

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment pronounced on: 11.12.2012

WP(C) No.6953/2012

RAJNEESH KUMAR

..... Petitioner

versus

COMMISSIONER OF POLICE AND ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Sanjeev Joshi with Mr Narender Bisth

For the Respondent : Mr Anjum Javed with Mr Mohd. Noorullah

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. This writ petition arises out of an order dated 22.09.2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (Tribunal) in O.A. No. 2815/2010. By way of the impugned order, the Tribunal dismissed the Original Application filed by the petitioner herein. The factual matrix unfolds as under:-

- (i) A regular departmental enquiry was initiated against the petitioner by virtue of an order dated 22.08.2006. The allegation

imputed against the petitioner was that while posted at Kotla Mubarakpur, New Delhi, the petitioner was entrusted with the investigation of criminal case registered as FIR No. 55/06 under Section 25 of the Arms Act, 1959.

- (ii) During the trial of the said criminal case, on 03.07.2006, Shri. Manish Yaduvanshi, Metropolitan Magistrate, Patiala House Court, New Delhi summoned the petitioner, being the investigating officer of the said criminal case, in order to record his evidence.
- (iii) However, on 03.07.2006 when the matter came before the Metropolitan Magistrate, the in-charge of Process Service Station informed the Court that the petitioner had refused to accept the summon/notice issued to him by the Metropolitan Magistrate on the ground that he had some important domestic work on 03.07.2006.
- (iv) The Metropolitan Magistrate took an adverse view of the matter and observed that several efforts had been made to examine the petitioner, and that on two earlier occasions as well i.e., on

29.04.2006 and 05.06.2006, the petitioner had absented himself from appearing before the Metropolitan Magistrate.

(v) In view of lackadaisical approach shown by the petitioner, the Metropolitan Magistrate directed that a departmental enquiry be initiated against the petitioner and suitable action be taken by the respondent.

(vi) After the launch of the enquiry, the Enquiry Officer submitted his report on 21.04.2008. The Enquiry Officer returned the finding that charges levelled against the petitioner stood proved. It is relevant to note that in his defence the petitioner had submitted before the Enquiry Officer that he had never refused to accept the summons but he did not receive the same as he was on earned leave from 19.05.2006 to 05.07.2006. The petitioner further submitted in his defence that refusal to accept the summons by the petitioner was not even recorded in the Daily Diary.

(vii) The Disciplinary Authority after due appreciation of the findings returned by the Enquiry Officer, agreed with the same. By virtue of the order dated 04.03.2009, the Disciplinary

Authority imposed the punishment of forfeiture of two years of approved service of the petitioner temporarily entailing proportionate reduction in his pay. The Disciplinary Authority also ordered for reduction of pay of the petitioner by two stages for a period of two years w.e.f. 30.01.2009.

(viii) Aggrieved by the order passed by the Disciplinary Authority, the petitioner preferred an appeal before the Appellate Authority. The Appellate Authority by an order dated 11.12.2009 agreed with the order passed by the Disciplinary Authority. However, the Appellate Authority disagreed with the punishment imposed by the Disciplinary Authority and held that in facts of the case, the punishment imposed upon the petitioner was rather harsh. Therefore, the Appellate Authority modified the punishment awarded from forfeiture of two years approved service temporarily to that of withholding of next increment temporarily for a period of one year.

(ix) Thereafter, the Respondent Department issued order dated 22.09.2009 whereby petitioner's name was put in the secret list of officer's of doubtful integrity for a period of three years.

- (x) Petitioner's representation against the order dated 22.09.2009 was dismissed by the respondent by virtue of an order dated 18.11.2009.
- (xi) Consequent upon the rejection, the petitioner approached the Tribunal seeking quashing of the orders dated 04.03.2009 (Disciplinary Authority), 11.12.2009 (Appellate Authority), 22.09.2009 and 18.11.2009.
- (xii) The Tribunal by way of the order impugned dismissed the Original Application filed by the petitioner upholding the order dated 11.12.2009 passed by the Appellate Authority. The relevant portion of Tribunal's decision is extracted herein below:-

"5. As regards the ground (a), referred to in Para 2 above, regarding the orders of the disciplinary authority and the appellate authority being without application of mind and their failure to appreciate that the applicant was on earned leave for the period from 19.05.2006 to 05.07.2006, it is seen that the appellate authority had observed that even if the applicant was busy or on leave, he should not have refused to receive the summon/notice of the Court and instead could have approached and requested the Court in writing for exempting him to appear in the Court on the said date and to give fresh date. Thus, the contention of the applicant that the appellate authority had not considered

the aspect of Earned Leave, is not correct. A perusal of the orders of the disciplinary authority and the appellate authority also shows that they are speaking orders and it cannot be accepted that there is no application of mind.

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7. It is well settled that Courts are not expected to interfere with the findings of the enquiry officer, disciplinary authority and the appellate authority and re-appreciate evidence in disciplinary cases unless the findings of the said authorities are perverse or *mala fide* or prima facie violative of principles of natural justice. We may usefully extract the following relevant observations of the Hon'ble Supreme Court in R.S. Saini vs. State of Punjab & Others, JT 1999(6) SC 507, in this regard:

“The court while exercising writ jurisdiction will not reverse a finding of the enquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the enquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The enquiring authority is the sole Judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings.”

8. We also find that the disciplinary authority and the appellate authority have arrived at conclusions after due application of mind and after considering all issues raised and after affording full opportunity to the applicant of being heard in the matter. Thus, due procedure has been followed and the principles of natural justice observed before imposing of the punishment.

9. In the case before us it cannot be said that the findings of the disciplinary authority are perverse or *mala fide* or that there has been violation of principles of natural justice in conduct of the proceedings.”

(Underlining added)

2. Before us, the only contention urged on behalf of the petitioner is that the authorities below failed to consider an important facet i.e., that the petitioner was on earned leave from 19.05.2006 to 05.07.2006 and because of being on leave, the petitioner was unable to accept the summons issued by the Metropolitan Magistrate for the purpose of securing petitioner’s appearance 03.07.2006. The counsel for the petitioner further submitted that non-acceptance of summons by the petitioner was unintentional.

3. We do not find any force in the submission advanced by the counsel for the petitioner. It is not in dispute that the petitioner refused to accept the summons/notice issued by the Metropolitan Magistrate. In fact, no plausible explanation or reasoning has been put forth by the petitioner for not accepting the summons except for the assertion that the petitioner was on earned leave from 19.05.2006 till 05.07.2006 and that, therefore, he could not accept the summons. Being on earned leave is, in our view, no reason for refusal of summons. The Disciplinary Authority as well as the Appellate

Authority categorically recorded in their respective orders that the correct course for the petitioner in case of his inability to attend the Court proceedings on 03.07.2006 was to approach the Metropolitan Magistrate by way a written application seeking exemption from personal appearance. We also note that the Appellate Authority had reduced the punishment imposed by the Disciplinary Authority from forfeiture of two years approved service to that of withholding of the next increment temporarily for a period of one year.

6. In view of the discussion above, the order of the Tribunal needs no interference. The Writ Petition is dismissed.

7. No costs.

SIDDHARTH MRIDUL, J.

BADAR DURREZ AHMED, J.

DECEMBER 11, 2012

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