
(2013) 04 DEL CK 0367
In the Delhi High Court
Case No : Writ Petition (C) 2730 of 2013

Ramesh Kumar

APPELLANT

Vs

Commissioner of Police and Others

RESPONDENT

Date of Decision : 29-04-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21
Penal Code, 1860 (IPC) — Section 34, 420, 427, 448, 468

Citation : (2013) 04 DEL CK 0367

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Arun Bhardwaj, for the Appellant;

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J.—The challenge in the Writ Petition is to the order dated April 27, 2012 passed in O.A. No. 1295/2012, and to the order dated December 10, 2012 disposing of R.A. No. 326/2012 and M.A. No. 3333/2012 in O.A. No. 1295/2012. The Tribunal has dismissed O.A. No. 1295/2012 filed by the petitioner and the application seeking review of the order dated April 27, 2012. The brief facts necessary to understand the issue in question are that while working as an Inspector (Investigation), P.S. Lajpat Nagar (South District), New Delhi, the petitioner was suspended on August 07, 2007 and thereafter departmental enquiry was initiated against him. The summary of allegations issued to the petitioner inter alia were that he had helped a person accused in FIR No. 705/2007 namely Bda Singh for offences punishable u/s 448/427/420/468/471/506/34 IPC, P.S. Lajpat Nagar, to grab the property No. K-49, Lajpat Nagar-III, New Delhi, belonging to one Sh. Naveen Kumar Bhatia. The proceedings culminated in a punishment order dated September 28, 2010 whereby the disciplinary authority imposed the penalty of forfeiture of three years approved service permanently entailing proportionate reduction in pay. The appeal filed against the order dated September 28, 2010 was rejected by the

appellate authority vide order dated March 04, 2011. Aggrieved by the said order the petitioner filed O.A. No. 1536/2011 before the Central Administrative Tribunal, Principal Bench, New Delhi. In so far as the challenge of the petitioner on merit of the findings in the departmental enquiry is concerned, the Tribunal held as under:

There is very limited scope for re-appreciating evidence led in a departmental enquiry. Despite that, we have scanned through the evidence and find that insofar as the applicant talking to Bala Singh on his mobile phone on number of occasions is concerned, the same stands amply established. Having said so, we, however, find that when the basic allegations against the applicant were held not proved, or proved to the extent of only "shadow of knowledge", and, therefore, the only allegation proved against the applicant of talking to Bala Singh, may not have attracted such a severe punishment as forfeiture of three years approved service permanently. It may be recalled that the first allegation against the applicant was regarding lending a helping hand to the accused, which has been held as not proved. The other allegation against him was that he had prior knowledge as regards grabbing of property, which has also been held as not proved, but the enquiry officer would hasten to add that even though the same was not proved clearly but shadow of knowledge for grabbing the property would go upon the applicant. The reason for this is only proof of 79+4 calls exchanged between the applicant and accused Bala Singh. We are of the considered view that finding such as but shadow of knowledge for grabbing the property goes upon the delinquent officer as 79+4 calls with the accused Bala Singh could not be proved by the delinquent officer that whether these calls were for positive official purpose or for some other purpose, cannot be taken as proof of any kind. Even though, once it is said by the enquiry officer that prior knowledge of grabbing the property is not proved clearly, and the extent of finding as mentioned above may not be enough to hold a person guilty, we have still scanned through the evidence, from where we find that there was no evidence whatsoever to show that the applicant had prior knowledge of grabbing of property. Surely, for such an allegation there cannot be any direct proof, but the positive evidence which has come on record clearly indicating that the applicant did not help Bala Singh or his co-accused in any manner, would show that the applicant would not have any prior knowledge of grabbing property by Bala Singh, as otherwise he would have extended some helping hand after his arrest. In this regard, we may make a mention of the statement made by none other than PW-1 Naveen Kumar Bhatia, the complainant himself. In his cross-examination he clearly stated that he neither knew nor met Inspr. Ramesh Kumar (the applicant) in the context of his matter and had no complaint against him. PWs 3 and 4 are formal witnesses. Inspr. C.K. Sharma, examined as PW-5, had registered the criminal case on 13.07.2007. Investigation of the case was entrusted to SI Saroj Tiwari, as per the deposition made by him. Accused Bala Singh told him that he was known to the applicant. SI Saroj Tiwari was transferred and thereafter the investigation was handed over to SI Praveen Vats

on 10.08.2007.

2. In so far as the aspect of punishment is concerned, the Tribunal was of the view that what has been proved against the petitioner was that he was having conversation with Bala Singh on 79 plus 4 occasions for about a period of one month prior to registration of the FIR and a few days thereafter. The Tribunal also holds that the petitioner has not proved that he had any family or friendly relations with Bala Singh nor he has been able to prove that Bala Singh was a police informer and therefore talking to him frequently would not auger well for a police officer. After reaching such conclusion, the Tribunal was of the view that the punishment which has been imposed on the petitioner is dis-proportionate. Setting aside the orders challenged the Tribunal directed the disciplinary authority to reconsider if punishment less than the one already imposed would meet the ends of justice.

3. The order dated November 01, 2011 in O.A. No. 1536/2011 had attained finality. Neither party challenged the same. It can be safely inferred that the parties were satisfied with the directions of the Tribunal, directing the disciplinary authority to re-visit the punishment imposed on the petitioner. The disciplinary authority vide its order dated December 22, 2011, which was in deference to the order of the Tribunal dated November 01, 2011, re-considered the issue of punishment and taking into consideration the evidence on record; findings of the Enquiry Officer and the decision of the Tribunal, reduce the punishment from forfeiture of three years approved service entailing proportionate reduction in pay to that of forfeiture of one year approved service entailing proportionate reduction in pay. The appeal of the petitioner against the said order was rejected by the appellate authority vide order dated February 27, 2012. The petitioner challenged both the orders i.e. order dated December 22, 2011 and February 27, 2011 by filing O.A. No. 1295/2012. Pursuant to the completion of pleadings, the O.A. was decided by the Tribunal vide order dated April 27, 2012. The primary contention of the petitioner in the said O.A. was that the petitioner was not guilty of the alleged mis-conduct. In other words, it is the case of the petitioner that the charges against him have not been proved. The Tribunal in Para No. 3 of the impugned order held as under:-

3. "Upon a careful analysis of the case, the Hon "ble Tribunal came to the conclusion that the applicant could have been found guilty and punished as well to the limited extent as mentioned therein for which the punishment of forfeiture of three years" approved service permanently was found to be disproportionate. In view of this, it is not open to the applicant in these proceedings to re-agitate the matter afresh by claiming that he is not guilty of the alleged misconduct. The only question that has to be gone into is the quantum of punishment. The respondents have already reduced the penalty of forfeiture of question that arised now is whether the revised penalty can be said to be excessively disproportionate. It is seen that out of 13 grounds taken in Para 5 of the application, only now pertain to the quantum of punishment; namely Para 5(J)

and 5(K). It would be expedient to reproduce these paras 5(J) and 5(K) as follows:-

J. Because the impugned order/s of punishment are disproportionate and are therefore liable to be quashed and set aside as neither the IO nor the disciplinary authority nor the appellate authority took care to dwell upon the grounds of defense taken by the applicant. The positive evidence in favour of the applicant has been overlooked by the Disciplinary Authority as well as Appellate Authority. It may be noted that the Disciplinary Authority has not applied its mind while issuing the impugned order of dismissal. The decision of the Disciplinary Authority has not applied its mind to the recommendations of E.O. but has blindly followed it. The Hon'ble Supreme Court in the case of Chairman cum Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others, discussed the question of proportionality. In Union of India and another Vs. G. Ganayutham (Dead) by LRs., , Supreme Court elaborately considered the proportionality in the administrative law in England as well as in our own country. The court considered some important English decisions, viz., Associated Provincial Picture Houses Limited v. Wednesbury Corporation, (1948) 1 K.B. 223 ; Council of Civil Service Unions V. Minister for Civil Service (1984) 3 All ER 935; R.V. Goldstein (1983) 1 All ER 434 and R.V. Secretary for Home Dept. ex. P. Brind (1991) 1 All ER 720 and few decisions of Supreme Court, viz., Ranjit Thakur Vs. Union of India (UOI) and Others, ; State of Maharashtra Vs. M.H. Mazumdar, ; Ex-Naik Sardar Singh Vs. Union of India (UOI) and Others, ; State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc., and summed up position of proportionality in administrative law in England and India thus:

(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedure improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The Court would consider whether relevant matters had not been taken into account or whether irrelevant matters had not been taken into account or whether the action was not bona fide. The Court would also consider whether the decision was absurd or perverse. The Court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Now could the Court substitute its decision to that of the administrator. This is the Wednesbury test.

(2) The Court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English Administrative Law in future is not ruled out. These are the CCSU principles.

(3)(a) As per the Bugdaycay, Brind and Smith as long as the Convention is not

incorporated into English Law, the English Courts merely exercise a secondary judgment to find out if the decision maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3)(b) If the Convention is incorporated in England making available the principle of proportionality, then the English Courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4)(a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the Courts/ Tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the Court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonable arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the Courts in our country will apply the principle of "proportionality" and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the Courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14.

K. Because, it would not be out of context to state that in the present case before this Hon''ble Tribunal the punishment imposed on the applicant is outrageous and disproportionate to say the least. It is a fit case which demands judicial review in view of observations made by the Hon''ble Supreme Court in the case of Management of Coimbatore District Central Co-operative Bank Vs. Secretary, Coimbatore District Central Co-operative Bank Employees Association and Another, , held that "proportionality" is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrive at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case.

4. The Tribunal went into the legality of the revised punishment awarded to the petitioner and found that the same cannot be viewed as outrages and disproportionate by applying the Wednesbury principles. The Tribunal concluded that the disciplinary authority has applied its mind. It also held that all issues pertaining to the finding of guilt raised by the petitioner stood decided by the Tribunal, where O.A. No. 1536/2011 was decided and thus could not be re-agitated.

5. The Tribunal had not, rightly gone into the aspect that the petitioner was not guilty of mis-conduct, which is the only issue urged by Mr. Arun Bhardwaj, Advocate, before us. Mr. Bhardwaj could not have agitated the said issue as that

issue has attained finality with the decision of the Tribunal in O.A. No. 1536/2011 dated November 01, 2011. It is settled position that principles of res judicata are also applicable to the proceedings before Tribunals in terms of judgment of Supreme Court reported as, *Dir., Cent. Marine Fisheries Res. Inst. and Others Vs. A. Kanakkan and Others*, .

6. The scope of judicial review in so far as the penalty/ punishment is concerned is well settled. In normal circumstances, the Court in Tribunal would not interfere with the discretion exercised by the competent authority in imposition of punishment. The only exception being with the punishment suffers from illegality or procedural irregularity of material in nature or the same is shockingly disproportionate. In this regard, reference can be made to the judgment of the Supreme Court reported as, *The Administrator, Union Territory of Dadra and Nagar Haveli Vs. Gulabhia M. Lad*, , wherein Supreme Court after analysing the law in para 14 has summed up as under:-

The legal position is fairly well settled that while exercising power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the Disciplinary Authority, and/or on appeal the Appellate Authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the Court/Tribunal. The exercise of discretion in imposition of punishment by the Disciplinary Authority or Appellate Authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the Court or a Tribunal would not substitute its opinion on reappraisal of facts.

7. In the present case, what has been proved is that the petitioner had made 79 plus 4 calls to Bala Singh for about one month prior to registration of FIR and few days thereafter. He could not prove that he had any family or friendly relationship with Bala Singh nor he could be able to prove that Bala Singh was a police informer. There is no reason for him to engage himself in conversation with Bala Singh on so many occasions. This would not, as observed by the Tribunal, "augur well for a police officer". To that extent, the punishment imposed on the petitioner would not be disproportionate.

8. Hence, we are of the view that the present petition filed by the petitioner is devoid of any merit and the same is dismissed. No costs.