

(2012) 10 DEL CK 0168
In the Delhi High Court
Case No : Writ Petition (C) 441 of 2007

Rakesh Kumar Garg

APPELLANT

Vs

LT. Governor of Delhi and Another

RESPONDENT

Date of Decision : 04-10-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Delhi Police Act, 1978 — Section 112, 122, 28
Penal Code, 1860 (IPC) — Section 186, 342, 353, 506

Citation : (2012) 132 DRJ 840 : (2013) LabIC 189

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

Bench : Division Bench

Advocate : Sanjeev Sachdev, with Mr. Rajan Tyagi, for the Appellant; Rajiv Bansal, Rahul Bhandari and Ms. Nitisha Kathuria for the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—In this writ petition Mr. Rakesh Garg, Officer of the Delhi Judicial Services is challenging the order of dismissal

from service. The facts are that the petitioner joined the Delhi Judicial Service on 4th November, 1986 and in the year 2000 he was promoted to

the Delhi Higher Judicial Service. He was posted as ACMM (Patiala House Courts) on 11th August, 2000 but before he could join, he was

transferred to the Labour Court. On 8th December, 2000, judicial work was withdrawn from the petitioner and he was asked to do only

administrative work. Since some time had gone by and no inquiry had been initiated, the petitioner made a representation to the High Court in

2002 requesting for judicial work being assigned to him. That, of course, did not happen. Instead, the charge memo dated 12.9.2002 was issued

to the petitioner containing five articles of charge. The same reads as under:-

ARTICLES OF CHARGE

1. The officer Mr. Rakesh Garg (then a DJS Officer) while working as Metropolitan Magistrate, PS Rajinder Nagar, Kirti Nagar and Subji Mandi

between 5.4.1999 to 27.5.2000 maintained contact and remained to touch with various hotels and banquet halls falling within his jurisdiction.

Hotels Megha Palace and Megha Sheraton fall within the jurisdiction of PS Rajinder Nagar and Rajesh Bhatia owns them. Mr. Rajesh Bhatia

(owner) Mr. Bhagat Ram (Manager) of Megha Sheraton hotel were challaned by the Police u/s 28/112 DP Act vide DD No. 33A dated

1.3.2000. This officer dealt with this case between 1.3.2000 and 27.5.2000. The officer made telephone calls from his cell phone No.

9810056432 on telephone Nos. 5788286 and 5788287 on 12.10.1999 and 22.11.1999 respectively. The officer also made calls from the same

cell phone on Phone No. 5788286 twice on 1.1.2000. He also received a call from phone No. 5788286 on his cell phone on 30.1.2000.

The telephonic link establishes a close contact, acquaintance link establishes a close contact, acquaintance and dealings between the officer and the

owner of the hotels Megha Palace and Megha Sheraton whose matter related to DD No. 33A/2000 was pending in his court and was also being

dealt with by him. This act amounts to failure on the part of the office to maintain absolute integrity and also shows that the officer acted in a way

which is unbecoming of a judicial officer.

2. The officer during his postings as Metropolitan Magistrate PS Rajinder Nagar dealt with and held trial in a case title State Vs. Rajesh Bhatia (the

owner of hotels Megha Palace/Megha Sheraton), FIR No. 210/1995, PS Rajinder Nagar u/s 186, 353, 342, 506 IPC. The officer acquitted this

accused vide his judgment dated 9.8.1999. The above said conduct of the officer in dealing with a case of an accused with whom he had

acquaintance with him amounts of failure on the part of the officer to maintain absolute integrity. Such conduct also amounts to his doing an act

which is unbecoming to a judicial officer.

3. Another hotel Bharat Palace fell within the officer's jurisdiction. This hotel was challaned u/s 28/112 by the Police vide DD No. 36B dated

2.3.2000. Mr. Sanjay Uppal is the owner of this hotel. In this matter Kalandara

seems to have been filed on 8.3.2000 and though Mr. Sanjay

Uppal was not challenged yet, the officer ordered him to be summoned for 15.3.2000. This matter was dealt with by the officer till 27th May,

2000 the date upto which he remained in this Court. The office made a phone call from his cell phone No. 9810056432 to phone No. 5735129

(Hotel Bharat Palace) which clearly reflects the close association and, link this officer had with the owner of this hotel. Despite this, he dealt with

the Kalandra and proceeded with the trial. This act amounts to failure on the part of the officer to maintain absolute integrity. Such conduct also

amounts to his doing an act which is unbecoming of a judicial officer.

4. The officer did contact hotel Bharat Palace telephonically on the above said date i.e. 14.11.1999 and again - handled another case State Vs.

Jugal Uppal, FIR No. 79/1999 for offence u/s 506 IPC, PS Rajinder Nagar. This was a Police case and a report was submitted for cancellation of

the same, which this officer accepted and cancelled the said police case vide his order dated 4.6.1999. Mr. Jugal Uppal is the brother of Mr.

Sanjay Uppal. This act on the part of the officer amounts to failure of the officer to maintain absolute integrity. Such conduct also amount to his

doing an act which is unbecoming of a judicial officer.

5. The officer had regular contacts with other hotel owners in the area- e.g. Hotel Alaska situate in PS Karol Bagh and Hotel Venus situate in the

adjoining area of PS Paharganj. Phone calls made from the officer's cell phone No. 9810056432 or received by him on it from the said hotels (

No. 5713487-Hotel Alaska and No. 5713488- Hotel Venus), which indicate the close proximity the officer had with the hotel owners. The officer

was, in the course of judicial functioning was having before him proceedings relating to such like hotel owners. Maintenance of regular contacts

with the hotel owners/management obviously was with oblique interest and purpose and thereby to misuse his official position in the event of an

occasion arising for dealing with proceedings, if any, before him, such as, u/s 28/122 of the DP Act. This act amounts to failure, on the part of the

officer, to maintain absolute integrity. Such conduct also amounts to his doing an act which is unbecoming of judicial officer.

2. The said charge memo was served upon the petitioner after it had been approved by the Full Court in its meeting of 1.8.2002.

3. Thereafter, an inquiry officer was appointed on 18th January, 2003. On 19th July, 2003, the Full Court of the High Court allowed the request of

the petitioner for engaging an Advocate to represent him in the disciplinary proceedings. Thereafter, the Inquiry Officer submitted his report dated

21st October, 2005. The Inquiry Officer exonerated the petitioner in so far as Articles Nos. 2 & 4 are concerned. However, he found the other

Articles of Charge as having been proved. The same was accepted by the Full Court in the meeting held on 19th November, 2005 and in the very

same meeting the Full Court directed that the Inquiry Officer's report be forwarded to the petitioner and he also be informed that the penalty of

dismissal from service was in contemplation. Subsequently, a memorandum dated 29th November, 2005 was served upon the petitioner requiring

him to show cause as to why the penalty of dismissal from service be not imposed on him. The petitioner submitted his reply on 13th December,

2005.

4. In the Full Court Meeting held on 20th May, 2006, the reply of the petitioner was considered and, in view of the gravity of charges, the Full-

Court decided to impose the major penalty of dismissal from service. The Registry was also directed to send the recommendation to the Lt.

Governor, which was sent by virtue of a memorandum dated 25th May, 2006. The Lt. Governor issued the order dated 22nd July, 2006

dismissing the petitioner from service. In the meanwhile, the petitioner had moved a representation for consideration of the Full Court on 11th July,

2006. However, that representation came up for consideration before the Full Court on 18th November, 2006 and was rejected as having

become infructuous inasmuch as the petitioner had, in the meanwhile, been dismissed from service. Being aggrieved by this, the petitioner has filed

the present writ petition.

5. The Learned Counsel for the petitioner, first of all, submitted that this was a case of no evidence inasmuch as the Presenting Officer did not lead

any evidence and the entire case has been build up on the basis of certain ""telephone calls"". Secondly, the Learned Counsel submitted that the

Inquiry Officer's report is based entirely on surmises and conjectures. Thirdly, it was submitted that the Inquiry Officer's report would also be bad

inasmuch as the Inquiry Officer during the disciplinary proceedings had placed

the onus on the charged officer to disprove the case against him.

Fourthly, the Learned Counsel for the petitioner submitted that prior to the inquiry, the petitioner was not informed that the inquiry was with regard

to a major penalty. Fifthly, the Learned Counsel for the petitioner submitted that the penalty of dismissal from service was disproportionate,

particularly, in view of the fact that the Inquiry Officer had exonerated the petitioner in so far as Articles 2&4 of the charge memo were concerned.

Sixthly, it was contended that the inquiry was on the basis of an anonymous complaint and till date nobody knows as to who the complainant was.

Finally, it was contended by the Learned Counsel for the petitioner that a personal hearing was not granted to the petitioner by the Full Court and,

as such, according to him, there was a violation of the principles of natural justice.

6. In response, the Learned Counsel for the respondent placed before us the decision of the Supreme Court in the case of Registrar General,

Patna High Court Vs. Pandey Gajendra Prasad and Others, . He submitted that in view of the observations of the Supreme Court in the case of

Pandey Gajendra Prasad (supra), nothing survives in the present writ petition.

7. The Supreme Court in Pandey Gajendra Prasad (supra) observed as under:-

14. Elaborating on the scope of judicial review of an Assessment of the conduct of a judicial officer by a Committee, approved by the Full Court,

in Syed T.A. Naqshbandi and Others Vs. State of Jammu and Kashmir and Others, this Court noted as follows:

As has often been reiterated by this Court, judicial review is permissible only to the extent of finding whether the process in reaching the decision

has been observed correctly and not the decision itself, as such. Critical or independent analysis or appraisal of the materials by the Courts

exercising powers of judicial review unlike the case of an appellate Court, would neither be permissible nor conducive to the interests of either the

officers concerned or the system and institutions of administration of justice with which we are concerned in this case, by going into the correctness

as such of ACRs or the Assessment made by the Committee and approval accorded by the Full Court of the High Court.

15. In Rajendra Singh Verma (Dead) Through L.Rs.. and Ors. v. Lieutenant Governor (NCT of Delhi) and Ors. Civil Appeal No. 7781/2011

dated 12/09/2011 reiterating the principle laid down in The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and

Another, , this Court observed as follows:

In case where the Full Court of the High Court recommends compulsory retirement of an officer, the High Court on the judicial side has to exercise

great caution and circumspection in setting aside that order because it is a complement of all the Judges of the High Court who go into the question

and it is possible that in all cases evidence would not be forthcoming about integrity doubtful of a judicial officer.

It was further observed that:

If that authority bona fide forms an opinion that the integrity of a particular officer is doubtful, the correctness of that opinion cannot be challenged

before Courts. When such a constitutional function is exercised on the administrative side of the High Court, any judicial review thereon should be

made only with great care and circumspection and it must be confined strictly to the parameters set by this Court in several reported decisions.

When the appropriate authority forms bona fide opinion that compulsory retirement of a judicial officer is in public interest, the writ Court under

Article 226 or this Court under Article 32 would not interfere with the order.

8. Thereafter, the Supreme Court in the context of the factual situation arising in the case before it observed that there was nothing on the record to

even remotely suggest that the violation made firstly by the standing committee and then by the Full Court was ""so arbitrary, capricious or irrational

so as to shock the conscience"" of the Division Bench to justify its interference with the unanimity of the Full Court.

9. The Supreme Court then observed that in the very nature of such things, it would be difficult, rather almost impossible, to subject such an

exercise undertaken by the Full Court, to judicial review, save and except in an extra-ordinary case when the court is convinced that some

exceptional thing which ought not to have taken place has really happened and not merely because there could be another possible view or there is

some grievance with the exercise undertaken by the Committee/Full Court.

10. Finally, the Supreme Court held as under:-

17. Having regard to the material on record, it cannot be said that the evaluation of the conduct of the first respondent by the Standing Committee

and the Full Court was so arbitrary, capricious or irrational that it warranted interference by the Division Bench. Thus, the inevitable conclusion is

that the Division Bench clearly exceeded its jurisdiction by interfering with the decision of the Full Court.

(underlining added)

11. From the above observations of the Supreme Court, it is apparent that judicial review of a Full Court decision is not to be entertained until and

unless the Full Court decision is regarded as being so arbitrary, capricious or irrational as to shock the conscience of the Court. It is only in this

limited sphere that judicial review is permissible when the matter has been considered by the Full Court on the administrative side.

12. Faced with this decision, the Learned Counsel for the petitioner fairly stated that he cannot pitch his case so high. As such, there is no reason

for us to interfere with the decision of the Full Court recommending to the Lt. Governor the imposition of the major penalty of dismissal from

service, in so far as the petitioner is concerned. The writ petition is dismissed. There shall be no order as to costs.