(2012) 02 DEL CK 0251

In the Delhi High Court

Case No : Writ Petition (C) 995 of 2012 and CM No. 2202 of 2012

Vinod Kumar, Ex. Constable APPELLANT

Vs

The Commissioner of Police and Others RESPONDENT

Date of Decision : 28-02-2012

Acts Referred:

Citation : (2012) 02 DEL CK 0251

Hon'ble Judges : V.K. Jain, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : V.K. Rao, with Mr. Gyanendra Singh, for the Appellant;

Final Decision : Dismissed

Judgement

V.K. Jain, J.—This writ petition is directed against the orders dated 02.06.2010 and 21.10.2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, whereby OA No. . 401/2009 and RA No. . 272/2010 respectively were dismissed. The facts giving rise to the filing of the OA can be summarized as follows:-

Three Constables of Delhi Police, namely, Ravinder Kumar, Gajraj and Kanhaiya Lal, who were posted in Rashtrapati Bhawan were transferred from there prior to June, 2006. W/ASI Bimlesh Varun, while making entries in the check sheet about salaries paid to the lower subordinates for the months of June and July, 2006, Noticed that the salary bills of the above-referred three constables had been prepared for the months of June and July, 2006, despite the fact that they had already been transferred from Rashtrapati Bhawan and Last Pay Certificates had also been issued to them. A preliminary inquiry was conducted by Assistant Commissioner of Police, who reported that the petitioner, who was preparing the salary bills of the lower subordinates had prepared inflated salary bills of Constables Ravinder Kumar, Gajraj and Kanhaiya Lal for the months of June and July, 2006, deleted their respective account number and replaced them by the number of his account with UTI bank and, thereby transferred the money to his own account through computer entries. The salary of these Constables was inflated by adding extra allowances and reducing deductions. However, the petitioner returned the amount of Rs 31,437/- which had been transferred to his account in the aforesaid manner, vide memo dated 02.08.2006. The petitioner was chargesheeted on the aforesaid allegation and on another allegation that he had also inflated his own salary by showing drawing of Transport Allowance at Rs 200 instead of Rs 100 to which he was entitled. The Inquiry Officer held the petitioner guilty and the Disciplinary Authority vide order dated 18.05.2007 imposed penalty of dismissal of service upon the petitioner. The appeal filed by the petitioner was dismissed by the Appellate Authority vide order dated 01.05.2010. The penalty imposed upon the petitioner and maintained by the Disciplinary Authority was challenged in the aforesaid OA which came to be dismissed by the Tribunal.

2. The learned counsel for the petitioner has assailed the decision of the Tribunal on two grounds. The first ground taken by him is that the guilt attributed to the petitioner could Not be substantiated during inquiry. The second contention of the learned counsel for the petitioner is that the penalty imposed upon the petitioner was disproportionate to the charge stated to have been established against him.

3. With respect to the power of the Tribunal or for that matter this Court to interfere with the finding recorded in a Departmental Inquiry, this Court in a recent judgment dated 19.1.2012 in WPC 2431/2011 Ex. Head Constable Manjeet Singh v. Union of India & Ors inter alia observed as under:

It is by No. w a settled proposition of law that the Court, while considering challenge to the orders passed in disciplinary proceedings does Not act as an Appellate Authority and does Not reassess the evidence led in the course of the inquiry Nor can it interfere on the ground that another view in the matter is possible on the basis of the material available on record. If the Court finds that the inquiry has been conducted in a fair and proper manner and the findings rendered therein are based on evidence, the adequacy of evidence or the reliability of the evidence are Not the grounds on which the Court can interfere with the findings recorded in the departmental inquiries. It is Not open to the Court to interfere with the finding of fact recorded in such inquiries unless it is shown that those findings are based on "No. evidence" or are clearly perverse. A finding would be considered to be perverse if No. reasonable person could have recorded such a finding on the basis of material available before him. Another ground on which the Court can interfere with the findings recorded in a disciplinary proceeding is violation of principles of natural justice or statutory rules or if it is found that the order passed in the inquiry is arbitrary, mala fide or based on extraneous considerations. This proposition of law has been reiterated by Supreme Court in a number of cases including B.C. Chaturvedi Vs. Union of India and others, , Union of India and another Vs. G. Ganayutham (Dead) by LRs., , Bank of India and Another Vs. Degala Suryanarayana, and High Court of

Judicature at Bombay v. Shahsi Kant S. Patil: 2001 (1) SCC 416.

4. In the case before us, the Tribunal after examining the record of inquiry found the following undisputed and admitted facts:-

? Salary Bill of Constable Gajraj was prepared for the month of July, 2006, despite the fact that he was already transferred and LPC issued.

? Though as per LPC Shri Gajraj''s net salary was Rs. 7971, the bill prepared for July indicated Rs. 10513, an inflated amount of Rs. 2542 [GPF deduction reduced from Rs. 2000 to Rs. 500 (Rs. 1500), No. deduction of festival allowance (Rs. 150), addition of training allowance (Rs. 872) and addition of washing allowance (Rs. 20)]

? In case of Constable Ravinder Kumar, who was already transferred and LPC issued, the salary bill was prepared for the month of June, 2006.

? As per the LPC, the net salary of Ravinder Kumar was Rs. 7962, but the salary bill for June 2006 for Ravinder Kumar was prepared for Rs. 10462; and increase of Rs. 2500 by reducing the contribution to GPF from Rs. 3000 to Rs. 500.

? Insofar as the salary bill for July 2006 for Constable Kanhaiya Lal is concerned, the same was prepared despite his transfer and release of LPC.

? The LPC of Shri Kanhaiya Lal revealed the net salary as Rs. 7942 but the bill for July 2006 was for Rs. 10462-a difference of Rs. 2520 by (a) addition of Rs. 20 as washing allowance and (b) reduction of GPF deduction from Rs. 3000 to Rs. 500.

? It is also a fact that the Applicant''s salary bill for June and July 2006 the transport allowance per month was enhanced from Rs. 100 to Rs. 200. Thus, additional payment was Rs. 200.

? The total amount raised in those 3 relevant salary bills is Rs. 31437 (Rs. 10513+Rs. 10462+Rs. 10462), which were credited to the Applicant''s UTI Bank Account No. .120010100039969 held at Khan Market Branch, Delhi.

? The Applicant withdrew Rs. 31437 from his account and voluntarily deposited in the Account Branch of Rashtrapati Bhawan on 2.8.2006, which, later on 24.8.2006 was deposited in the Government treasury.

5. It also came in the evidence of PW-7 Head Constable Mahesh Kumari that the salary bills of lower subordinates for the month of June and July, 2006 were prepared by the petitioner. From the records produced by the respondents, the Tribunal found that the petitioner was independently working on the seat for preparation of salary bills of lower subordinates. PW-1 SI Daya Ram also told the Inquiry Officer that the bills for the months of June and July, 2006 were prepared by the petitioner on his directions. It also transpired from the deposition of PW-5 W/ASI Bimlesh Varun that salary bills of lower subordinates were put up by the petitioner directly to the Accountant instead of rooting the same through her. Thus, at least three witnesses, namely, PW-1 SI Daya Ram, PW-5 W/ASI Bimlesh

Varun and PW-7 Mahesh Kumari had stated during the course of the inquiry that the bills of Constables Ravinder Kumar, Gajraj and Kanhaiya Lal for the months of June and July, 2006 were prepared by the petitioner. It also transpired from the record that Not only the bills of the above-referred three Constables for the months of June and July, 2006 were prepared despite their having been already been transferred from Rashtrapati Bhawan, the bills had also been inflated thereby transferring an amount more than the actual salary which would have been payable to these Constables had they continued to work in Rashtrapati Bhawan, in June and July, 2006.

6. It is an admitted case even before us that an amount of Rs 31,437/- was transferred to the account of the petitioner with UTI bank and that amount was later deposited by him with the Accounts Department. It can Not be a mere co-incidence that the account number of the petitioner was inserted, by removing the account number of the concerned constable in all the three bils and thus the salaries of all the three Constables were transferred to the account of the petitioner. Though the learned counsel for the petitioner contended that W/ASI Bimlesh Varun was inimical to the petitioner, and indicated that this could be her mischief, there is No. evidence of any animosity between her and the petitioner at any time prior to the aforesaid credits in the account of the petitioner were detected.

7. She being pregnant at that time, bulk of the work was being done by the petitioner. Moreover, W/ASI Bimlesh Varun was Not the only witness to depose against the petitioner. PW-1 SI Daya Ram as well as PW-7 Mahesh Kumari have also categorically stated during the course of inquiry that the salary bills of the above-referred three Constables for the months of June and July, 2006 were prepared by the petitioner.

8. The other charge which has been held to be proved against the petitioner was manipulation of his own salary by drawing Rs 200/- as against admissible amount of Rs 100/- towards Transport Allowance for the months of June and July, 2006.

Therefore, it can Not be said that the findings recorded against the petitioner by the Inquiry Officer and upheld by the Appellate Authority as well as by the Tribunal are based on No. evidence, No. r the same can be said to be perverse. We can Not say that No. reasonable person called upon to record a finding on the basis of the evidence which was led during the course of inquiry could have recorded a finding of guilt against the petitioner. We, therefore, find No. ground to interfere with the findings recorded by the Disciplinary Authority and maintained by the Appellate Authority as well as the Tribunal.

9. As regards the quantum of punishment, this Court in Ex. Head Constable Manjeet Singh (supra), had inter alia, observed as under:-

It is a settled proposition of law that neither the Central Administrative Tribunal No. r the Writ Court can interfere with the punishment awarded in a departmental proceeding, unless it is shown that the punishment is so outrageously disproportionate, as to suggest lack of good faith. While reviewing an order of punishment passed in such proceedings, the Court can Not substitute itself for the Appellate Authority and impose a lesser punishment merely because it considers that the lesser punishment would be more reasonable as compared to the punishment imposed by the Disciplinary Authority. The Court or for that matter even the Tribunal can interfere with the punishment only if it is shown to be so disproportionate to the nature of the charge against the delinquent official that No. person, acting as a Disciplinary Authority would impose such a punishment. The following observations made by Supreme Court in V. Ramana Vs. A.P.S.R.T.C. and Others, are pertinent in this regard:

The common thread running through in all these decisions is that the court should Not interfere with the administrator''s decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would Not go into the correctness of the choice made by the administrator open to him and the court should Not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and Not the decision.

To put it differently unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/Tribunal, there is No. scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a No. rmal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed.

In B.C. Chaturvedi Vs. Union of India and others, , Supreme Court, after considering a Constitution Bench decision in State of Orissa Vs. Bidyabhushan Mohapatra, and some other decisions, inter alia held as under:

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 No. rmally 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.

Considering the nature of the charges established against the petitioner, we cannot say that the punishment awarded to him was so disproportionate to the charge, as to shock the conscience of the Court Nor can the same be said to be illogical or improper in any manner. The petitioner, despite being a police official, had No. compunction in diverting Government funds to his own account by preparing inflated bills of the police officials who had already been transferred from Rashtrapati Bhawan and by drawing higher Transport Allowance as a part of his salary. Such an official, in our view, is Not entitled to any leniency in the matter of punishment. The punishment awarded to the petitioner, therefore, does Not call for any interference.

For the reasons given hereinabove, the writ petition is devoid of any merit and is hereby dismissed with costs.

