

(2007) 03 DEL CK 0038

In the Delhi High Court

Case No : Writ Petition (C) No. : 1231 of 2007

Ramesh Chander

APPELLANT

Vs

Administrative Civil Judge and Another

RESPONDENT

Date of Decision : 08-03-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 1 ILR Delhi 168

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Manish Malhotra, for the Appellant; Avnish Ahlawat, Advocate and Ms. Latika Chaudhary, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—By way of the present petition, the petitioner here in seeks to assail the office order dated 8th March, 2006 issued by the Administrative Civil Judge, Delhi, respondent no. 1 herein, whereunder it was held that the disciplinary proceedings held against the petitioner under Rule 14 CCS(CCA) stood proved. Consequently, as a measure of penalty, the petitioner was demoted to the post of Farash and it was further held that the petitioner would not be entitled to get any benefit for the period he remained suspended, except subsistence allowance already received by him. The petitioner has also challenged office order dated 3rd April 2006 by which the pay scale of the petitioner was decreased from Rs. 3050-4590 to Rs. 2250-3200. The facts which are relevant to dispose of the present petition are that the petitioner was appointed as a Chowkidar on ad hoc basis in the scale of Rs. 2,550-3,200 w.e.f. 23rd December, 1997 in the Tis Hazari Court, Delhi and was promoted to the post of process server vide order dated 24th February 1999. The petitioner was working as a process server till his suspension on 2nd August 2003.

2. On 3rd July, 2003, the petitioner was carrying summons in a bag for delivering the same in Narela zone and was traveling in a bus. When he was about to alight

the bus at his destination, he found that the summons were missing. Despite making all efforts, when he could not find the same, he filed an FIR in the Model Town police station and lodged DD No. 16B dated 3rd July, 2003. After obtaining a copy of the NCR, he returned to Tis Hazari and handed over the same to Shri Dharam Pal, concerned Naib Nazar and Incharge Nazarat branch with verbal information to both the officials about the loss of the summons.

3. On 8th September, 2003, the respondent no. 1, ordered an enquiry against the petitioner under Rule 14 CCS(CCA) Rules on the ground that the petitioner and one other process server had failed to return summons one week before the date of hearing. This report was put before respondent no. 1 by the Civil Nazar and the respondent no. 1 gave a note dated 25th July, 2003 on the said report ordering initiation of disciplinary action.

4. The enquiry proceedings were initiated and the petitioner contested the same through a Defence Assistant. The parties were given an opportunity to adduce evidence. While the petitioner himself neither stepped into the witness box nor did he produce any witness or summon any witness to produce documents, the department produced its witness who was cross-examined by the petitioner. Thereafter, arguments were advanced by both the parties. The Enquiry Officer gave her report on 9th January 2006, wherein she came to the conclusion that as the petitioner failed to produce or summon any record, the defence put up by him remained unsubstantiated and the charges framed against him stood proved. On the basis of the said report of the Enquiry Officer, the respondent no. 1, passed the impugned order dated 8th March 2006 imposing a punishment of reduction in the rank of the petitioner under Rule 11(vi) of the CCS(CCA) Rules, from the post of process server to that of Farash, and vide order dated 3rd April, 2006, the pay scale of the petitioner was lowered from Rs. 3050-4590 to Rs. 2250-3200. Against the said order of demotion, the petitioner filed an appeal before the Distt. & Session Judge, Tiz Hazari, respondent no. 2 herein, which was dismissed vide order dated 7th August, 2006. Aggrieved by the aforesaid orders of demotion and reduction in pay scale, the petitioner has filed the present petition.

5. Learned counsel for the petitioner stated that the petitioner is aggrieved by the fact that the Naib Nazar as well as the 1 Civil Nazar withheld the oral report made by the petitioner on 3rd July, 2003 as well as the DD NO. 16B about the loss of summons. It was also submitted that the said defence was not considered by the disciplinary authority, which not only violated the rules of natural justice but also violated Rule 14(5)(a) of the CCS(CCA) Rules. It was submitted that even if it is assumed that the petitioner did not summon the records from the Model Town Police Station to prove that he had filed a complaint with regard to the loss of the summons, it was well within the powers of the Enquiry Officer to have summoned the said records and to have satisfied herself regarding the said fact.

6. Learned counsel for the petitioner further assailed the impugned order on the

ground that the Enquiry Officer was a Civil Judge, who not only conducted the enquiry proceedings in a highly technical manner as a regular Civil Court case, but even signed the proceedings as a Civil judge and very strictly applied the principles of evidence such as onus of proof etc. which is not the procedure to be followed in a domestic enquiry. It is also submitted that the Enquiry Officer failed to give adequate and legally warranted opportunity to the petitioner to place on record/to put forward his statement of defence on conclusion of departmental evidence and that it failed to appreciate that the Defence Assistant was an LDC who was not conversant with the enquiry rules and closed evidence on statement of such Defence Assistant.

7. It was also stated that the Enquiry Officer erred in making the observation that the petitioner failed to place on record a copy of DD No. 16B, whereas the same stood established in the order of the respondent no. 1, dated 28th February, 2006 and that the said fact had material bearing on the case. It was stated that since the petitioner had already submitted a copy of the DD to the department, it was then the responsibility of the department to bring the said DD on record, and that since the department took no objection to the document produced on record, it was erroneous to state that there was no evidence available with the Enquiry Officer. In support of his contentions, learned counsel for the petitioner has relied on the following judgments:-

(i) State of Haryana and Another Vs. Rattan Singh, .

(ii) O.A. Oommen vs. Hindustan Aeronautics Ltd. and Anr. 1972 FIR 217 (Mys.).

8. Learned counsel for the respondents appearing on advance notice, on the other hand, strongly supported the impugned orders and submitted that there is no patent error of fact or law, violation of principles of natural justice or any misappreciation of records, by which either the proceedings before the Enquiry Officer or the proceedings before the disciplinary authority stood vitiated and that unless any one of the conditions as mentioned above is satisfied, this court while acting under its writ jurisdiction, ought not to interfere with the enquiry report or the report of the disciplinary authority.

9. It was submitted that the Enquiry Officer after appreciating the evidence on record, rightly arrived at the conclusion that there was no specific question put to the department's sole witness by the petitioner in his cross-examination, regarding handing over of any copy of the missing report allegedly lodged by the petitioner in the Police Station. It was claimed that the petitioner had himself failed to file on record a copy of the said report stated to have filed by him by the alleged Daily Diary Number and he even failed to summon any such record of the alleged complaint from the Police Station, Model Town and no other evidence was led by the petitioner regarding this. Learned counsel for the respondents further stated that in view of the above-mentioned circumstances, the Enquiry Officer rightly concluded that the petitioner could have easily proved the said alleged fact by summoning the record from the police station and in the absence of any

efforts made by him in this direction, an adverse inference was drawn against him.

10. Learned counsel for the respondents further submitted that the petitioner failed to prove his defence. It was stated that since it was the petitioner who made the statement that he had lodged a report in the police station regarding the loss of summons, it was his responsibility to prove the same, which he failed to discharge as he did not depose as a witness in the enquiry proceedings. It was also contended that each document has to be proved in accordance with the law and the onus to prove the report alleged to have been made by the petitioner, was on him. Only after the petitioner discharged the said onus, would the burden shift to the Department. Counsel for the respondent has relied on the judgment of the Apex Court in the case of Ministry of Finance and Another Vs. S.B. Ramesh, to substantiate her arguments.

11. I have heard the counsels for both the parties and have also gone through the records of the case, including the impugned orders, the report of the Enquiry Officer and the report of the disciplinary authority. The petitioner has raised various grounds to urge that the proceedings before the Enquiry Officer as also the findings of the disciplinary authority stood vitiated, the most important of all being the fact that the Enquiry Officer as well as the disciplinary authority erred in not taking note of the copy of DD No. 16B submitted by the petitioner to Shri Dharam Pal, concerned Naib Nazar and Incharge Nazarat branch with verbal information to both the officials about the loss of the summons, and which according to the petitioner, stands established in the order dated 28.2.2006, passed by the respondent no. 1.

12. The contention of the petitioner that the aforesaid document ought to have been produced by the department and not by him, cannot be sustained. Since, it was the case of the petitioner that the bag containing the summons had got lost and that he had filed a report of the said incident in the police station. Model Town, the burden of proving the same was also on him. It is a basic principle of the law of evidence that one who alleges, needs to prove. Even otherwise, enquiry proceedings are quasi-criminal in nature, and therefore even if the principle of "onus of proof is not strictly applied, still the burden of proof depends on the nature of explanations given by the parties. Also, it is not necessary that the burden of proof always rests on the department, as has been contended by the petitioner. Reliance in this regard can be placed on the judgment of the Supreme Court in the case of Orissa Mining Corporation and another Vs. Ananda Chandra Prusty, wherein it has been held that:

6. On a consideration of the totality of the facts and circumstances of the case including the nature of charges, we are not inclined to interfere in the matter. The position with respect to burden of proof is as clarified by us herein above viz., that there is no such thing as an absolute burden of proof, always lying upon the department in a disciplinary enquiry. The burden of proof depends upon the nature of explanation and the nature of charges. In a given case the burden may

be shifted to the delinquent officer, depending upon his explanation. For example take the first charge in this case. The charge was that he made certain false notings on account of which loans were disbursed to certain ineligible persons. The respondent's case was that those nothings were based upon certain documents produced and certain records maintained by other employees in the office. In such a situation it is for the respondent to establish his case. The department is not expected to examine those other employees in the office to show that their acts or records could not have formed the basis of wrong notings made by the respondent.

13. In the present case also, the only defence of the petitioner was that he had filed a report in the Model Town Police Station. The petitioner could have easily summoned the record of the alleged complaint from the said Police station. He could have also taken steps to summon the records of the Department as it was his plea that he had handed over the DD to the concerned Naib Nazar. On his failure to take any such steps, an adverse inference was rightly drawn against him. It is also pertinent to mention here that not only did the petitioner fail to put any question to the department witness regarding any copy of said complaint which was allegedly handed over to him by the petitioner on 3rd July, 2003, but he even failed to depose himself to prove his case. The Enquiry Officer is under no obligation to prove the case of the petitioner on his behalf, particularly, when the petitioner remained complacent himself. Therefore, the judgments relied upon by the petitioner, are not of any assistance to him.

14. The next contention of the petitioner that the enquiry was conducted in a highly technical manner as a regular Civil Court case is of no assistance to the petitioner, as assuming the same to be correct, when asked as to how the same adversely affected him, or which of his rights were violated by such manner of conducting the proceedings, the petitioner had no answer to the same, much less a satisfactory answer.

15. As far as the contention of the petitioner to the effect that the Enquiry Officer failed to give adequate and legally warranted opportunity to the petitioner to place on record or to put forward, his statement of defence on conclusion of departmental evidence, and that it failed to appreciate that the Defence Assistant was an LDC who was not conversant with the enquiry rules and closed evidence on statement of such Defence Assistant is concerned, the same is misconceived and liable to be rejected. A bare perusal of the order sheets of the departmental proceeding, particularly, of the proceeding hold on 15th January, 2005 shows that when the department closed its evidence, it was submitted by the Defence Assistant that he did not wish to examine any witness and that his evidence be closed as well. On the said occasion, the petitioner was also present in person along with the Defence Assistant and therefore, he cannot at this stage state that the Defence Assistant being an LDC was unaware of enquiry rules, and this in itself cannot be a ground for interfering with the enquiry report. In fact, the proceedings show that the Enquiry Officer gave sufficient latitude to the

petitioner in conducting his case. A perusal of the proceeding sheets dated 30.11.2004 and 15.1.2005, shows that despite the fact that the petitioner was proceeded ex-parte as he was absent on the earlier date, he was granted an opportunity twice to summon the witness for cross-examination.

16. As observed by the Supreme court and this Court on a number of occasions, while exercising its jurisdiction under Article 226 of the Constitution of India, the role of the High Court is a supervisory one and not an appellate one, and as such the Court would not be justified in re-appreciating the evidence adduced in a disciplinary proceeding, to alter the findings arrived at by the Enquiry Officer. The scope of interference in findings of the disciplinary authority is very limited. Its jurisdiction is circumscribed by the limits or judicial review correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice, judicial review is not akin to adjudication of the case on merits as an Appellate Authority. In *B.C. Chaturvedi Vs. Union of India and others*, . the scope of judicial review was indicated by stating that review by the Court is of the decision making process and where the findings of the disciplinary authority are based on some evidence, the Court or the Tribunal cannot re-appreciate the evidence and substitute its own findings. In view of the facts and circumstances of the case and the aforementioned position of law, as discussed above, it is not found to be a fit case for interference by this Court while acting under its extraordinary jurisdiction. The petition being devoid of merits is dismissed.