

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

% Judgment reserved on: 12.04.2012
Judgment pronounced on: 23.04.2012

+ W.P.(C) 7022/2011

CONSTABLE ANIL KUMAR

..... Petitioner

versus

GOVT. OF DELHI AND ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Shanker Raju
For the Respondent : 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 19.08.2010 passed by the Central Administrative Tribunal, Principal Bench (hereinafter referred to as the 'Tribunal') whereby OA No. 2639/2010 filed by the petitioner was dismissed. The facts giving rise to the filing of the petition can be summarized as under:

On 23.08.2007, the petitioner was posted in Police Station Dabri and was placed on *Sentry* duty at the lock up and malkhana from 9.00 pm to 12.00 midnight. The arms and ammunitions were also given to the petitioner, while placing him on duty. One Abdul Shamshad alias Raju was lodged in the lock up at

that time. During a power failure between 9.00 pm and 12 midnight, Shamshad alias Raju bent the iron bars of the lock up and escaped from police custody. The petitioner was chargesheeted on the allegations that he had performed security duty in a very careless and negligent manner which had resulted in Shamshad escaping from lawful custody of the police. The Enquiry Officer held the charge to be proved. Accepting the report of the Enquiry Officer, the Disciplinary Authority by his order dated 11.9.2009 imposed penalty of forfeiture of one year of his approved service permanently upon the petitioner, entailing a proportionate deduction in his pay. The period of his suspension from 24.8.2007 to 9.6.2008 was stated as not spent on duty for all intents and purposes. The appeal filed by the petitioner was dismissed by the Appellate Authority vide order dated 28.5.2010.

Aggrieved by the orders passed by the Disciplinary Authority and the Appellate Authority, the petitioner approached the Tribunal, which found no merit in his case and accordingly dismissed his OA.

2. The only argument advanced by the learned counsel for the petitioner, before us was that there was no evidence to prove any misconduct or negligence on the part of the petitioner. His contention was that the petitioner having been posted at lock up as well as Malkhana was patrolling between the lock up and the malkhana,

and therefore, when the power failure occurred he could not notice Abdul Shamshad bending iron bars of the lock up and escaping from police custody.

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 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.

Therefore, this court can interfere with the finding recorded in a domestic inquiry only in a case when there is absolutely no evidence to prove the charge framed against the employee or the finding recorded by the Disciplinary Authority is such which no reasonable person could have recorded on the basis of the material available to him. Once it is found that there is some evidence which may justify the finding of fact recorded by the disciplinary authority it is not permissible for this court to re-appreciate the evidence, to record an independent finding of its own.

4. A perusal of the site plan of police station Dabri (page 28 of the writ petition) would show that there is a 'malkhana store' adjoining the lock up. Also, there is a 'record malkhana' almost diagonally opposite the lock up and malkhana store. During the course of arguments, the learned counsel for the petitioner submitted that since the petitioner had to take care not only of lock up but also of malkhana diagonally opposite the lock up, he was not in a position to notice Abdul Shamshad escaping from the lock up. In our view the contention is not factually correct. 'Malkhana store' in a police station is meant for keeping various articles including arms and ammunitions in the custody of the police station. The record

malkhana on the other hand contains the record of the police station. DD No. 79B dated 23.8.2007 of police station Dabri does not indicate that the petitioner was detailed on duty at the lock up as well as both the malkhanas i.e. 'malkhana store' and 'malkhana record'. This is also not the case of the petitioner that he was on duty at the lock up as well as both the malkhanas. His contention before us was that his duty was confined to lock up and the malkhana diagonally opposite the lock up, which means 'record malkhana'. We find it difficult to accept that DD No. 79B refers to 'record malkhana' and not to 'malkhana store'. The safety of various articles including arms and ammunitions which are kept in 'malkhana store' is indisputably more important than the record kept in the malkhana. 'Malkhana store' therefore, needs constant guarding by an armed person so that no one is able to remove anything from the store. The Record Malkhana on the other hand does not need this kind of security since only record of the police station is kept there. A perusal of the site plan would show that Duty Officer's Room is just adjoining the record malkhana. Admittedly, some police officer or the other is always on duty in the police station and is stationed in DO room. Therefore, there would be no necessity of posting an armed *sentry* for the record malkhana, when the security of the record can be ensured by the D.O. sitting in the adjoining room. The Duty Officer present in the DO room can look after the record malkhana but not the malkhana store. It, therefore, makes sense to post a *sentry* at the lock up and

adjoining 'malkhana store'. Since the petitioner was detailed on duty at the lock up and the 'malkhana store' which are adjoining rooms, it is difficult for us to accept that at the time of the power failure in the police station, the petitioner, had he been vigilant enough in the performance of his duty, would not have been able to notice Shamshad escaping from the police custody after bending iron bars of the lock up. In fact, had the petitioner remained present on duty outside the lock up and adjoining 'malkhana store' his very presence along with arms and ammunition, would have deterred Abdul Shamshad from even making an attempt to escape from custody.

5. In our view, Shamshad could have escaped from custody only if either the petitioner was in connivance with him and therefore, he turned a blind eye to what he was doing or he was not present at the place where he was supposed to be present between 9 p.m. to 12 p.m. (midnight). We, therefore, cannot say that the finding recorded by the Enquiry Officer, which was accepted by the Disciplinary Authority, was based on no evidence or was otherwise perverse in law. The writ petition, therefore, is liable to be dismissed on merits.

6. There is one more reason we would not like to interfere with the order passed by the Tribunal. Page 28 of the writ petition is the photocopy of the original site plan of police station Dabri. Page 29 purports to be true copy of the site plan

which has been attested as 'true copy'. During the course of arguments, learned counsel for the petitioner maintained that this attestation was in the hands of the petitioner and bears his initials. A comparison of the 'true copy' site plan with its photocopy would show that malkhana store has not at all been depicted in the 'true copy' though it has been clearly shown in the photocopy of the site plan at page 28. During the course of arguments before us, learned counsel for the petitioner referred only to the copy placed at page 29 of the writ petition, in support of his contentions. The discrepancy between the photocopy and 'true copy' of the site plan was noticed by us of our own without the same having been pointed out to us. The purpose behind omitting malkhana store in the 'true copy' at place at page 29 of the writ petition is also quite obvious. Malkhana store being adjoining to the lock up, the petitioner did not want the court to notice that he was not required to move away from the lock up and that had he remained outside the lock up he could have taken care not only of the lock up but also of the malkhana store. The petitioner, therefore, has not come to the court with clean hands.

7. It is a settled proposition of law that a person approaching the Court for redressal of his grievance must place all the relevant facts before the Court clearly, candidly and frankly without any reservation even if those facts are against him. If the person approaching the court does not disclose all the material facts fairly and truly or states them in a distorted manner or otherwise tries to mislead the court, the

Court has inherent power to proceed further with the examination of the case on merits. While exercising its extraordinary power under article 226 of the Constitution, the High Court certainly has to take into consideration the conduct of the party which invokes its jurisdiction and if it finds that the litigant has tried to mislead or hoodwink the court, it must necessarily prevent him from abusing its process by refusing to hear him on merits of the case. Such a person, by his very conduct, disentitles himself from getting any relief from the Court even if it is otherwise made out on merits.

In *Dalip Singh v. State of Uttar Pradesh and Others*, (2010) 2 SCC 114, it was found that the appellant while approaching the High Court had made a misleading statement in para 3 of the writ petition by giving an impression that the tenure holder did not know of the proceedings initiated by the prescribed authority and by doing to, he succeeded in persuading the High Court to pass an interim order. Finding that it was an effort to mislead the authorities, which had been transmitted to the Court, the Supreme Court was of the view that the petitioners belong to the category of persons, who had succeeded in polluting the course of justice and, therefore, there was no justification for interfering with the order, which had been passed against them.

In *P. Seshadri vs. S. MangatiGopal Reddy and Ors*: 2011 5 SCC 484, the Supreme Court reiterated the otherwise settled proposition of law that a person approaching the Court needs to do so come with clean hands.

For the reasons stated hereinbefore, the writ petition is hereby dismissed with costs.

V.K.JAIN, J

BADAR DURREZ AHMED, J

APRIL 23, 2012
‘raj’