
(2010) 02 DEL CK 0074

In the Delhi High Court

Case No : Writ Petition (C.) No. 3720 of 2001

Sh. Net Ram

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-02-2010

Acts Referred:

Citation : (2010) 02 DEL CK 0074

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : Shyam Babu, for the Appellant; Rohit Madan, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner after his dismissal as sub-Inspector of Delhi Police has challenged the order dated 7th December, 2000 passed in OA No. 1602/1999 titled as Ex. Sub-Inspector Net Ram v. UOI and Ors. dismissing his OA u/s 19 of the Administrative Tribunal Act, 1985 seeking setting aside the order dated 30th October, 1997 dismissing him from service and setting aside of orders dated 11th March, 1998 and 18th February, 1999 dismissing his appeal and the revision petition and order dated 16th October, 1996 by which the name of the petitioner was entered in the list of officers with doubtful integrity.

2. Brief facts to comprehend the present disputes are that the petitioner jointed as a constable in Delhi Police and subsequently he was promoted as sub-inspector. The petitioner was posted in special staff/North East District when a complaint was lodged against him and other police officials by Sh. Nanhe Mal, pursuant to which a preliminary inquiry was conducted and on the basis of the preliminary enquiry it was ordered to conduct a regular departmental inquiry and he was placed under suspension on 24th April, 1996.

3. Charge sheet was issued against the petitioner and the departmental inquiry was conducted. The inquiry officer gave his findings holding the petitioner guilty of the charges. After having an the inquiry report, a reply was submitted by the

petitioner to the Disciplinary Authority, considering which the punishment of dismissal from service was imposed on the petitioner and his period of suspension was ordered to be treated as not spent on duty.

4. The petitioner had preferred an appeal against the order of the Disciplinary Authority dismissing him from service which was dismissed by the Appellate Authority. A revision petition was also filed which was also dismissed.

5. The petitioner thereafter filed an OA u/s 19 of the Administrative Tribunal Act, 1985 seeking quashing of the orders passed against him and his reinstatement. The petitioner had contended that there is no evidence against him showing his culpability to the charges made against him, as the complainant Sh. Nanhe Mal had not recognized him during the proceedings before the inquiry officer and identified another person/another delinquent official Sh. Ranbir Singh as Net Ram. The petitioner had also contended that one of the sons of the complaint and his one helper before the Inquiry Officer in their testimonies had completely absolved the petitioner of the charges made against him. In the circumstances, it was contended that it is a case of no evidence and the extreme punishment of dismissal from service could not be awarded to him as the proof required for the extreme penalty of dismissal is much higher than mere preponderance of probability.

6. The petition before the Tribunal was contested by the respondents contending inter-alia, that Nanhe Mal, complainant had made a complaint on 23rd April, 1996 that the petitioner along with other officials of the special staff had forcibly picked up his son Subhash Chand and two servants from their cold drink shop and accused them of manufacturing spurious cold drinks and recovered 70 crates of cold drinks including a three wheeler scooter. In order to extort money, a threat was given that unless an amount of Rs. 50,000/- as illegal gratification is paid, they would be involved in false criminal cases. The son of the complainant and his servants were detained for more than 20 hours. The allegation of beating Subhash Chand and his servants and misbehavior was also made. It was also contended that the son of the complainant, his helper and part of the goods were released after extorting Rs. 30,000/- from the complainant.

7. The allegations against the petitioner were inquired by the DCP/ North-East District who found the allegation to be correct and it had also transpired that a false DD No. 11 was lodged stipulating that the special staff party had checked one tempo carrying cold drinks, which was brought to special staff office for verification and thereafter, it was allowed to go. The petitioner and others, officials of the special staff rather denied that the complainant and his servants were un- authorizedly and wrongfully detained. It was also found that the officials of the special staff including the petitioner had kept 11 crates of cold drinks out of 70 crates and returned 59 crates and released Subhash Chand and others along with the three wheeler after extracting Rs. 30,000/- from them.

8. The Central Administrative Tribunal after considering the pleadings and

contentions of the parties held that the order of the disciplinary authority did not suffer from any illegality or irregularity which would require any interference by the Tribunal. The plea of the petitioner that there was no cogent evidence against him was also rejected and the punishment awarded to the petitioner was upheld. Against the order of the Tribunal, the petitioner has preferred the present writ petition impugning the order of the Tribunal upholding the order of dismissal by the Disciplinary Authority which was affirmed by the Appellate and Revisional Authorities.

9. Learned Counsel for the petitioner Mr. Shyam Babu has challenged the order of the Tribunal and punishment awarded to the petitioner on the ground that in case of petitioner there is no evidence against him, as the complainant Sh. Nanhe Mal had not identified him before the Inquiry Officer. It was contended by the learned Counsel that though in the preliminary inquiry, the complainant is alleged to have identified the petitioner, however, the concerned DCP before whom the complainant had identified the petitioner had not been examined. In order to buttress his plea that in the case of the petitioner there is no evidence against him, it is asserted that the statement of Sh. Subhash Chand, son of the complainant also absolve him, as he categorically deposed that he was not beaten up and misbehaved with and all the crates of cold drinks seized from the complainant were returned. It is pleaded by the learned Counsel that the relevant testimonies have been completely ignored by the respondents. The learned Counsel has also raised the dispute about the proportionality of the punishment awarded to the petitioner. For proving the guilt of the punishment and awarding the extreme punishment of dismissal, according to learned Counsel, it is not the preponderance of probability but it has to be proof of guilt beyond reasonable doubt.

10. The Tribunal while considering the case of the petitioner, relying on N. Rajarathinam v. State of Tamil Nadu 1997 (1) SLJ 10 has held that the Tribunal is not a fact finding body and so long as on the preponderance of probability even on the basis of one witness an inference can be reached regarding the culpability of the delinquent employee, the Tribunal does not have to interfere with decision of the Disciplinary Authority. The Tribunal also noted that there is no infirmity in the proceedings followed by the Disciplinary Authority and the Appellate Authority in conducting the departmental inquiry and consequent thereto the orders passed and the punishment imposed on the petitioner could not be interfered with.

11. The learned Counsel for the petitioner has not argued and raised any point regarding any infirmity in the procedure followed by the respondents in conducting the departmental inquiry, however, what is stressed is that there is no evidence against the petitioner as even the inquiry officer in the inquiry report had noted that the petitioner was not identified by the complainant Sh. Nanhe Mal.

12. Though, this Court does not have to re-appreciate the evidence and give its

own finding of facts, however, it can take cognizance of entire facts and circumstances of the case and pass appropriate orders to give parties complete and substantial justice. The jurisdiction of the High Court, being extraordinary, is normally exercisable keeping in mind the principal of equity and one of the ends of the equity is to promote fair play.

13 The learned Counsel for the petitioner, though, emphasized that in case of imposition of penalty of dismissal, it is not the preponderance of probability on the basis of which the inference of guilt has to be established and it has to be something more almost equivalent to proof beyond reasonable doubt, however, learned Counsel for the petitioner is unable to substantiate his proposition on the basis of any precedent of the Supreme Court or the High Court.

14. In the circumstances we are not inclined to hold differently that in departmental proceedings the charges are to be proved like in a criminal trial that is beyond all reasonable doubts, even in cases of extreme penalty of dismissal. In order to infer guilt of a delinquent, the inquiry officer performing quasi judicial function on analyzing the evidence and documents must arrive at a conclusion that on the basis of preponderance of probability the charges are established on the basis of materials on record. While doing so, the inquiry officer and the Disciplinary Authority cannot take into consideration irrelevant facts and refuse to consider the relevant facts. Even, the burden of proof cannot be shifted nor relevant testimony of the witness can be rejected on the basis of surmises and conjectures. The inquiry officer also cannot enquire or go into the allegation with which the delinquent officers had not been charged with. These principals were reiterated by the Supreme Court in M.V. Bijlani Vs. Union of India (UOI) and Others, detailing about the process of judicial review and decision making process. It was held at page 95 by the Supreme Court as under:- 25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

15. Since the counsel for the parties were also at issue about the noticing the evidence by the enquiry officer, therefore, in order to appreciate the contention of the learned Counsel for the petitioner, we obtained the photocopies of the statements of Nanhe Mal, Complainant, PW 4, his son Sh. Subhash Chand, PW5,

Sh. Krishan Pal, helper of the complainant, PW6 and Sh. Vinod Kumar, another son of the complainant, PW7 recorded before the Disciplinary Authority and perused the same and copies were also ordered to be given to the counsel for the petitioner. Though, the gist of the testimonies of the witnesses had been considered by the inquiry officer and incorporated in the inquiry report, however, learned Counsel for the respondent had pointed out slight variation in few aspects which necessitated perusal of the testimonies.

16. From the perusal of the testimony of PW 4 Sh. Nanhe Mal, it is apparent that he has categorically implicated the petitioner and other official in his examination-in-chief and he categorically deposed that the police personnel present at the time of recording the statement and departmental inquiry, including the petitioner had come on 15th April at 7 O'clock at the shop of Subhash Chand, his son and made an allegation of spurious campa cola stored by them. On showing the bills pertaining to the goods which were alleged to be spurious, he was told that they know how to make duplicate bills and difference between the original and duplicate bills which were given. From his statement, it is apparent that he is definite and his statement is cogent about the threats extended to him and that he was pressurized to give Rs. 50,000/- for the release of his son, the helper and the goods. He stated that when the police personnel including petitioner did not release his man and his goods, a telegram was given to Sh. Nikhil Kumar at 2:30 AM on 16th morning. He has stated that next day in the morning, when he again went and told that he will get the bail for his man, who had been detained by these police personnel including the petitioner, then he was told not to waste that money in litigation and rather settle with the police including petitioner and instead of Rs. 50,000/-, to pay Rs. 30,000/- to them. Since the demand was decreased to Rs. 30,000/- the complainant sent his grandson Sh. Rakesh Kumar with the key of the trunk of his grandmother to go and fetch Rs. 30,000/- which amount was paid to the petitioners Sh. Jiyaram, Sh. Ranbir and Sh. Jatanbir Singh, who were in the police station. The complainant has categorically stated that the money was paid to the petitioner including other police personnel.

17. In the cross-examination to question No. 5 as to at his place how many and which of the police personnel had come, he stated that four police personnel, i.e., Sh. Jiyaram, Sh. Net Ram (petitioner), Sh. Jatanbir and Sh. Ranbir had come. He stated that earlier he did not know their names however, he came to know their names later. In the reply to question 6 in the cross-examination, out of five persons, he did not recognize two persons correctly, i.e., he did not identify the names of two persons correctly but identified them and stated that they had come to his shop and even money was given to them. From the tenor of entire cross-examination, it cannot be held that he did not identify the petitioner as not having come to his place. Merely because the name of the petitioner was not correctly recollected by the petitioner in the cross examination, who is very aged, his testimony that the money was given to Net Ram, petitioner and others cannot be doubted nor it can be held that there is no evidence against the petitioner.

18. The complainant at one point in the cross-examination referred Net Ram as Ranbir and Ranbir as Net Ram. However, on the basis of this, it cannot be held that there is no evidence against Net Ram because the complainant identified both, i.e., Net Ram and Ranbir, who had come to the shop and to whom on account of the pressure, an amount of Rs. 30,000/- was paid. In the reply to question 17 of the cross-examination as to with whom the settlement to pay Rs. 30,000/- was finalized, he stated that it was with the petitioner. He even gave the denomination of the notes of the amount of Rs. 30,000/- which were of 100 rupees and 50 rupees. In the reply to question 19 in the cross-examination, the complainant had stated that at the time when the money was paid, 5-6 persons were present, however, the money was handed over to Jiyaram and Net Ram/petitioner.

19. In the circumstances, the plea of the learned Counsel for the petitioner that there is no evidence against the petitioner cannot be accepted. The testimony of the complainant is sound and reliable and cannot be ignored. Learned Counsel Sh. Shyam Babu has tried to discredit the statement of the complainant on the basis of the cross-examination of Sh. Subhash Chand who stated that the police personnel had not beaten him whereas according to the complainant, the police personnel had beaten him. However, perusal of the cross-examination of the complainant reveals that his statement was that Sh. Jatanbir, other police personnel had beaten his helper Sh. Krishan Pal. The complainant had not deposed that his son Sh. Subhash Chand was beaten up by police personnel and consequently, on this ground the testimony of the complainant cannot be doubted or ignored. Though, Sh. Krishan Pal, helper of the complainant in the cross-examination, stated that he was not beaten up by the police contrary to the statement of the complainant but on the basis of this, the remaining testimony of the complainant cannot be discredited.

20. In the circumstances it is not a case where the enquiry officers has rejected any testimony on the basis of surmises and conjectures. From the entire testimonies of the witnesses it also cannot be inferred that the enquiry officer has taken into consideration irrelevant facts. The culpability of the petitioner in picking up the son of the complainant and his helper and releasing them after accepting illegal consideration has been established without any doubt. There was no reason for the complainant to implicate petitioner and other police personnel. The enquiry officer has also taken into consideration the false DD entry made at the instance of petitioner and other police personnel of special staff. In the circumstances the plea of the learned Counsel for the petitioner that there is no cogent evidence against the petitioner cannot be accepted. Merely because there is minor variance in the testimony about the beating of the helper by another police personnel, neither the charges against the petitioner are mitigated nor he can be absolved of them. From the report of the enquiry officer it also cannot be inferred that he had enquired into the allegations with which the petitioner has not been charged with. In the circumstances taking it from any angle and on any account, the petitioner cannot be absolved of the charges

made against him.

21. Disciplinary and appellate authority have considered these statements in detail. In the facts and circumstances, the contention of the learned Counsel for the petitioner that there is no cogent evidence against the petitioner is without any basis. The evidence as discussed hereinabove shall be sufficient to demonstrate the culpability of the petitioner. In the circumstances, the petitioner is not entitled for any relief on the ground that the findings of the enquiry officer and the respondents are based on no evidence or are based on surmises or conjectures or that the relevant evidence was not considered.

22. No other ground has been raised by the learned Counsel for the petitioner impugning the order of the disciplinary authority and other authorities imposing the punishment of dismissal from service. Brazenness with which the petitioner in collusion with other police officials violated the rules and extorted money from an innocent businessman does not entitle the petitioner for any leniency and it cannot be held that the punishment imposed by the respondent is disproportionate. The petitioner was entrusted with the maintenance of law and order and he was in the special staff. The power and authority given to him was exploited by him brazenly for his personal ends and in the circumstances, there is no scope to differ with the punishment awarded by the disciplinary authority. The order of the Tribunal does not suffer from any such illegality or irregularity so as to entail any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

23. The writ petition is without any merit and it is therefore dismissed. Parties are however, left to bear their own costs.