

(2014) 11 DEL CK 0110
In the Delhi High Court
Case No : Writ Petition (Civil) 4834/2007

Ranbir Singh

APPELLANT

Vs

UOI

RESPONDENT

Date of Decision : 27-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 11 DEL CK 0110

Hon'ble Judges : Vipin Sanghi, J; S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Arun Bhardwaj, Advocate for the Appellant; Gautam Gupta, Advocate for the Respondent

Judgement

S. Ravindra Bhat, J.—The petitioner's grievance is in respect of his dismissal by order dated 07.11.1997; his challenge before the Central Administrative Tribunal (CAT/ Tribunal) , after exhaustion of departmental remedies failed. The Tribunal by its order impugned in the present case " dated 29.01.2003 in O.A. No. 2000/2000, rejected the application.

2. The petitioner Constable employed with the Delhi Police was issued a charge-sheet which alleged that he was a member of a team which raided a shopkeeper " one Subhash Chand, on suspicion that he was complicit in manufacturing and storing spurious cold drinks. During the course of that raid, 70 crates of cold drinks were apparently seized and recovered. The complainant/ informant Subhash Chand, who was an accused in that case, alleged that the petitioner and the others demanded illegal gratification and the complainant and his servants were illegally detained for more than twenty hours. The charge-sheet proceeded on the averment that the Special Staff had lodged a false D.D. No. 11 mentioning that a tempo carrying cold drinks had been checked and the informant/ complainant had been brought to the Special Staff for verification. In the joint inquiry, the petitioner along with other members of the team S.I. Net Ram, Constable Jatan Bir Singh and ASI Jiya Ram were proceeded with. The

petitioner's defence was one of denial " his version was that at that time, i.e. in the evening of 15.04.1996, he was part of another team headed by S.I. Devender Singh of Police Station North-East Special Staff, which was on "Ilaka Gasht" and during the course of which, they came upon gambling activities, which led not only in reporting, but eventually led to the conviction of the accused.

3. The petitioner had relied upon the deposition of DW-12, S.I. Devender Singh, who headed the police party and who even deposed in his favour. At the same time, though he is alleged to have committed the misconduct along with S.I. Net Ram, in fact, the petitioner was a witness to the gambling activities case. The Inquiry Officer, however, relied upon the testimony of PW-4 Nanhe Mal, the father of the complainant, Subhash Chand and choose to disbelieve the statement of DW-12, S.I. Devender Singh.

4. The Tribunal upon being approached, initially, allowed the application on the ground that the concerned disciplinary authority was the Additional Commissioner, whose prior approval is pending. This determination was, however, set aside and the matter was remitted to the CAT for fresh determination on merits. It is in these circumstances that the impugned order was made.

5. It is contended on behalf of the petitioner that the CAT fell into error in rejecting the application being M.A. No. 167/2001 filed during the course of the proceedings. In that application, the writ petitioner had sought liberty to produce all the documentary evidence in support of his contention that he was not part of the raiding party headed by S.I. Net Ram, but, instead, was, in fact, part of the raiding party headed by S.I. Devender Singh. These included the copies of the F.I.R.s registered in respect of the offence under the Gambling Act, F.I.R. No. 99/1996, the relative D.D. entries in respect of both the incidents, i.e. the DD No. 7A, 8, 9, 11, 14, 14A & 16A as well as the challan filed on 20.04.1996, the conviction slip dated 06.01.1997, and the various copies of Court proceedings of the criminal Court. The application, filed on 08.08.2001 " copy of which has been produced as a part of the writ, was even considered by the CAT, which formed the opinion that since there was no indication that such documentary material was, in fact, before the Inquiry Officer, the petitioner had himself to blame and he had been provided adequate opportunity.

6. Learned counsel argues that the complete silence in the Inquiry Officer's findings and lack of discussion about the simultaneous raids which resulted in lodging of F.I.R. No. 99/1996, and even the petitioner's involvement in that raiding party, completely negates the allegations of misconduct.

7. It is urged that the reliance placed upon the statement of PW-4 Nanhe Mal was, in fact, misplaced. In this regard, learned counsel places reliance on the line of questioning taken by him during the course of inquiry proceedings and pointed to question Nos. 5 & 6. It was submitted that Nanhe Mal " who was of advanced

age when he made the statement, had weak eye sight. In fact, he was unable to positively identify two out of five persons shown to him during the inquiry proceedings. The Inquiry Officer also apparently made a note at the relevant entry, stating wrong identification of Net Ram and Ranbir Singh, i.e. the present petitioner.

8. Learned counsel for the respondents urges that the findings of fact based upon the Inquiry Officer's determination were correctly assessed by the CAT and, in these circumstances, the Court should decline to grant any relief in these proceedings. It was urged that so far as the question of identification and involvement of the petitioner in the other raiding party " which led to lodging of complaint and disciplinary proceedings (of which the informant was Subhash Chand) , two objective indications completely belie the arguments made.

9. Learned counsel relied upon the order made in W.P. (C.) No. 3720/2001 titled Sh.Net Ram Vs. Union of India & Others, on 01.02.2010, in which this Court had refused to interfere with the order of the CAT vis-a-vis one of the co-accused, i.e. S.I. Net Ram. It was pointed out that the said order specifically deals with the question of identification and, in fact, confirms the CAT's order. In these circumstances, the petitioner cannot be heard to say that he was denied justice. Learned counsel also submits that the files of the inquiry proceedings are no longer available since, according to his instructions, they have been destroyed.

10. The Court has considered the submissions as well as the defence recorded by the Inquiry Officer. The defence of the petitioner that he was, in fact, not present and not part of the raiding party, which led to the complaint by Subhash Chand was apparently urged before the Inquiry Officer, as is evident from his discussion of DW-12's evidence. The finding of the petitioner's guilt hinges upon PW-4 Nanhe Mal's deposition. The material produced with regard to the identification, does throw some doubt whether he was able to identify the petitioner and Net Ram correctly. In this regard, the decision in W.P. (C.) No. 3720/2001 appears to be that the said officer alleged that the identification by Nanhe Mal was not correct, and one based upon confusion as Net Ram was, in fact, shown as Ranbir Singh. The Court refused to draw itself into the inquiry, and held that since the extensive scrutiny had been undertaken by CAT, jurisdiction under Article 226 was not available. Moreover, the Court went by the record, so far as it pertained to Net Ram. Undoubtedly, Net Ram headed the raiding party, which culminated in seizure of bottles, leading to the complaint made by Subhash Chand.

11. The Inquiry Officer in this case nowhere seems to suggest that the petitioner had produced, or relied upon the D.D. entries which he sought to produce before the CAT. The D.D. entries and the other documents in his favour were never produced in those proceedings. Although some indication appears on the basis of the appeal preferred to the higher authority, and the revision petition, the first reference to these documents appears, inter alia, in the application filed before CAT in 2001.

12. The CAT's decision not to go into the factual matrix, in the light of the materials sought to be adduced before it, ordinarily would not be gone into by the Court. In the present case, there are certain unusual circumstances which compel us to do so. These are: that the petitioner's allegation is that he was part of an independent raiding team, i.e. which went on Ilaka Gasht and came by the gambling incident, which led to lodging of a separate F.I.R., i.e. 99/1996 on 15.04.1996 at, more or less, the same time. The timing of this F.I.R. and the relevant D.D. entries is too close for comfort, to the incident leading to complaint lodged by Subhash Chand. If there is some iota of truth in the petitioner's contention, the entire basis of the determination of guilt, premised upon PW-4 Nanhe Mal's rather weak identification, is thrown into grave doubt.

13. In these circumstances, the petitioner's reliance on documents which could not have been disputed, especially by the Delhi Police, such as the D.D. entries of the challan, evidencing movement, F.I.R., challan, conviction slip and the Court proceedings would have thrown better light on his contention. In the course of the proceedings, as noticed earlier, the respondent's counsel had stated that the inquiry proceedings and the file have been destroyed. This is unfortunate, considering that the writ petition has been pending for the last seven years or more. However, learned counsel for the petitioner urged that some, if not all of the documents relied upon, were, in fact, sourced earlier and certified copies are available.

14. In view of the forgoing discussion, we are of the opinion that the CAT should examine the merits of the case, specifically in the light of the documents, copies of which were annexed along with the application filed in 2001 and any other relevant certified copy, which may be produced by the petitioner, in support of his case that there was no involvement in the alleged incident but he was rather a part of the team headed by S.I. Devender Singh " DW-12 which culminated in F.I.R. No. 99/96 and conviction of the accused in that case, i.e. Nawab and Shakeel Ahmed.

15. The impugned order is, accordingly, set aside. The parties are directed to be present before the CAT on 08.12.2014, which will proceed to hear the merits of the O.A. No. 2000/2000 in the light of the above directions. The CAT shall endeavour to complete the proceedings and render the judgement at its earliest convenience considering that the petitioner has been out of employment for the past seventeen years. It shall endeavour to pass final orders within four months from today. In view of the above, the impugned order dated 29.01.2003 is hereby quashed.

16. The writ petition is allowed in the above terms.