
(2017) 09 DEL CK 0219

In the Delhi High Court

Case No : Civil Writ Petition No. 4577 Of 2017

Ranbir Singh

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 21-09-2017

Acts Referred:

Public Gambling Act, 1867 — Section 5, 12, 99

Citation : (2017) 09 DEL CK 0219

Hon'ble Judges : Rekha Palli, J

Bench : Single Bench

Advocate : Shanker Raju, Nilansh Gaur, Meera Bhatia, Satyakam

Final Decision : Dismissed

Judgement

Rekha Palli, J

1. The present writ petition assails the order dated 24.08.2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA

No.2000/2000 whereby the Tribunal has dismissed the Original Application filed by the Petitioner. The Petitioner, a Constable in Delhi Police, had filed

the OA challenging his dismissal from service vide order dated 07.11.1997.

2. While the Petitioner was posted in the North East District, one Sh. Nanhe Mal made a complaint to the Commissioner of Police, alleging therein

that four police personnel from the Special Staff, North East District including the Petitioner, had, on 15.04.1996, illegally picked up and detained his

son Subash Chand and his two servants Krishan Kumar and Chander Pal, on a false accusation of manufacturing and storing spurious cold drinks, and

had also recovered crates of the allegedly spurious cold drinks. It was also alleged that the team of police personnel headed by Net Ram, of which

team the Petitioner was also a member, had demanded illegal gratification of Rs.50,000/- and had released the detained persons only after receiving a sum of Rs.30,000/- on 16.04.1996 as bribe. Based on this complaint, an joint departmental enquiry was ordered against the Petitioner and the other three police personnel, vide order dated 16.05.1996 of the Additional Commissioner of Police/R-4. In the enquiry, the Petitioner set up a defence of denial by stating that he was not a part of the raiding team, which had raided the shop of Mr.Subhash Chand on 15.04.1996, as at that time on 15.04.1996, he was part of another team headed by SI Devender Singh. His plea was that this team had gone on "Ilaka Gasht" and had come across gambling activities by some persons which led to registration of FIR No.99/1996 based on the report given by him. However, the Enquiry Officer upon consideration of entire evidence adduced in the enquiry, rejected the Petitioner's defence and vide his report dated 05.08.1997 concluded that the charges framed against the Petitioner and his co-delinquents stood fully proved.

3. Based on the findings of the Enquiry Officer, the Respondent No. 4, passed an order dated 07.11.1997 dismissing the Petitioner from service.

4. The Petitioner's departmental Appeal and Revision Petition having failed, he preferred OA 2000/2000 before the Tribunal on 12.09.2000.

During the pendency of the OA, he also filed a Miscellaneous Application on 08.08.2011 to bring on record copies of certain additional documents to

show his alibi and non-involvement in the incident relating to Shri Subhash Chand.

5. The Petitioner's OA was dismissed by the Tribunal on 05.04.2002 but subsequently Review Application No. 114/2002 filed by the Petitioner

was allowed. The Tribunal vide its order dated 29.01.2003 partly allowed the OA by remitting back the matter to the departmental authorities for fresh

enquiry after obtaining approval of the ACP. This order passed by the Tribunal was challenged by the Respondents by way of W.P.(C) No.

6026/2003 before this Court. Vide order dated 24.07.2006 the Writ Petition of the Respondents was allowed and the Tribunal's order remitting

back the matter was set aside. The Petitioner, then sought a review of the order dated 24.07.2006, which prayer was rejected by this Court on

08.12.2006.

6. At this stage, the Petitioner filed W.P.(C) No.4834/2007 challenging the Tribunal's order dated 29.01.2003 before this Court. This Court after

considering the plea of 'alibi' raised by the Petitioner vide order dated 27.11.2014 remanded the matter back to the Tribunal for adjudication of the

OA on merits. This Court also directed the Tribunal to consider the documents filed by the Petitioner, in support of his plea, that he had no involvement

in the alleged incident as he was part of a different raiding team i.e. which went on 'Ilaka Gasht' and came across a gambling incident, which

led to lodging of a separate FIR, i.e. 99/1996 on 15.04.1996, under the Gambling Act at the same time as the alleged incident.

7. Upon remand, the Tribunal has once again considered the Petitioner's OA. The main plea of the Petitioner before the Tribunal was that, there

was no evidence on record to connect him with the alleged charge. To support his plea that he was part of a raiding party headed by SI Devender

Singh, and was not connected with the raiding team headed by Net Ram, the Petitioner had relied upon copies of certain documents annexed with his

Miscellaneous Application filed in 2001. These documents included copies of DDR Entries No.14A and 16A, both dated 15.04.1996, copies of

FIR/police report in criminal case No.99/96 under Section 12/5/99 of Public Gambling Act, site plan, recovery memo, search memo and conviction slip

in respect of FIR No.99/96. Relying on copies of these documents, the Petitioner had contended before the Tribunal that since the factum of his being

a member of the investigation team headed by SI Devender Singh in a criminal case registered vide FIR No.99/1996 under the Gambling Act stood

proved, it was evident that he could not have been a part of the raiding party headed by Net Ram, which was alleged to have demanded and accepted

bribe from Mr. Subhash Chand and he was, therefore, falsely implicated.

8. On the other hand, the stand of the Respondents before the Tribunal was that, there was overwhelming evidence including the statement of PW-4 -

Nanhe Mal, to show the involvement of the Petitioner in the incident in question and that he was a part of the team which had visited the house of

PW-4 on 16.04.1996 and taken a bribe of Rs.30,000/-. It was contended that the Enquiry Officer and the departmental authorities had appreciated and

evaluated the evidence in the right perspective, and there was no infirmity in the finding of the Enquiry Officer or the orders passed by the Disciplinary

Authority.

9. The Tribunal, not only examined the documents on which the Petitioner had sought to rely, but also considered the evidence led by the Respondents

before the Enquiry Officer to prove the Petitioner's guilt. The Tribunal found that the authenticity of the copies of DDR No.14A and 16A dated

15.04.1996 itself was very doubtful. The Tribunal held that, even otherwise, the documents relied upon by the Petitioner in support of his plea of

alibi pertained to 15.04.1996, whereas there were specific allegations and evidence to show that he had gone to the complainant's house on

the next day, i.e. on 16.04.1996, and received the bribe money. The Tribunal, therefore, vide its impugned order dated 24.08.2016 dismissed the OA by

holding that there was sufficient oral and documentary evidence to prove the Petitioner's guilt.

10. In these circumstances, the Petitioner has approached this Court by way of the present petition.

11. Before us, Mr.Shanker Raju, Advocate, arguing for the Petitioner submits that the Tribunal has failed to appreciate that the Enquiry Report

indicting the Petitioner, was wholly perverse and the finding of guilt arrived at by the Enquiry Officer was based on "no evidence". He submits

that despite specific directions given by this Court, vide its order dated 27.11.2014 - while remanding the matter back to the Tribunal to consider the

documents produced by the Petitioner in support of his plea of alibi, the Tribunal has brushed aside those crucial documents produced by the

Petitioner. According to him, these documents clearly show that at the relevant time, the Petitioner was a part of the raiding party headed by SI

Devender Singh and in these circumstances, he just could not be a part of the raiding party headed by Net Ram, which team was involved in the

alleged incident of demanding and accepting bribe from Mr.Subhash Chand.

12. Drawing our attention to the copies of documents including DD Entries, FIR, seizure memo etc., on which reliance had been placed by the

Petitioner before the Tribunal, Mr.Raju contends that this clinching evidence has been wrongly ignored by the Tribunal. According to him, once the

Petitioner's participation as a member of the raiding party led by SI Devender Singh on 15.04.1996 was proved, it was just not possible for him to

simultaneously be a part of the other raiding team led by Net Ram, at the same

time.

13. In support of his plea that since it is a case of "no evidence", the Enquiry Report and all consequential orders are liable to be set aside,

Mr.Raju has placed reliance on judgments of the Apex Court in *Sher Bahadur vs. Union of India & Ors.*, (2002) 7 SCC 142, *Union of India vs. H.C.*

Goel, AIR 1964 SC 364, *Union of India & Ors. vs. Gyan Chand Chattar*, (2009) 12 SCC 78 *Commissioner of Police, Delhi & others v. Jai Bhagwan*

(2011) 6 SCC 376 and judgment of this Court in *Jai Bhagwan vs. Commissioner of Police*, 2010 (166) DLT 563.

14. Per Contra, Mr.Satyakam, the learned counsel for the Respondents while supporting the impugned order, submits that the Tribunal has

meticulously examined not only the Enquiry Report but also the documents filed by the Petitioner along with his Miscellaneous Application. He submits

that the Tribunal after considering the entire evidence had come to a categorical conclusion that there was sufficient oral as well as documentary

evidence on record to prove the guilt of the Petitioner.

15. Having heard the learned counsels and perused the impugned order as well as the record, we are unable to find any infirmity in the impugned

order passed by the Tribunal.

16. We find that despite the well settled legal position that the Court cannot and should not re-appreciate evidence or examine the sufficiency of

evidence led before the Enquiry Officer, the Tribunal has examined the entire evidence and come to a conclusion that there was no infirmity in the

enquiry report. The Tribunal also held that even though the Petitioner has raised an alibi for 15.04.1996, there was no defence raised qua the incident

of 16.04.1996. The Tribunal also found that there was sufficient direct evidence to show the Petitioner's involvement on 16.04.1996, when the

bribe was actually received by the raiding team led by Net Ram.

17. We have also examined the copies of documents including DD entries relied upon by the Petitioner, but we find that the Petitioner has sought to

rely only on typed copies of some documents and has failed to produce even photocopies of these documents which, according to him, are crucial in

proving his false implication. In these circumstances, the Tribunal has, in our view, rightly observed that the authenticity of these documents is

doubtful, and no reliance could be placed on them.

18. We have also considered the judgments relied upon by the learned counsel for the Petitioner. We find that the common thread running through all

these judgments is that disciplinary proceedings being quasi-criminal in nature, there should at least be some evidence to prove the charge and in cases

where the Court finds it to be a case of 'no evidence', the Court can and should interfere with the findings of the Enquiry Officer and

Disciplinary Authorities. The judicial approach, thus, has been that the Court/Tribunal should not re-appreciate evidence. The Court may interfere only

in cases where the enquiry is held in violation of principles of natural justice or is held in violation of statutory rules, or it is a case of 'no

evidence'. There can be no dispute with this legal proposition. In our view, in cases, where the Court finds that it is a case of 'no evidence',

it is the duty of the Court to go into the merits of the case and not reject the case by merely relying on the findings of the Disciplinary Authorities

19. We are fortified by the decision of the Supreme Court in the case of B.C. Chaturvedi vs. Union of India, (1995) 6 SCC 749 where, while

reiterating the principles and scope of judicial review in departmental proceedings, the Supreme Court in paras 12 and 18 held as under:-

'12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review

is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily

correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is

concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether

the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and

authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence

Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and

conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The

Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own

independent findings on the evidence. The Court/Tribunal may interfere where the authority held that proceedings against the delinquent

officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where

the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no

reasonable person would have never reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so

as to make it appropriate to the facts of each case.â??

â??18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being

fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the

discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while

exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the

punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would

appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the

litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.â??

20. Having examined the record, including the findings of the Enquiry Officer and the order passed by Disciplinary Authority, we do not find that this

is a case of â??no evidenceâ??. In fact, we find that there was sufficient evidence before the Enquiry Officer to hold the Petitioner guilty of the

charge levelled against him. Without delving into the evidence in detail, we find that the statement of PW4-Nanhe Mal, which has gone

uncontroverted, was in itself sufficient to hold the charges against the Petitioner as proved.

21. We also find that neither the plea of violation of principles of natural justice nor of any violation of statutory rules had been raised either before the

Tribunal or before us. We, therefore, see no reason to interfere with the findings of the Disciplinary Authorities. The Tribunal has, in our view, rightly

declined to interfere with the conclusions of the Disciplinary Authorities.

22. In these circumstances we see no infirmity in the Tribunal's order. We find no merit in the petition. Accordingly, the same is dismissed with no orders as to costs.