

(2009) 08 DEL CK 0361

In the Delhi High Court

Case No : Writ Petition (Civil) No. 4496 of 2000

Shri Chander Pal

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 31-08-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi Police (Punishment and Appeal) Rules, 1980 — Rule 12, 15(2), 16
Penal Code, 1860 (IPC) — Section 420

Citation : (2009) 08 DEL CK 0361

Hon'ble Judges : Madan B. Lokur, J;A.K. Pathak, J

Bench : Division Bench

Advocate : Kunwar C.M. Khan and Ramesh Kumar Koli, for the Appellant; V.K. Tandon, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Pathak, J.—Petitioner was working as Constable with the Delhi Police at the relevant time. Disciplinary proceeding for major penalty was initiated against him on the charge that on 4th February, 1986 while posted as Constable he had cheated one Mr. Hari Prasad, maternal uncle of SI Gulab Rai No. D/910, to the tune of Rs. 4000/-, on the pretext that he would get him enlisted in the Delhi Police, by using his cordial relations with senior officers of the Delhi Police, responsible for the recruitment.

2. FIR No. 229/1986 u/s 420 IPC was also registered against the Petitioner in the Police Station Nand Nagari on 13th September, 1986, on the complaint of SI Gulab Rai, with regard to the same incident.

3. Enquiry Officer, after concluding the enquiry submitted his report dated 27th July, 1988 before Disciplinary Authority. A show cause notice was issued to the Petitioner who submitted his written statement. Petitioner was afforded personal hearing. Thereafter, Disciplinary Authority vide order dated 13th September, 1988 awarded punishment of dismissal from service to the Petitioner.

4. Petitioner preferred an appeal before the Appellate Authority, which was dismissed vide order dated 23rd December, 1988.

5. Petitioner filed a revision petition before Commissioner of Police which was also dismissed on 19th September, 1989.

6. Petitioner was acquitted in the criminal case by the learned Magistrate on 4th May, 1992. Thereafter, Petitioner filed a review- cum-mercy petition before Commissioner of Police which was rejected on 18th July, 1992. Representation filed before the Lt. Governor was also rejected on 1st December, 1995.

7. Petitioner filed O.A. No. 312/1996 before the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "Tribunal") thereby challenging the orders passed by Disciplinary Authority, Appellate Authority and the Lt. Governor. Petitioner contended before Tribunal that as per the Enquiry Officer there was no documentary or oral independent evidence against the Petitioner to show that Petitioner had received Rs. 4000/- from the complainant Hari Prasad. In spite of this Disciplinary Authority had concluded that charge against the Petitioner was proved, on the basis of circumstantial evidence, to the effect that complainant Hari Prasad had visited residence of the Petitioner in order to seek his help for his recruitment in the Delhi Police. Without disagreeing with the findings of Enquiry Officer, Disciplinary Authority had passed the impugned order of punishment. Proper opportunity was also not afforded to the Petitioner, therefore, penalty order was illegal. Petitioner also contended before Tribunal that as per Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980 (hereinafter referred to as "Rules") a police officer, who had been tried and acquitted by the Criminal Court, could not have been proceeded with departmentally on the same charges. Petitioner was acquitted in the criminal case for the same charge, therefore, order passed by Disciplinary Authority, in violation of Rule 12, was liable to be reviewed and quashed.

8. As per Respondent, principles of natural justice were followed during the departmental proceedings. Petitioner was afforded opportunity to defend himself during the enquiry. Disciplinary Authority had also issued show cause notice along with findings of Enquiry Officer. Personal hearing was also afforded to the Petitioner. Respondent further contended before the Tribunal that the Petitioner was acquitted in criminal trial as witnesses did not turn up. Acquittal was on technical grounds. Petitioner could not have derived any benefit out of such acquittal order. It was further contended that O.A. was barred by time. Penalty order was passed on 13th September, 1988. Appeal was dismissed by the Appellate Authority on 23rd December, 1988. However, O.A. was filed only in the year 1996 i.e. after about seven years. The representations made before Commissioner of Police and the Lt. Governor were not made under the Rules as no such remedy was provided therein. These representations made and orders passed therein were not sufficient to extend period of limitation.

9. Vide impugned order dated 3rd January, 2000 Tribunal dismissed the O.A.

Tribunal held that O.A. was time barred. Punishment order was passed on 13th September, 1988. Appeal was dismissed on 23rd December, 1988. Though there was no provision for revision provided in the Rules but the same was also dismissed on 27th October, 1989. Even thereafter Petitioner did not file O.A. till 1996. O.A. was barred by time. Subsequent representation made before Commissioner of Police and the Lt. Governor were beyond the remedies provided under the Rules, therefore, time consumed by the Petitioner in pursuing such remedies was not a sufficient ground to allow the condonation of delay.

10. On merits, Tribunal held that the orders of Disciplinary Authority and Appellate Authority could not be faulted. Petitioner was afforded opportunity to defend himself during the enquiry proceedings. Disciplinary Authority had also followed due procedure as provided under the rules. Show cause notice was issued to Petitioner. Written reply submitted by the Petitioner in response to show cause notice was duly considered. Personal hearing was also afforded. Thus, Rule 16 of the said Rules was complied with. Principles of natural justice were followed by Disciplinary Authority. Tribunal also held that the Petitioner was acquitted in criminal trial as no witness was produced by the prosecution. Witnesses were available during the departmental enquiry. In a way charges in criminal case failed on technical grounds. Accordingly, there was no violation of Rule 12 of the said Rules.

11. Before us, learned Counsel for the Petitioner has contended that under Rule 15(2) of the said Rules Respondent could not have proceeded with the departmental action as the FIR was also lodged against the Petitioner in respect of the same incident which led to criminal trial. We are of the view that this argument of learned Counsel cannot be considered at this stage as no such argument was advanced before the Tribunal. No finding has been returned by the Tribunal on this point, obviously, because no such argument was advanced. Petitioner cannot be permitted to urge all together a new point before us which was not raised before the Tribunal.

12. In our view, principles of natural justice were followed during the enquiry proceedings and even thereafter. Petitioner was given opportunity to defend himself during enquiry. Witnesses were examined in his presence. After Enquiry Officer submitted his report, show cause notice was issued to Petitioner. Written reply of Petitioner was duly considered by the Disciplinary Authority. Even personal hearing was afforded to Petitioner. Thereafter, a reasoned order has been passed. Thus, we find that Tribunal was right in concluding that principles of natural justice were followed inasmuch as there was no violation of Rule 16 of the said Rules.

13. We do not find any force in the contention of learned Counsel that there was violation of Rule 12 of the said Rules. Punishment order was passed much before the Petitioner was acquitted by the Court. Accordingly, Rule 12 was not attracted in the facts of this case. Besides this, we find that no witness was produced by the prosecution during criminal trial despite opportunities granted by the Court.

Consequently, Petitioner was acquitted on 4th May, 1992. In fact criminal trial failed on technical grounds as the witnesses were not produced and charge remained unproved. In the departmental proceedings witnesses were produced. As many as seven witnesses were examined before the Enquiry Officer. Testimony of the witnesses was considered by Disciplinary Authority and on the basis thereof it was concluded that sufficient circumstantial evidence was available to indict Petitioner.

14. Learned Counsel for the Petitioner has next contended that Enquiry Officer had concluded in his report that no independent ocular or documentary evidence was available to arrive at the findings that Petitioner had taken Rs. 4000/- from Mr. Hari Prasad. Accordingly, Disciplinary Authority had no reason to disagree with the findings of Enquiry Officer and take a different view. We do not find any force in this argument of the learned Counsel either. Disciplinary Authority has discussed in detail testimony of witnesses and has concluded that sufficient circumstantial evidence was available to indicate that Petitioner had taken money from the complainant through one Mr. Virender. Appellate Authority has agreed with this view. Tribunal has also not interfered with the view taken by Disciplinary Authority. In our view scope of judicial review is limited and this Court cannot sift and weigh the evidence recorded during the enquiry as if hearing an appeal. Even, if two views are possible, Tribunal/court cannot substitute its own view over and above the view taken by Disciplinary Authority in exercise of the power under Article 226 of the Constitution.

15. We do not find any jurisdictional error in the impugned order. Accordingly, writ petition is dismissed.