

(2008) 03 DEL CK 0275

In the Delhi High Court

Case No : Writ Petition (C) No. 5673 of 2002 and CMs 9629/02, 1025/04

Union of India (UOI)

APPELLANT

Vs

Sh. M.A.J. Farooqui

RESPONDENT

Date of Decision : 28-03-2008

Acts Referred:

All India Services (Conduct) Rules, 1968 — Rule 3
Constitution of India, 1950 — Article 226, 227
Penal Code, 1860 (IPC) — Section 448, 449, 450, 451, 452

Citation : (2008) 03 DEL CK 0275

Hon'ble Judges : Mukul Mudgal, J;Aruna Suresh, J

Bench : Division Bench

Advocate : Jyoti Singh and Karan Dewan, for the Appellant; Hari Shankar, for the Respondent

Final Decision : Allowed

Judgement

Mukul Mudgal, J.—That the present writ petition arises out of a judgment dated 27th May, 2002 of the Central Administrative Tribunal (hereinafter referred to as "the Tribunal") in OA No. 950/2001. The OA challenged the punishment of withholding of increments for two years with cumulative effect imposed upon the respondent. The Tribunal allowed the OA and quashed the order dated 7th March, 2001. The petitioner was further directed to open the sealed cover and if the respondent was found fit, to promote him as DIG and IG with all consequential benefits.

2. That the brief facts of the case are as under:

- a. That the respondent is an IPS officer of AGMU cadre, 1979 batch and at the relevant time was posted as DCP, south-west district.
- b. The said officer was charge-sheeted vide OM dated 13th September, 1993 for an alleged misconduct in two separate events.
- c. The first event, related to his high-handed behaviour of 9th February, 1991 at/

near Sangam Cinema, R.K. Puram where he allegedly abused and criminally assaulted Constable Chander Kumar on duty and misbehaved with the manager of the Cinema Hall.

d. Subsequently, on the intervening night of 9-10th February, 1991 he conducted an operation for removal of various vendor owners including 31 Kashmiri migrants who were holding valid tehbazari rights.

e. He was also alleged to have placed two constables under suspension without any just and sufficient cause and without exercising his proper jurisdiction.

f. The second event relates to a case which was registered against Smt. Neelam Mahajan, a Journalist on 28th September, 1992 at the instance of the respondent for trespass and assault. Subsequently, the respondent got Smt. Neelam Mahajan arrested in the aforementioned case after dusk and detained her upto midnight in violation of the instructions and guidelines laid in relation to arrest and custody of a woman.

g. Therefore, seven articles of charges were framed against the respondent.

h. The respondent submitted his reply denying the charges. Accordingly, an oral inquiry was ordered by Sh.R.P. Rai, IAS, who in his report submitted in January 1998 tentatively disagreed with the IO's finding with regard to articles of charge (V) and (VII) of the chargesheet.

i. Accordingly, the case was again examined extensively in light of the reply submitted by the respondent and it was tentatively held that there was sufficient evidence on record to hold that the articles of charge III, IV and VII as proved against him.

j. The case records were accordingly forwarded to Union Public Service Commission (Hereinafter referred to as "UPSC") as per the prescribed procedure for advice before taking a final decision in the matter.

k. The UPSC vide their letter dated 3rd April, 2000 advised that the articles of charges (I), (II), (V) and (VI) had not been considered by them since the Disciplinary Authority (hereinafter referred to as "the DA") had concluded that the said charges had not been proved against the respondent.

l. After taking into account all the facts, evidence/documents relevant to the case UPSC advised that ends of justice would be met with in this case if the minor penalty of withholding of increments of pay for two years with cumulative effect is imposed on the respondent.

m. The matter was further examined by the petitioner in light of the aforesaid advice tendered by the UPSC and it was tentatively held that the gravity of the lapses established against the respondent justified imposition of a suitable major penalty. The case was accordingly referred to UPSC for reconsideration of their advice. The UPSC on re-examination of the case records, however, reiterated their earlier advice and recommended the same quantum of penalty (i.e.

withholding of increments of pay for two years with cumulative effect).

n. In June 2000, the respondent filed OA No. 2493/2000 before the Tribunal, Principal Bench, praying for quashing charge-sheet dated 13th September, 1993 and OM dated 7th July, 1998 and also for consideration for promotion to the DIG cadre with effect from the date of promotion of officer immediately junior to him.

o. The tribunal vide its order dated 29th November, 2000 directed the petitioner to pass appropriate orders on the representations submitted by the applicant expeditiously within a period of 3 months. It was further held that in case the applicant was exonerated, his sealed cover would be opened and appropriate orders in respect of promotion would be passed. It was held by the Tribunal that in case the orders of the respondent therein went adverse to the applicant, it will be open to him to approach the Tribunal once again by raising all the contentions which have been raised in the OA and also others that may become available to him.

p. The order imposing a penalty on the respondent of withholding the increment, for 2 years with cumulative effect, in agreement with the advice tendered by the UPSC was passed on 7th March, 2001 by the petitioner.

q. The respondent subsequently filed OA 950/2001 before the Tribunal praying for quashing Charge-sheet dated 13th September, 1993 and the order dated 7th March, 2001. He also prayed for directions to open the sealed cover and promote him as DIG, if found fit.

r. The Tribunal, vide order dated 27th May, 2002 allowed the OA and quashed the order dated 7th March, 2001 imposing the penalty of withholding of increment by 2 years. The petitioner was further directed to open the sealed cover and if the respondent was found fit to promote him as DIG and IG with all consequential benefits.

3. The learned Counsel for the petitioner submits as under:

a. The Tribunal by passing the impugned order dated 27th may, 2002 had gone beyond the scope of its own order dated 19th April, 2001 wherein the notice was issued on the issue as to whether the petitioner is or is not the competent authority to initiate disciplinary proceedings against the respondent.

b. The Tribunal had exceeded its jurisdiction in re-appreciating the entire merits of the case as if it was an inquiry authority. It is a well settled law that the court or the Tribunal cannot sit as a court of appeal and re-appreciate the evidence or the merits of the case and come to its own conclusion regarding the guilt of the charged officer. The only ground on which any interference is possible is when any mandatory rules had been violated in the conduct of inquiry proceedings or principles of natural justice had not been complied with. The Tribunal erred in virtually deciding the case as though it was the inquiring authority and was sitting to decide the guilt of the delinquent officer. The minor penalty of withholding increments of pay for two years with cumulative effect was imposed

on the respondent after the Disciplinary Authority in consultation with the UPSC and after arriving at the conclusion that the articles of charge III and VII framed against the respondent stood established on the basis of the evidence on record.

(c) (i) The allegation against Sh. Farooqui under article III of charges that he carried out on the night between 9th and 10th February, 1991 outside/opposite Sangam Cinema, Vivekanand Marg, Sector-1, R.K. Puram, New Delhi an operation for removal of a number of vendors/kiosk owners including 32 Kashmiri migrants who were holding valid "tehbazari" rights and forcibly removed and caused damage to their furniture, wooden "takhats" and eatable items without proper planning and without associating authorities concerned and without ascertaining the legal rights of vendors/kiosk owners and without issuing any notice or even without giving them an opportunity to show cause against the proposed action.

(ii) The Tribunal failed to appreciate that it was established in the course of oral inquiry that the whole operation of removal of "encroachments" was triggered off at the spur of the moment without any proper planning and executed in a haste. The respondent had himself admitted that his action was on the spur of the moment. The events on record further showed that this set off a chain reaction which ended with the removal of "takhats" set up by the Kashmiri migrants at Vivekanand Marg without anyone having cared to ascertain whether they were holding "tehbazari" rights or not and as such the charge substantially stood established.

d. The Tribunal failed to appreciate that the article VI of charge framed against the respondent also stood established inasmuch as there was undisputed documentary evidence on record to show that he got a criminal case registered against Smt. Neelam Mahajan Singh and caused her arrest in a pre-determined manner without verification of facts as to whether any cognizable offence had been committed at all. It is not disputed that the respondent had given written instructions to the SHO of the Police Station concerned to the effect that : "There is a serious complaint against Smt. Neelam Mahajan Singh R/o Kasturba Gandhi Apartments from Sh. A.K. Gupta, DIG, IB. You are hereby directed to take cognizance of the complaint, register a case and arrest her in this case under an intimation to me". The disciplinary authority on the basis of this documentary piece of evidence came to the conclusion that the respondent had in a pre-determined manner directed his subordinate officer to arrest Smt. Singh. The Tribunal took the view that the disciplinary authority had over-emphasized the aforesaid written order issued by the respondent and held that it has been neglected that the respondent only wanted to ensure that an FIR was registered against Smt. Singh on the basis of the complaint lodged by her neighbour as the SHO was reluctant to investigate the matter on the basis of the complaint. The Tribunal, however, erred in completely ignoring the fact that the impugned direction was given by the respondent in a pre-determined manner without following the prescribed procedure in law.

e. The Tribunal failed to appreciate that there was no delay let alone considerable, on the part of the petitioner in completing the proceedings. In any case, it is also a well settled law that a mere delay will not vitiate inquiry when otherwise there is ample evidence to support the charges.

f. The Tribunal had exceeded its jurisdiction and re-appreciated evidence. The tribunal failed to see that all procedures were admittedly applied correctly and there was no violation of any rules. It is a clear case where the charges leveled against the officers were very serious which when having been proved clearly established that the respondent had conducted himself in a manner unbecoming of a senior member of uniformed force and lacked dedication and sincerity to duty. The Tribunal was thus, not justified in quashing the impugned order awarding the punishment. Moreover, there is no legal ground on which the impugned punishment order has been quashed.

4. The learned Counsel for the respondent submits that:

a. The effect that "the only ground on which interference is possible" by a Court or Tribunal hearing a writ petition against orders passed in disciplinary proceedings "is when any mandatory rules have been violated in the conduct of inquiry proceedings or principles of natural justice have not been complied with", does not stand in law. There is no such postulate in law. In fact, the wideness of the ambit of judicial review against an order of punishment consequent upon disciplinary proceedings has been explained, in detail, in *UOI v. K.A. Kittu* (2001) 1 SCC 64, which has also been noted by the Tribunal in the impugned judgment. The interference, by the Tribunal, in the impugned judgment with the order of punishment of the respondent, is well within the peripheries delineated in *K.A. Kittu's* case (*supra*), and is entirely sustainable in law.

b. A perusal of charge No. III shows that it was held to be proved to the extent that the respondent had removed encroachments, on the pavement outside Sangam Cinema, without any proper planning. The finding that the respondent had acted without pre-planning was based only on his own statement that he acted "on the spur of the moment". No independent material or evidence apart from this statement, justifies this finding and none of the authorities had indicated what pre-planning the respondent was expected to do before removing the encroachments. The IA had only found that the applicant had acted with "thoughtless enthusiasm to set things right in a prompt manner", and held that this could not constitute misconduct. Without any substantial material, the UPSC and DA held the respondent to have committed misconduct for having acted without "pre-planning", but remained silent on the nature of "pre-planning" expected of the respondent in the circumstances. The finding of the DA against the respondent on the basis of this that the respondent has been penalised on this Article of charge is only that he acted without any planning. There is no allegation that the respondent has acted in removing the encroachments, *mala fide* or any ulterior motives. The Tribunal had quashed this finding on the basis of the detailed reasoning given in its judgment. The writ petition is also entirely

silent on the question of "planning" which was expected by the respondent in the circumstances. Therefore, in no way it can be said that the Tribunal erred in its decision.

c. The Article VI of the charges framed against the respondent was not found to be proved by the Tribunal. In fact, one of the clearest indicators of the fallacy of the findings of the DA against the respondent was that after holding Article VI of the charge against him not to be proved, Article VII was held to be proved. By no stretch of imagination it can be held so. Articles VI and VII were as the Tribunal had rightly noticed, inextricably entwined. Article VI charged the respondent with having wrongly got a case registered against Smt. Neelam Mahajan Singh, and Article VII charged him with directing her arrest. If the respondent had not been found to have wrongly got a case registered against Smt. Singh, the inevitable corollary is that he could not be alleged to have wrongly directed her arrest, either. As has been found by the Tribunal, registration of a case against a person for committing a cognizable offence brought inexorably, in its wake, the arrest of such person. The only two situations could be that, if the person was charged under a non-bailable provision, he would have to obtain bail from Court, whereas, if he were charged under a bailable provision, he could be released on bail immediately. It has been admitted throughout that the respondent was responsible for converting the provision, whereunder the case was registered against Smt. Singh, from Section 452 to Section 448, thereby ensuring that she was released on bail without delay.

d. The Tribunal had found Article VII of the Articles of charge against the respondent as not proved and had also given a detailed reasoning for the same. The writ petition besides reiterating the findings of the DA, does not advance any cogent ground as to discredit the findings of the Tribunal so as to merit the interference in judicial review under Articles 226-227 of the Constitution.

5. We are at first considering only Charge No. 3. The charge under Article 3 as it stands against the respondent is that the respondent while being posted as Deputy Commissioner of Police, South West District, Delhi on the intervening night of 9-10th February, 1991 outside Sangam Cinema, Sector-1, R.K.Puram, New Delhi had without proper planning and without approaching the concerned MCD authorities carried out an operation for the removal of a number of vendors/kiosk owners including 32 Kashmiri migrants, who were holding valid tehbazaari rights granted to them by the competent authority. The respondent had further, without ascertaining any legal rights of the various vendors/kiosk owners to occupy the sites in question and without issuing any notice, carried out the operation to forcibly remove them and cause damage to their furniture, wooden planks, takhats and eatable items in a hasty and unjust manner. The respondent also ordered the removal of a catering van number DBL-619 from the footpath, although it had valid authority to be there.

6. The Inquiring Authorities found the aforesaid charges proved in the following terms:

Be that as it may, C.O.'s haste and lack of systematic planning before the operations seems rather indisputable. His action on this occasion appear to have been triggered by his impatience seeing the sorry state of affairs on the spot, followed by his overwhelming enthusiasm to cleanse the surrounding at one fell swoop. In the process he suppressed his sensitivity to the unnecessary suffering caused to the helpless vendors. The basic facts in this Article of Charge can be said to have been proved. Whether these constitute an instance of misconduct on the part of the C.O. Or whether it was just a case of thoughtless enthusiasm to set things right in a jiffy, may best be left to the judgment of the Disciplinary Authority. In all probability, it appears to be the later.

The DA also found it proved initially as well as in the order of penalty passed by him on 7th March, 2001 albeit only to extent that:

The ingredient of the charge that the operation was conducted by Shri Farooqui without any planning, therefore, stands established.

The UPSC by its letter dated 3rd April, 2000 and after a detailed discussion of the evidence on record, held that the aforesaid charge stood proved only to the extent that the entire operation of removal of encroachment was triggered on the spur of the moment without any proper planning and executed in an unsystematic fashion.

7. After a perusal of the imputation of misconduct and misbehaviour in support of the Articles of charge Nos. 1 to 5 against the respondent and after a perusal of the averments made against the Articles of Charges by the respondent, it is evident that on 9th February, 1991 at about 9.30 p.m. the family of the respondent, an IPS Officer, who was posted as Deputy Commissioner of Police, South-West District, Delhi and the family of one of his friends had gone to Sangam Cinema in order to see film "Hum" during 9.00 p.m. to 12.00 p.m. show. The ladies and children reached the cinema hall in the staff car of Deputy Commissioner of Police, South-West District, while Shri Farooqui himself came with his friend in a Maruti Car a few minutes later and got stuck in the crowd near the gate of the cinema hall. While S.I. Surender Singh and Constable Angad Kumar, Head Constable Varun Kumar, Wireless Operator and Shri P.D. Menon, Manager of the cinema escorted the families of Shri Farooqui and his friend inside the cinema hall, there was no one to receive Shri Farooqui and his friend.

On the same night between 9.30 pm to around mid-night and intervening night of 9th and 10th February, 1991, Shri Farooqui who was present outside/opposite Sangam Cinema, Vivekanand Marg, Sector-I, R.K. Puram, New Delhi, summoned the S.H.Os of Police Stations R.K. Puram, Kapashera and Dabri along with the police force and Gypsy/Allwyn Nissan vehicles of these police stations as also summoned the Inspector, Special Staff along with some additional police force. Shri Farooqui then undertook an operation of removing the alleged unauthorised encroachments outside Sangam Cinema with the aid and assistance of the above police staff and got removed and caused damage to the furniture, wooden planks/

takhats and eatable items of various vendors and kiosk owners including 32 Kashmiri migrants who were holding valid "Tehbazari" granted to them by the Municipal Corporation of Delhi. A catering Van No. DBL-619 (Chung King Chinese) which was stationed at the footpath under valid authority from the competent authority was also ordered to be removed by Shri Farooqui.

8. In our view, after a bare perusal of the charge under Article 3 and after considering the findings of the Inquiry Officer, the Disciplinary Authority and the UPSC, it is aptly clear that the respondent is responsible for gross misuse of his authority and official position for personal motives. The respondent has acted malafide in garb of exercising his authority so as to vent his anger for getting stuck in the crowd surrounding the vendors. The undue haste of acting the same night for removal without any notice on planning shows gross abuse of power and dereliction of duty. The respondent, by committing the above-mentioned acts, in such haste and by way of retribution had committed grave misconduct and dereliction in the discharge of his official duties, which is not expected of a senior member of the All India Services. The respondent further failed to maintain absolute integrity and thereby contravened the provisions of Rule 3 of the All India Service (Conduct) Rules, 1968 which reads as follows:

3. General.-

(1) Every member of the Service shall, at all times, maintain absolute integrity and devotion to duty and shall do nothing that is unbecoming of a member of the service.

(3) (i) No member of the service shall, in the performance of his official duties, or in exercise of powers conferred on him, act otherwise than in his own best judgment to be true and correct except when he is acting under the direction of his official superior.

This finding is also based on the applicant's own admission that he acted on the spur of the moment when he visited the Sangam Cinema area and saw encroachments all over. We do not have an iota of doubt that the respondent acted in a vindictive manner solely actuated by his being stuck in the crowd surrounding the vendors. The respondent by his conduct transgressed and misused the powers vested in him by the official position. The respondent without ascertaining the legal rights of various vendors/kiosk owners and without issuing any notice and without giving them any opportunity to show cause against the proposed action carried out an operation for the removal of a number of vendors/kiosk owners including 32 Kashmiri Migrants who were holding valid teh bazaari rights granted to them by the competent authority and forcibly removed them. He conducted the said operation without any prior planning and without associating the concerned MCD authorities and was solely actuated by personal motive by giving it a public colour. The operation of removing the encroachments was conducted by him without any proper planning stands established.

9. The UPSC vide their letter dated 3rd April, 2000, in respect of charge under Article 6 and 7 advised as under:

(a) Article III of the charge is established against the charged officer to the extent that the whole operation of removal or encroachment was triggered off at the spur of the moment without any proper planning and executed in an unsystematic fashion;

(b) Article VI of the charge is not established against the charged officer; and

(c) Article VII of the charge is established against the charged officer to the extent that he got the lady against whom the complaint had been received arrested by misusing his official position and power and that he was partly responsible for the delayed release of the said lady

The charge under Articles 6 and 7 reads as under:

Article VI

That the said Shr. M.A.J. Farooqui, while posted as Deputy Commissioner of Police, New Delhi District got a case registered on 28.9.1992 against one Smt. Neelam Mahajan, a Journalist R/O A-506, Kasturba Gandhi Apartments, New Delhi u/s 452/506 IPC at P.S. Tilak Marg FIR No. 478/92 dated 28.9.1992 on a complaint of Shri A.K. Gupta, R/O A-206, Kasturba Gandhi Apartments otherwise than in his best judgment and proper verification of the relevant facts and circumstances and thereby failed to maintain absolute integrity.

Shri M.A.J. Farooqui by committing the above acts of commission and omission has exhibited grave misconduct and dereliction in the discharge of his official duties which is unbecoming of a member of an All India Services and failed to maintain absolute integrity and thereby contravened the provisions of Rule 3 of the All India Services (Conduct) Rule, 1968.

Article VII

That the said Shri M.A.J. Farooqui while posted as Deputy Commissioner of Police, New Delhi District on the same date i.e. 28.9.1992, got arrested above named Smt. Neelam Mahajan in the above referred case after dusk, got her detained and confined her upto around mid-night by misusing his official position and power and in violations of the instructions regarding arrest and custody of a woman.

Shri M.A.J. Farooqui by committing the above acts of commission and omission has exhibited grave misconduct and dereliction in the discharge of his official duties which is unbecoming of a member of an All India Services and failed to maintain absolute integrity and thereby contravened the provisions of Rule 3 of the All India Services (Conduct) Rule, 1968.

The charge and Article 6 framed against the respondent stood established in as much as there was undisputed documentary evidence on records to show that he

got a criminal case registered against Smt. Neelam Mahajan Singh and caused her arrest in a predetermined manner without verification of the facts. It is not disputed that the respondent had given the written instructions to the SHO of the Police Station concerned to the effect that : "There is a serious complaint against Smt. Neelam Mahajan Singh R/o Kasturba Gandhi Apartments from Sh.A.K. Gupta, DIG, IB. You are hereby directed to take cognizance of the complaint, register a case and arrest her in the case under an intimation to me". The disciplinary authority on the basis of this documentary piece of evidence came to the conclusion that the respondent had in a predetermined manner directed his subordinate officer to arrest Smt. Singh without giving him the opportunity to verify in the first place whether any cognizable offence had at all been committed. The Disciplinary Authority after holding Article 6 of the as not proved against the respondent held Article 7 to be proved. The charges under Article 6 against the respondent was held not to be proved by the Tribunal.

10. However, we are not going into the correctness of the charges comprised in Articles 6 and 7 as we have held that the charge under Article 3 was fully established against the respondent. The impugned order of the Tribunal dated 27th May 2002 quashing the punishment order passed on 7th March 2001 by the petitioner imposing the penalty on the respondent of withholding the increment for 2 years with cumulative effect, in agreement with the advice tendered by the UPSC is not justified. Accordingly, the writ petition is allowed and the Judgment dated 27th May 2002 of the Tribunal quashing the order dated 7th March 2001 passed by the petitioner, is set aside and the punishment of withholding of increment of pay for two years as imposed on the respondent is upheld.