

(2012) 08 DEL CK 0003

In the Delhi High Court

Case No : Writ Petition (C) 5134 of 2012 and CM 10499 of 2012

Rajesh Kumar Meena

APPELLANT

Vs

Commissioner of Police and Others

RESPONDENT

Date of Decision : 24-08-2012

Acts Referred:

Citation : (2012) 6 ILR Delhi 254

Hon'ble Judges : Siddharth Mridul, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Y.S. Chauhan, for the Appellant; Sumit Chander, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—This writ petition is directed against the orders dated 23.09.2010 and 31.03.2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 1005/2010 and R.A. No. 90/2011 respectively. The petitioner had been charged as under:-

I, Satish Kumar Bhardwaj, Inspector, Enquiry Officer, charge you, Const. Rajesh Kumar No-1899/C(PIS No. 28900491) that while posted at P.S. Daryaganj on 18.07.2007 you were detailed for Motor Cycle patrolling duty on Motor Cycle No-DL-1SN-4256 having Call Sign CM-2 in the area of P.S. Darya Ganj. During the evening patrolling, ACT/Darya Ganj found that you were picking and eating Chips etc. from a Rehri after parking the above said motor cycle at Asaf Ali Road near Wine Shop and some persons were also found consuming beer openly. The above said conduct of you, Const. Rajesh Kumar, No-1899/C was totally unwarranted, damage of reputation of Delhi Police in the eyes of general public, disobedience of directions of senior officers and dereliction in the discharge of official duties.

The above act on the part of you, Const. Rajesh Kumar, No. 1899/C, amounts to gross negligence, misconduct and dereliction in discharging you official duties, which render you liable to be punished under the provisions of Delhi Police Act, 1978.

2. Thereafter, enquiry proceedings were held and the Station House Officer of Police Station Pahar Ganj, who was an Inspector rank officer, was appointed as the Enquiry Officer. He concluded his enquiry and submitted his report dated 06.01.2009 wherein the said Enquiry Officer came to the following conclusion:-

From the statements of PW-2 Const. Subhash No. 728/C and PW-3 H.Ct. Madhu Bala No. 2206/C it is clear that Const. Rajesh Kumar No. 1899/C (PIS No. 28900491) was on Motor Cycle patrolling duty in the area of P.S. Daryaganj from 9 am to 9 p.m. The Duty Officer has proved by producing the D.D. Entries that the delinquent had departed for patrolling on motor cycle No. DI-1 S-N-4256 at 8:45 am vide DD No. 11B dated 18.07.2007 and had returned to the police station at 9-15 p.m. vide DD No. -89-B. PW-6 Sh. Ashok Saxena, the then ACP/Daryaganj has categorically stated that on 18-07-2007 t about 8-15/8-30 p.m., he was checking the patrolling staff and going towards Delhi Gate from Turkman Gate side. When he reached Asaf Ali Road near Wine Shop he saw that the people were consuming beer I the barandah near Wine Shop, Asaf Ali Road. Motor Cycle No. DL-1-S-N4256 was parked near the Wine shop, the helmet was also there on the Motor Cycle and cont. Rajesh Kumar No. 1899/C (PIS No. 8900491) was earing Namkeen after picking from the Rehri. At that time Cont. Rajesh Kumar No. 1899/C (PIS No. 28900491) was on patrolling duty on motor cycle No. DL-1-SN-4256 with call sign Charlie Mike-2. The people were consuming Beer openly at the public place and instead of taking legal action against them Const. Rajesh Kumar No. 1899/C (PIS No. 28900491) was picking Namkeen from the Rehri and eating Namkeen. As such he directed Inspr. Ram Kumar, SHO/Daryaganj to lodge it in the Daily Diary and flashed a wireless message to CDCR regarding the suspension of Const. Rajesh Kumar No. 1899/C. PW-5 Inspr. Ram Kumar, has supported the version of PW-6 by stating that Sh.Ashok Saxena, the then ACP/Daryaganj had informed him about the misconduct of the delinquent and he had lodged the DD Entry to this effect. The plea of the delinquent that legal action was not taken by the ACP/Daryaganj has stated in the cross examination that those persons had slipped away from the spot seeing his gypsy. The plea of the delinquent that at one stage Sh. Ashok Saxena had stated that the delinquent was eating Namkeen. In fact Chips are also the Namkeen. Therefore, this plea of the delinquent does bear any weight. The delinquent has also taken the plea that it was the responsibility of the Beat Staff. This plea is also irrelevant as the Police Official on duty who is present at the place where any offence is being committed is duty bound to take legal action. Since the delinquent was present at that particular place he was duty bound to take legal action into the matter. Further, the delinquent has pleaded that Inspr. Ram Kumar SHO/Daryaganj had recorded the DD entry after the return of the delinquent to the Police Station. This plea is also irrelevant since the PW-5 Inspr Ram Kumar had recorded the DD Entry when the PW-6 Sh. Ashok Saxena had informed him about the act/misconduct of the delinquent after reaching the Police Station. In view of the facts mentioned above, the charges against the delinquent Const. Rajesh Kumar No. 1899/C (PIS No. 28900491) are

proved beyond doubt.

3. Thereafter, the Disciplinary Authority who is an officer of the rank of Additional DCP passed a penalty order on 24.07.2009 whereby the said Disciplinary Authority concurred with the findings of the Enquiry Officer and imposed the punishment of withholding two annual increments without cumulative effect. He also directed that the suspension period shall be deemed to be not spent on duty for all intents and purposes.

4. Being aggrieved by the said penalty order, the petitioner preferred an appeal to the Joint Commissioner of Police, Northern Range, Delhi, which was also dismissed by an order dated 11.12.2009.

5. Thereafter, the petitioner filed O.A. No. 1005/2010 which was disposed of by the Tribunal by its order dated 23.09.2010. The Tribunal concluded as under:-

6. We have given our careful consideration to the respective submissions made by both the learned counsel for the parties. We have also perused the records of the case.

7. On a careful consideration, we do not find any force in the applicant's contention that there is no evidence against him. Strict rules of the evidence are not applicable to the departmental enquiry. The guilt of the delinquent officials is not required to be proved to the hilt. The disciplinary authority has taken the decision on the basis of the inquiry report. There is indeed evidence to support the charge. The courts do not sit over the decisions of the disciplinary authority in such cases unless the decisions of the disciplinary authority and the appellate authority are perverse. The present case does not fall in the category of cases of no evidence. The applicant has not been able to point out any legal infirmity in the decision taking process by the respondents. The thrust of the applicant's defence has been the failure on the part of ACP in apprehending the persons consuming liquor openly. It has been urged that had there been any truth in the allegations against the applicant then the ACP who was accompanied by his Staff Officer and the Driver ought to have at least apprehended the persons drinking Bear openly and could have taken action against such persons. In the rejoinder as well as at the hearing, the learned counsel has vehemently contended that if the applicant had failed to discharge his duties so had the ACP. We do not have the case of the ACP before us. We are considering the case of the applicant and not of the ACP. If the ACP had not taken any action against the aforesaid persons, it would be for the respondents to take an appropriate action on that aspect of the matter. Nevertheless it would not negate the allegations levelled against the applicant. The applicant's contention that there is no malafide on the part of the applicant as he had not taken any undue advantage is not relevant as these are not the essential constituents of the misconduct alleged to have committed by him while discharging the official duties that renders him liable to be punished under applicable rules.

8. Having given our careful consideration, we are of the considered view that the

applicant has failed to make out any ground for relief. There is no merit in the application and OA is accordingly dismissed. No order as to costs.

6. Being aggrieved by the said order dated 23.09.2010 passed in O.A. No. 1005/2010 the petitioner filed a writ petition before this court being WP(C) No. 232/2011. That was dismissed as not pressed by a Division Bench of this court on 17.01.2011. The circumstances in which that order came to be passed are indicated in the order itself which is extracted below:-

1. Learned counsel for the petitioner states that certain issues impinging upon the competence of the Inquiry Officer as also the competence of the officer who has acted as the Disciplinary Authority which were argued before the Tribunal have not been dealt with by the Tribunal. Thus, counsel states that leave be granted to the petitioner to withdraw the writ petition with right reserved to move an application before the Tribunal requiring the Tribunal to decide on the issues which were raised, argued, but not dealt with.

2. The writ petition is accordingly dismissed as not pressed. Needless to state if the petitioner were to file an application before the Tribunal pointing out that certain issues on which arguments were advanced have not been dealt with by the Tribunal in the impugned order, the said application shall be decided as per law.

(underlining added)

7. Thereafter, the petitioner filed the said Review Application being R.A. No. 90/2011 wherein the impugned order dated 31.03.2011 has been passed whereby the petitioner's said Review Application has been rejected. The petitioner is before us, once again, against the said order dated 31.03.2011.

8. It is clear from the above narration of facts that the only reason why a Division Bench of this court had permitted the petitioner to file a Review Application before the Tribunal was because the learned counsel for the petitioner had stated that certain issues impinging upon the competence of the Enquiry Officer as also the competence of the officer who acted as the Disciplinary Authority had been argued before the Tribunal but had not been dealt with by the Tribunal. It is in this backdrop that the learned counsel for the petitioner had sought leave of this court to withdraw the said writ petition with liberty to move an application before the Tribunal requiring the Tribunal to decide the issues which were raised, argued, but not dealt with.

9. The learned counsel for the petitioner stated that the issue of competence of the Enquiry Officer and the Disciplinary Authority had been raised as well as argued before the Tribunal in the first instance. However this is not borne out from the decision of the Tribunal dated 31.03.2011. The Tribunal observed that although the point with regard to the Enquiry Officer being subordinate to the complainant who was an officer of the rank of DCP had been raised in the O.A., the same had not been pressed at all at the hearing of the original application.

This is abundantly clear from the observations of the Tribunal in paragraph 2 of the order dated 31.03.2011 which reads as under:-

2. The principal point taken by the applicant in the present review application is that he had contended in his original application that the Inquiry Officer being subordinate of the complainant was under the influence of the complainant and as such the enquiry was conducted in violation of principles of natural justice. This point though raised in the Original Application was not at all pressed at the hearing of the application. We will refer to this aspect in detail appropriately at a later stage...

(underlining added)

10. Even though the issue of competence of the Enquiry Officer had not been argued before the Tribunal in the first instance, the Tribunal, while considering the Review Application, has examined this aspect of the matter. This would be evident from the discussion in the impugned order dated 31.03.2011 which reads as under:-

5. Even as regards the competence of the Inquiry Officer is concerned, it is seen that even though the Inquiry Officer was a SHO yet he was not subordinate to the ACP, Daryaganj (Complainant). The Inquiry Officer in the present case was the SHO Paharaganj while the complainant was the A.C.P., Darya Ganj. Inquiries in respect of Constables are ordinarily conducted by Officers of the rank of Inspector. The concerned authority while ordering inquiry against the applicant vide its Order dated 9.1.2008, a copy of which is annexed to the original applicant as Annexure A-4 was conscious of the fact and therefore, appointed SHO from a different division Police Station to conduct the enquiry. The Inquiry Officer was, thus, not subordinate to the complainant as alleged by the applicant. Subordinate in rank and subordinate to someone are two different things, having different connotations. There is no warrant to say that an Officer of a subordinate rank will not act independently and impartially especially when he is exercising judicial or quasi-judicial functions that are amenable to judicial review. Even if the applicant had any apprehension in the matter on this count it was open to him to seek change of the Inquiry Officer on this ground. Interestingly, the applicant has not raised this point in any of his representation nor has he sought the change of Inquiry Officer on this ground.

11. It is apparent that the Enquiry Officer was an officer of the rank of Inspector. However, he was the SHO of Police Station Pahar Ganj while the complainant was the ACP, Darya Ganj. Though the Inspector was, in rank, lower to the complainant, he was not directly subordinate to the said ACP as they were posted in different areas. Importantly, this issue of the Enquiry Officer not being independent in his enquiry proceedings or of not being impartial was not raised at all at any point when the appointment of the Enquiry Officer was made or during the enquiry proceedings. There was no representation or request on the part of the petitioner for a change of the Enquiry Officer on this ground. Thus,

the contention of the learned counsel for the petitioner that the Enquiry Officer was not competent to conduct the enquiry proceedings is not tenable. The Tribunal has rightly decided so.

12. Insofar as the competency of the Disciplinary Authority is concerned, the learned counsel for the petitioner has been fair in conceding that he is not pressing the same inasmuch as the Disciplinary Authority was an officer of the rank of Additional DCP which is higher than the rank of ACP, which was the rank of the complainant.

13. In view of the foregoing we do not find any infirmity in the impugned order dated 31.03.2011 passed in R.A. No. 90/2011. Insofar as the other aspects pertaining to the order dated 23.09.2010 are concerned, the same no longer survive for consideration inasmuch as the writ petition was dismissed as not pressed as indicated in the High Court's order dated 17.01.2011. Consequently, the writ petition has no merit and the same is dismissed. There shall be no order as to costs.