

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 12.01.2012
Judgment pronounced on: 19.01.2012

+ **W.P.(C) 2431/2011**

EX. HEAD CONSTABLE MANJEET SINGH ... Petitioner

versus

UNION OF INDIA & ORS ... Respondents

Advocates who appeared in this case:

For the Petitioner	: Mr Rajat Malhotra, Mr Sunil Malhotra & Mr Anupam Sharma
For Respondent No.1	: Mr Prashant Ghai for Mr Jatan Singh,
For Respondent Nos. 2 to 4	Ms Sonia Arora

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K.JAIN

V.K. JAIN, J.

1. This Writ Petition is directed against the order dated 6.12.2010 passed by the Central Administrative Tribunal (Principal Bench) (hereinafter referred to as the Tribunal) whereby it dismissed OA No. 739/1998 filed by Shri Manjeet Singh, petitioner before this Court, and OA No. 1896/1998 filed by one Constable Shri Bhagwan.

2. The petitioner and two other police officials were charge-sheeted on the allegations that in the night intervening 21/22.2.1995 they chased tempo No. MP-09-D-2079 being driven by one Shri Vinod Kumar and intercepted it near

Wazirabad Road, where one of them asked the driver either to pay Rs 50/- or to accompany him to the police station, whereas the petitioner before this Court, Head Constable Manjeet Singh, who was in-charge of the police van misbehaved with him. In the meanwhile, Inspector Balwant Singh, who was the PCR (Night Checking Officer), happened to reach the spot and on questioning the tempo driver disclosed these facts to him and also submitted a written complaint to him in this regard. Four witnesses were produced in support of the allegations against the police officials, whereas two witnesses were produced by them in defence. The Inquiry Officer held that the charges against the police officials including the petitioner Shri Manjeet Singh stood proved. The Disciplinary Authority vide order dated 18.7.1995 ordered dismissal of the police officials including the petitioner from service. The appeal filed by the police officials was dismissed by the Appellate Authority vide order dated 22.7.1996. The Revision Petition against that order was also dismissed.

3. The OAs filed by Shri Manjeet Singh and Shri Bhagwan filed were dismissed initially vide order dated 13.11.2010. They filed two separate Writ Petitions before this Court. It was contended before this Court that the complainant Shri Vinod Kumar had been won over and in the absence of any evidence against the petitioner there was no warrant to hold him guilty. This Court noted that there was a reference to Inspector Balwant Singh who was examined as PW-2 and who

had fully supported the incident in terms of the complaint made by Shri Vinod Kumar. The learned Counsel for the petitioner thereupon submitted that the evidence of Shri Balwant Singh having not been discussed by the Tribunal cannot be taken into consideration. This Court felt that the entire evidence has to be seen to determine whether it was a case of 'no evidence' and accordingly set aside the order of the Tribunal and remitted the matter for re-consideration on merits.

The only contention raised before the Tribunal, in the second round was that this was a case of no evidence. The Tribunal after referring to the entire evidence led by the parties negated the contention of the petitioner and held that the department had led sufficient evidence to pin down the delinquency of the applicants and that evidence was sufficient to discharge the burden of proof required in departmental proceedings. The OAs were accordingly dismissed.

4. It is by now 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 v. Union of India: 1995(6) SCC 749, Union of India v. G.Gunayuthan: 1997 (7) SCC 463, Bank of India v. Degala Suryanarayana: 1999 (5) SCC 762 and High Court of Judicature at Bombay v. Shahsi Kant S. Patil: 2001 (1) SCC 416.

5. It is true that the complainant Shri Vinod Kumar, did not identify the petitioner during the course of inquiry, but, he did state that he was stopped by a blue coloured police gypsy and police officials and was harassed by the police officials. He also admitted that in the meantime a Police Officer came to the spot and the complaint written by him in his own hand-writing was given to him when he also admitted that the police gypsy, which intercepted was on the spot when the police officer arrived there. Thus, the complainant maintained during the course of

inquiry that he was harassed by the police officials, who intercepted his tempo and those police officials were travelling in gypsy which was still there on the spot when the Police Officer (Inspector Balwant Singh) reached the spot. The statement of Inspector Balwant Singh would show that when he reached the spot at about 3.15 am, he found tempo No. MP-09-D 2079 parked on the road and a PCR vehicle parked beside it. He also stated that the written complaint Exh. PW-2/B was given to him by the complainant Shri Vinod Kumar. The petitioner did not dispute during the course of inquiry that in the night of 21/22.2.1995 he was on duty in a PCR Van, which was found parked on the spot by the side of tempo No. MP-09-01 2079 when Inspector Balwant Singh reached there. It thus stood proved during the course of inquiry that the petitioner Shri Manjeet Singh was one of the three police officials who while travelling in a PCR Van in the night intervening 21/22.2.1995 intercepted the tempo of complainant Mr. Vinod Kumar and allegedly demanded money from him and misbehaved with him. It has also not been disputed that the petitioner Shri Manjeet Singh, was the in-charge of the aforesaid police van, at the time the tempo of the complainant was intercepted. The failure of the complainant to identify the petitioner as one of the police officials involved in the incident becomes meaningless when the identity of the petitioner as one of the three police officials, who had intercepted the tempo of the complainant, demanded money from him and misbehaved with him stands otherwise proved during the course of

inquiry on account of their being on duty in the police van which intercepted the tempo of the complainant and being present on the spot by the side of the tempo of the complainant when Inspector Balwant Singh reached the spot. It was not necessary to establish the identity of the culprit by direct evidence when it had been established by the circumstantial evidence produced during the course of inquiry.

6. The testimony of the complainant Shri Vinod Kumar cannot be rejected in toto merely because he did not support the department with respect to identity of the police officials and thereby did not support the case of the department in toto.

In **Rai Singh v. State of Haryana: 1971 SC 2505**, Supreme Court held that in each case the Court has to appraise the evidence to see to what extent it is worthy of acceptance and merely because in one respect the Court considers it unsafe to rely on the testimony of the witnesses, it does not necessarily follow as a matter of law that it must be discarded in all other respects as well. It is for the Court to separate the grain from the chaff and then believe that part of the evidence which is found to be true and correct. It was held by the Supreme Court in **Ganga Dhar v. State of Orissa: AIR 2002 SC 3633** that even if major portion of the evidence is found deficient, the conviction can be based on the residual evidence, if it is otherwise sufficient to prove the guilt attributed to him. Even if a part of the testimony of a witness appears to be untrue or false, that by itself does not destroy his testimony from beginning to end. It is only where the Court does not find it possible to

separate truth from falsehood on account of the ‘grain’ and ‘chaff’ being inextricably mixed up that the Court has to discard the entire testimony of the witness. Even with respect to the testimony of witnesses who are cross examined by the prosecution, popularly termed as ‘hostile witnesses’ Supreme Court in **Bhagwan Singh v. The State of Haryana: AIR 1976 SC 202**, Supreme Court held that the permission given to the prosecution to cross-examine its own witness does not completely efface his evidence which continues to remain admissible in trial and there is no legal bar to base a conviction upon his testimony, if corroborated by other reliable evidence. In **Radha Mohan Singh v. State of U.P.: 2006(1) SCC (Cri.) 661**, Supreme Court held that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witness cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent his version is found to be dependable on a careful scrutiny thereof.

7. In a criminal trial, the prosecution is required to establish the guilt of the accused beyond reasonable doubt whereas in a departmental inquiry the standard of proof required is much lesser and it is sufficient if the guilt attributed to the delinquent is established from preponderance of probabilities. Therefore, there can be no valid objection to the testimony of the complainant Shri Vinod Kumar being

accepted by the Inquiry Officer to the extent it pertained to the incident which took place with him in the night intervening 21/22.2.1995.

8. In any case as stated earlier, it is neither for the Tribunal nor for this Court to re-appreciate or reassess the evidence produced during the course of inquiry and decide whether the evidence was adequate to establish the guilt of the delinquent or not. Once it is shown that the finding recorded by the Inquiry Officer is based on some evidence and the view taken by the Inquiry Officer /Disciplinary Authority is not a view which no reasonable person could have taken on the basis of the material available to him, it is not open to the Court to interfere with the finding of fact recorded in the inquiry.

9. As regards proportionality of punishment, we find that this aspect has been duly considered by the Appellate Authority, which was of the opinion that since the delinquent police officials were found indulging in corrupt practices, they deserved to be weeded out from the police force. The Revision Petition filed against the order of the Appellate Authority was dismissed by Commissioner of Police, Delhi on 18.2.1998. It appears to us that the contention on proportionality of the punishment was not pressed before the Tribunal.

It is a settled proposition of law that neither the Central Administrative Tribunal nor 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 cannot 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 v. A.P.SRTC And Others: (2005) III LLJ 725 SC** 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 normal 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.”

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In **B.C.Chaturvedi** (*supra*), Supreme Court, after considering a Constitution Bench decision in **State of Orissa And Others v. Bidyabhushan Mohapatra**: (1963) ILLJ 239 SC 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 normally 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.

10. Considering the nature of the allegations against the petitioner and he being a member of the police force his duty was to protect the citizens and not to harass them, we are of the view that no interference by this Court is called for in the matter. In taking this view, we also take note of the fact that the petitioner being in-charge of the police van in which the tempo of the complainant was intercepted was in a position to control the misdemeanours of other police officials travelling

with him in that vehicle and no such attempt having been made by him, indicates that all the police officials, travelling in the police vehicle, were acting in concert and shared a common objective.

11. For the reasons given in the preceding paragraphs, we find no merit in the Writ Petition and the same is hereby dismissed without any orders as to costs.

V.K.JAIN, J

BADAR DURREZ AHMED, J

JANUARY 19, 2012
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