, thus, by his above act failed to maintain absolute integrity and acted in a manner unbecoming of a Govt. servant thereby violating the provisions of Rule 3 of the CCS (Conduct) Rules, 1964.

3. Enquiry Officer conducted the proceedings wherein Petitioner participated. Enquiry Officer submitted his report before the Disciplinary Authority after conducting the enquiry. As per the Enquiry Officer charge against the Petitioner was duly proved. Disciplinary Authority issued a show cause notice to the Petitioner enclosing therewith enquiry report. Petitioner made a written representation before the Disciplinary Authority on 17th February, 1997. Vide order dated 13th March, 1997 Disciplinary Authority imposed penalty of reduction of post of the Petitioner from Motor Licensing Officer to Motor Vehicle Inspector for a period of eight years with a further stipulation that pay of the Petitioner as Motor Vehicle Inspector will be fixed at the minimum of the scale.

4. Petitioner preferred an appeal before the Appellate Authority on 23rd April, 1997 which was dismissed vide order dated 28th August, 1997.

5. Dissatisfied by the orders of the Disciplinary Authority and Appellate Authority, Petitioner preferred an original application being O.A. No. 233/1998 before the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as Tribunal). It was contended by the Petitioner before the Tribunal that he was denied a fair hearing as certain documents asked by him and even allowed by the Enquiry Officer were not supplied to him; conclusions of the Enquiry Officer were based on conjectures and surmises and the findings were based on no evidence. Disciplinary Authority had imposed three different penalties contrary to the provisions of CCS (CCA) Rules, 1965.

6. Vide order dated 29th April, 1999, Tribunal disposed of the O.A. It was upheld that Petitioner was guilty of misconduct. However, penalty imposed upon the Petitioner was modified only to the extent that reduction in a lower grade only; in other words his pay in the lower grade will be fixed on the assumption as if he had not been promoted as Motor Licensing Officer at all.

7. Dissatisfied by the outcome of the O.A., Petitioner has filed this writ petition under Article 226 of the Constitution praying therein that the order dated 29th April, 1999 passed by the Tribunal be set aside and the orders of Disciplinary Authority as well as Appellate Authority be quashed. Petitioner be granted all

consequential benefits in the facts and circumstances of the case.

8. Arguments heard.

9. Learned senior counsel for the Petitioner has contended that the findings of Enquiry Officer as well as the order of Disciplinary Authority is based on "no evidence" and is amenable to judicial review. He has placed reliance on Kuldeep Singh Vs. The Commissioner of Police and Others, and Union of India (UOI) Vs. H.C. Goel, As per the learned senior counsel, case of the department was that a raid was conducted by Enforcement Section on 24th January, 1995 and amongst this the bus No. DL IP 8001 (earlier No. 2465) was intercepted after which its permit was seized. In the vigilance enquiry it was revealed that the original route of bus in question was from Bara Tuti to Shahdara with the validity period from 24th October, 1992 to 23rd February, 1993. However, subsequently Petitioner changed this route Shalimar Bagh to Regal without prior approval of the competent authority. Petitioner, who was working as Assistant Secretary, during the year 1992 was not having any authority to change the route of the bus. By doing so he had facilitated the plying of bus on the changed route unauthorisedly till the bus was intercepted by the Enforcement Section. The permit with the changed route was issued by the Petitioner under his signatures. As per the learned senior counsel no evidence was led by the department to prove the above facts.

10. Learned Counsel has further contended that the Petitioner had denied his signatures on the permit. In spite of this department did not take any step to prove the signatures of the Petitioner on the permit. Not only this, report of S.I. Ramesh Chand of the Enforcement Section was also not produced. S.I. Ramesh Chand was not produced before the Enquiry Officer despite several opportunities being granted to the department during the enquiry, merely this report had remained unproved. According to learned senior counsel, in absence of this report, there was no material evidence available before the Enquiry Officer/Disciplinary Authority to conclude that the bus was plied on the changed route on the basis of alleged permit, till it was finally intercepted by the Enforcement Section. Learned Counsel has contended that the Enquiry Officer had himself observed that the signatures of the Petitioner appearing on the permit were at variance with his usual signatures. In view of this, it was all the more necessary for the department to have procured the handwriting expert's opinion to prove the signatures of the Petitioner. No noting was there in the office file regarding the change of route bearing signatures of the Petitioner. Even Mr. Ravi Dutt Sharma, star witness of the department, had not made any categorical statement that the Petitioner had appended his signatures on the permit in his presence. Even the original permit was not produced. In a nutshell he has contended that there was no evidence available on record to hold that it was the Petitioner, who had changed the bus route. Learned senior counsel has further contended that the original permit, though was available with the department, was not produced, therefore, an adverse inference against the Respondents had

to be drawn. Non-production of the permit during enquiry as also non-production of the material witnesses to prove the Enforcement Section report is gross procedural irregularity and is sufficient to quash the impugned orders.

11. Learned Counsel has further contended that the needle of suspicion rests on Mr. Ravi Dutt Sharma for having committed forgery and in all probability the permit had been issued by him and/or in the alternative, at the most, it can be said that he was an accomplice along with the Petitioner and in such an eventuality his evidence was of weak nature and required corroboration. Solely on the statement of Mr. Ravi Dutt Sharma, neither the Enquiry Officer nor the Disciplinary Authority could have concluded that the permit with changed route was issued by the Petitioner. Reliance has been placed on Rampal Pithwa Rahidas and Others Vs. State of Maharashtra,

12. As against this, learned Counsel for the Respondents has contended that power of judicial review of Court/Tribunal is very limited. Court/Tribunal has only to see, as to whether the enquiry was conducted fairly and the principles of natural justice were followed inasmuch as due opportunity was given to the delinquent to defend his case. Adequacy or reliability of evidence cannot be looked into by the Court/Tribunal while exercising its power of judicial review. Disciplinary Authority is the sole judge of facts. Remedy of appeal is also provided against the order of the Disciplinary Authority and it is within the domain of Appellate Authority to reappraise the evidence or nature of punishment. The Court/Tribunal in its power of judicial review does not act as Appellate Authority. The Court/Tribunal can interfere only if the enquiry is conducted in violation of statutory rules prescribed regarding the mode of enquiry or the conclusions or findings reached by the Disciplinary Authority are based on no evidence. If the findings reached by the Disciplinary Authority are based on some evidence, the Court has no power to interfere with such findings and the subsequent penalty order. Reliance has been placed on B.C. Chaturvedi Vs. Union of India and others,

13. As per the learned Counsel for the Respondents the whole issue involved was, as to whether the Petitioner had changed the route of the bus by issuing a new permit during the subsistence of the earlier permit in spite of the fact that he was not having any such authority. In view of this, non-production of S.I. Ramesh Chand was immaterial. Even otherwise, the report of the Enforcement Section could have been read against the Petitioner in the departmental enquiry as no rules of evidence are applicable and it was not required to be proved by producing the maker thereof. She has contended that Mr. Ravi Dutt Sharma was working as Lower Division Clerk under the Petitioner. He had categorically deposed during the enquiry that the noting on the file was made by him on the directions of the Petitioner. He had also prepared the permit with changed route and placed it before the Petitioner. Mr. Ravi Dutt Sharma has also categorically stated that the signatures on the permit were of the Petitioner. It was contended that this shows, that there was adequate evidence available before the Enquiry

Officer to establish charge against the Petitioner. On the basis of this evidence the Disciplinary Authority also arrived at the same conclusion. According to her, this is not a case of "no evidence".

14. We have considered the rival contentions of both the sides in the light of material available on record. However, we are not convinced with the arguments of learned Counsel for the Respondents. In our opinion, this case is based on no evidence, inasmuch as, procedural irregularities have been committed during the enquiry proceedings. We are of the view that as case is based on "no evidence" this Court can interfere with the order passed by the Disciplinary Authority and all subsequent orders arising there from.

15. In B.C. Chaturvedi's case (supra) Supreme Court has held as under:

The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappraise the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India v. H.C. Goel* this Court held at p.728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.

16. In *Kuldeep Singh's* case (supra) Supreme Court has held as under:

The findings recorded in a domestic enquiry can be characterised as perverse if it is shown that such findings are not supported by any evidence on record or are not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence. This principle was laid down by this Court in *State of A.P. v. Rama Rao* in which the question was whether the High Court under Article 226 could interfere with the findings recorded at the departmental enquiry. This decision was followed in *Central Bank of India Ltd. v. Prakash Chand Jain and Bharat Iron Works v. Bhagubhai Balubhai Patel*. In *Rajinder Kumar Kindra v. Delhi Admn.* it was laid down that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse. It was also laid down that where a quasi-judicial tribunal records findings based on no legal evidence and the findings are its mere ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of no-application of mind and stands vitiated.

17. In *H.C. Goel's* case (supra) Supreme Court has held as under:

That takes us to the merits of the respondent's contention that the conclusion of the appellant that the third charge framed against the respondent had been proved, is based on no evidence. The learned Attorney General has stressed before us that in dealing with this question, we ought to bear in mind the fact

that the appellant is acting with the determination to root out corruption, and so, it is shown that the view taken by the appellant is a reasonably possible view this Court should not sit in appeal over that decision and seek to decide whether this Court would have taken the same view or not. This contention is no doubt absolutely sound. The only test which we can legitimately apply in dealing with this part of the respondent's case is, is there any evidence on which a finding can be made against the respondent that charge No. 3 was proved against him. In exercising its jurisdiction under Article 226 on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which deals with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent. This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence illegally the impugned conclusion follows or not. Applying this test, we are inclined to hold that the respondent's grievance is well founded, because in our opinion, the finding which is implicit in the appellant's order dismissing the respondent that charge number 3 is proved against him is based on no evidence.

18. In view of backdrop of above legal position, it is clear that power of judicial review of the Court/Tribunal is limited. The Court has not to go into the merits of the case in detail. It has not to sift and weigh the evidence adduced before the Enquiry Officer meticulously in such a manner as if hearing an appeal against the said order. Adequacy or reliability of evidence also cannot be gone into by the Court/Tribunal. The Court/Tribunal cannot arrive at its own conclusion on the basis of the evidence available before the Disciplinary Authority. If the finding of the Disciplinary Authority is based on some evidence that would be sufficient. The Court/Tribunal has only to see whether the principles of natural justice were applied inasmuch as the enquiry was held, as per the rules. However, in case it is found that conclusion reached by the Disciplinary Authority is based on no evidence the Court/Tribunal would be justified in interfering with the order of the Disciplinary Authority in exercise of its power of judicial review.

19. In view of the above settled legal position, now it has to be seen, as to whether findings of the Enquiry Officer and the order passed by the Disciplinary Authority was based on no evidence or there existed some evidence indicating the guilt of the Petitioner. The whole action was started on the basis of report of S.I. Ramesh Chand of the Enforcement Section. As per this report, in a surprise check based on a complaint it was found that the bus in question, was plying on the route of Shalimar Bagh to Regal. Though its original permit was for the route Bara Tuti to Shahdara. Permit was seized and the matter was probed wherein it was revealed that the Petitioner had issued this permit with changed route unauthorisedly. This permit was issued by the Petitioner without seeking approval of the competent authority. Disciplinary action was initiated against the Petitioner

on the basis of report of Enforcement Section and vigilance probe. We find that S.I. Ramesh Chand was not produced to prove his report. Since this witness did not step in the witness box despite opportunity granted by the department Enquiry Officer dispensed with his evidence vide order dated 19th December, 1996. In absence of statement of S.I. Ramesh Chand this complaint/report regarding interception of the bus and seizure of the permit had remained unproved. We are of the view that merely because this report was filed by the Presenting Officer, would not mean that it required no proof during the enquiry and can be read. This document was required to be proved by calling the maker of the documents in the witness box or through some other witness who was conversant with the handwriting and signatures of the maker of this document. Since this document had remained unproved, the same cannot be read against the Petitioner. In absence of the above said document, it remained unproved that the bus was intercepted by the members of the Enforcement team or that original permit was seized. There was no evidence before the Enquiry Officer to suggest that bus was being plied on the route from Shalimar Bagh to Regal on the basis of the alleged permit. Not only this, even the original permit seized by the enforcement team was not produced during the enquiry and only photocopy thereof was placed on record. Be that as it may, we are of the view that there was no evidence before the Disciplinary Authority to conclude that bus was placed on the route Shalimar Bagh to Regal on the basis of the alleged permit.

20. As mentioned earlier that Petitioner had categorically denied the signatures appearing on the permit were his. He even produced a report of the handwriting expert to this effect. In view of this, it was necessary for the department to prove that the signatures on the permit were in fact of the Petitioner, by leading some cogent and reliable evidence to this effect. Such evidence is totally missing in this case. No handwriting expert's report was produced by the department during the enquiry. Enquiry Officer himself had written to Deputy Director, Vigilance, on 2nd December, 1996 that the verification of certain document from handwriting expert was necessary in view of the denial of Petitioner regarding his signatures on the material documents attributed against him. As per the Enquiry Officer, three months time was required for this purpose. Surprisingly, no steps were taken by the department to obtain opinion of the handwriting expert regarding the signatures of the Petitioner on the alleged photocopy of the permit. Even Enquiry Officer, for the reasons best known to him, dispensed with this requirement and gave a report on 19th December, 1996, i.e. only after seventeen days of his writing a letter to Deputy Director regarding necessity of the opinion of handwriting expert, before giving his findings. This also shows that the Enquiry Officer himself was not sure whether the signatures on the questioned permit were that of the Petitioner or not. Even Mr. Ravi Dutt Sharma, the star witness of the prosecution has not categorically deposed that the Petitioner had appended his signatures on the permit in his presence. He had simply deposed that on the directions of the Petitioner, he had prepared a noting along with the permit with changed route. He has not deposed that permit was

signed in his presence after he had placed the file before the Petitioner. So far as the office noting is concerned, there is no mention therein about the change of route of the bus. Office noting signed by the Petitioner talks about the fact only that the permit issued earlier was valid upto 23rd February, 1993. Since there is no mention in the noting signed by the Petitioner regarding change of route, it cannot be said that it was the Petitioner who had ordered for the change of route. So far as signatures of Petitioner on the permit are concerned, same had remained unproved. No evidence was available before the Enquiry Officer to hold that the signatures on the permit were of the Petitioner. On the contrary, Enquiry Officer has himself returned a finding that the signatures appearing on the permit were different than the usual signatures of the Petitioner. However, Enquiry Officer took a view that a forger would append his signatures on a forged document at variance with his usual signatures. In our view, this finding of Enquiry Officer is based on no material and is merely a hypothetical proposition floated by the Enquiry Officer and the same could not meet the test of acceptable evidence. Finding in this regard is imaginary and without any basis.

21. Since the Enforcement report as well as the signatures on the permit remained unproved, we are of the view that no evidence was available before the Enquiry Officer/Disciplinary Authority to conclude that it is the Petitioner who had changed the route and had issued a new permit with changed route i.e. from Shalimar Bagh to Regal. In our view, the findings returned by the Disciplinary Authority are based on no evidence and are liable to be set aside.

22. In the light of the above discussion, we are of the considered view that the Tribunal had taken erroneous view in upholding the finding of the Enquiry Officer/Disciplinary Authority and the Appellate Authority.

23. Since we have already arrived at a finding that the order passed by the Disciplinary Authority is based on no evidence, we need not delve upon the other arguments raised by the learned Counsel for the Petitioner.

24. In view of the above discussion we allow this writ petition and set aside the order passed by the Disciplinary Authority dated 19th December, 1996 and all the orders arising there from. Petitioner would be entitled to all consequential benefits.

25. Vide the impugned order dated 29th April, 1999 Tribunal modified the penalty imposed upon the Petitioner to the extent of reduction in a lower grade only. In other words, Petitioner's pay in the lower grade was fixed on the assumption as if he had not been promoted as M.L.O. at all. Respondent has challenged this order of the Tribunal by filing C.W.P. No. 6216/1999 on the ground that the Tribunal cannot substitute its own penalty in place of penalty awarded by the Disciplinary Authority in exercise of its power of judicial review. As we have set aside the order of the Disciplinary Authority and the subsequent orders arising there from, the W.P.(C) No. 6216/1999 has become infructuous and is dismissed accordingly.