

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

% Date of Decision: 24.02.2012

+ **W.P.(C) No.1080/2012**

Davender Kumar Kaushik ... Petitioner

Versus

Union of India & Ors. ... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr.B.S.Rajesh Agrajit.
For Respondents : Mr.R.V.Sinha and Mr.R.N.Singh.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

ANIL KUMAR, J.

CM No.2371/2012

Allowed subject to all just exceptions.

Application is disposed of.

W.P.(C) No.1080/2012 & CM No.2370/2012

1. The petitioner has challenged the order of his removal dated 30th June, 2008 and the dismissal of his appeal by order dated 30th January, 2009.

2. The petitioner had joined the Railway Protection Force on 20th May, 1995. A charge sheet dated 4th August, 2005 was issued against the petitioner under Rule 153 of the Railway Protection Force Rules, 1987 for the serious charges of gross indiscipline and misconduct,

when the petitioner was posted at Khan Alampura Yard (KJGY). The charges leveled against the petitioner were as under:-

“1. On 21.7.2005 at about 21.00 Hrs., he consumed liquor while on duty at quarter guard at RPF Outpost, KJGY;

2. On 21.7.2005, after consuming liquor he misbehaved and used unparliamentary language with Ompal a railway employee; and

3. He absented himself from duty on 22.7.2005 without any information and authority.

By doing so, he violated Rules 147 (i), (ii), (iii), (iv), (vi), and (ix).”

3. The chargesheet was received by the petitioner on 23rd August, 2005. Pursuant to the charge sheet, a departmental enquiry was initiated and the then Inspector of the Reserve Company, Ambala, Sh.G.P.S.Dhillon was appointed as the enquiry officer. In the meantime, the petitioner was transferred to Ferozpur division and from there to Moradabad division.

4. According to the petitioner, the enquiry had continued for about two years and four months and thereafter Sh.P.K.Vashisht was appointed as the enquiry officer to complete the enquiry. The enquiry officer subsequently submitted the enquiry report dated 6th May, 2008. A copy of the enquiry report was given to the petitioner as well and he was asked to submit his reply. The petitioner submitted a reply dated 10th June, 2008 addressed to the Assistant Security Commissioner, Railway Protection Force, Moradabad Division.

5. The Divisional Security Commissioner, Moradabad after considering the enquiry report and the reply of the petitioner passed the order dated 30th June, 2008 ordering the removal of the petitioner from service.

6. Aggrieved by the order dated 30th June, 2008, the petitioner filed an appeal dated 2nd September, 2008 which was considered by the Additional Security Commissioner, Railway Protection Force, Moradabad who on careful consideration dismissed the appeal by order dated 30th January, 2009. While dismissing the appeal, the Appellate authority also noticed that the petitioner had admitted that his image in the force was that of an infamous cop and that the record also revealed that he is a habitual drinker and that he had fought in an inebriated condition. It was further observed that in 14 years of his service he had been awarded 13 punishments on the charge of misconduct which were detailed by the appellate authority in its order dated 30th January, 2009 as under:-

- “1. Punishment of temporary stoppage of 3 months’ salary in the year 1997;
2. Punishment of temporary stoppage of 1 year’s salary in the year 2000 (13.07.2000);
3. Punishment of temporary stoppage of 2 year’s salary in the year 2000 (29.11.2000);
4. Demotion in lower pay scale for one year in the year 2001 (31.12.2001);

5. Punishment of temporary stoppage of 6 months' salary in the year 2003 (31.12.2003);
6. Punishment of temporary stoppage of 2 year's salary in the year 2004 (18.5.2004);
7. Punishment of temporary stoppage of 1 year's salary in the year 2004 (17.11.2004);
8. Demotion in the lower pay scale for 2 years in the year 2004 (2.11.2004);
9. Termination from service in the year 2005 (6.9.2005). However, he was reinstated on appeal and was awarded punishment of demotion in the lower pay scale for a period of 3 years;
10. Again terminated from service in the year 2006 (18.9.2006);
11. Reinstated in 2007 on Appeal and order of termination was converted into punishment of placing in the lowest pay scale for a period of one year;
12. Punishment of temporary stoppage of 3 months' salary in the year 2008 (25.2.2008);
13. Removal from service in the year 2008 (30.6.2008)."

7. The appellate authority had noted that all the earlier punishments too were awarded to the petitioner for the serious charges of gross indiscipline, dereliction of duty, consumption of liquor while on duty and misbehavior and beating etc. The appellate authority while dismissing the appeal had also noted that despite the various opportunities given to the petitioner he had not reformed himself. The observations made by the appellate authority are as under:-

“Infact Appellant ought to have learnt some lesson from his past punishments and ought to have performed his duties diligently and dedicatedly. But inspite of several warnings and punishments, he did not mend himself and it is also quite visible that there are remote chances of his improving in near future. Therefore, in the foregoing circumstances, the disciplinary authority had no choice, but to terminate him from service.”

8. The petitioner has challenged his order of removal passed by the disciplinary authority dated 30th June, 2008 and the dismissal of his appeal by the appellate authority by order dated 30th January, 2009, inter-alia, on the grounds that the manner of the complaint and departmental proceedings in itself were suspicious and frivolous as the complaint was made by his superior officer and the witnesses are his subordinates; the points raised by the petitioner were not considered by the enquiry officer; the contradictions in the statements of the witnesses have been ignored by the enquiry officer and the statement of the witnesses could not be relied on; the material witness, Ompal against whom the alleged abusive language was used by the petitioner was not examined; the doctor who had opined that the petitioner was drunk on examination, had not based his conclusion on any blood or urine examination and the report was merely based on the observations of the doctor, which could not be relied on as the same was not based on any pathological test; that the rule of natural justice had not been complied with as statutory provisions had been violated; the

punishment of removal is shockingly disproportionate and is in defiance of logic and is perverse and irrational. The petitioner also contended that “proportionality” involves a “balancing test” and “necessity test”. According to the petitioner, the punishment of removal from the service is too harsh in the facts and circumstances and is thus liable to be set aside.

9. The learned counsel for the respondents, Mr.R.V.Sinha who appears on advance notice has contended that the petitioner is a habitual violator of rules and regulations and that he has himself admitted that his image in the force was that of an infamous cop. The learned counsel has contended that the appellate authority has detailed the 13 previous punishments imposed upon the petitioner including the punishment of termination from service which was, however, set aside later and was converted into punishment of placing the petitioner in the lowest pay scale for a period of one year which facts have not even been denied by the petitioner in the present petition. The learned counsel for the respondents has further contended that the testimonies against the petitioner before the enquiry officer are cogent and inculcate the guilt of the petitioner. According to him, in any case this Court will not go into the correctness of the charges and will not substitute its own inferences with the inferences drawn by the enquiry officer.

10. The learned counsel for the respondents has also contended that

the petitioner was examined by Dr.Grover, EMO, SBD Hospital, Saharanpur who had made the observation that the petitioner had taken alcohol and that he was under its effect at that time and further that he had smelt of alcohol. According to the learned counsel, if the physical observation by the doctor reveals that the petitioner had taken alcohol and that he was under its effect, lack of any other further pathological test would not invalidate his opinion in any manner and pathological tests were not must to infer whether the petitioner had taken alcohol or not. It is further contended that the doctor had no bias against the petitioner nor have any mala fides been imputed against him and that in the circumstances the evidence of the doctor could not be ignored as has been contended by the petitioner.

11. This Court has heard the learned counsel for the parties in detail. This is not disputed that the medical certificate pursuant to the examination of the petitioner by Dr.Mahesh Grover, EMO, SBD Hospital, Saharanpur was produced and proved, which categorically disclosed that the petitioner had taken alcohol and he was under its effect and that he smelt of alcohol. If the doctor after observing the petitioner had given the report about the petitioner having taken alcohol, the same cannot be ignored or repudiated on account of not carrying out the blood and urine examination of the petitioner to detect alcohol in them. The petitioner has not imputed any malafides against the concerned doctor and thus there was no reason for the doctor who

had examined the petitioner to have given an incorrect report about him.

12. The learned counsel for the petitioner has also contended that the medical report pertaining to the petitioner was procured, as in the communication dated 21st July, 2005 it was indicated that the petitioner be examined and the medical certificate be issued so that action be taken against him which indicates that the fact that the petitioner had taken alcohol had already been communicated to the emergency medical officer of Bagoria, Civil Hospital, Saharanpur. The letter addressed to the emergency medical officer dated 21st July, 2005 is as under:-

“The subjected constable Devender Kaushik is being produced by the undersigned for the purpose of Medical Examination because he is found in alcoholic Condition. More over due to consumption of intoxicating substance he is creating nuisance in quarter guard duty.

Therefore it is requested to please medically examine the above constable and issue necessary medical certificate so that action will be taken against him.”

13. Pursuant to the said letter, Dr.Mahesh Grover, EMO had carried out the physical inspection of the petitioner. He had indicated in his report that the petitioner was smelling of alcohol and that his observation was that the petitioner had taken alcohol and that he was under its effect. As already observed hereinabove in absence of any mala fides being imputed against the doctor, it cannot be held that he

had given his report merely on the basis of the letter dated 21st July, 2005 sent to the emergency medical officer and without examining the petitioner and applying his mind. Another relevant aspect in this context is that the charge in question was not a solitary incident of the petitioner taking alcohol, as the petitioner was found to have taken alcohol on many occasions previously for which he was punished. Though the petitioner had tried to allege in his appeal filed before the appellate authority that he was having cough for few days and, therefore, he had taken the cough syrup Corex and inadvertently he had consumed almost half a bottle of Corex cough syrup, which made him sleepy. In this context the appellate authority has detailed the 13 previous punishments imposed upon the petitioner for his misconduct which included even a termination from service in the year 2006 which was, however, thereafter modified to reduction to the lowest pay scale for a period of one year. The pleas of the petitioner in this regard, therefore, cannot be accepted and are repelled. In any case perusal of the statements of the Constable Ravinder Kumar, Constable Seth Pal, Head Constable Mukesh Kumar reveal that this is not a case of no evidence or any perversity in the findings of the enquiry officer.

14. It cannot be disputed that the grounds on which the administrative action can be challenged for judicial review are “illegality”; “irrationality” and “procedural impropriety”. The Court in exercise of its power under Article 226 of the Constitution of India does

not interfere with the disciplinary matters unless the decision is tainted by any vulnerability like 'illegality', 'irregularity' and 'procedural impropriety'. What is pertinent to note is also that the mere assertion about the illegality, irrationality and procedural impropriety is not sufficient and that what is required is that it must be established by disclosing cogent facts and grounds. Even though the petitioner has contended that there is violation of the principles of natural justice as the rules and regulations had not been followed, however, the learned counsel for the petitioner has failed to show any rules and regulations which have not been followed nor has he pointed out any 'procedural impropriety'. The charges were framed against the petitioner and were duly communicated to him. An enquiry officer was appointed who had recorded the statement of witnesses and the petitioner was given a right to cross examine the said witnesses, since perusal of the statement of the witnesses clearly reveals that the petitioner had cross examined the said witnesses. On the basis of the evidence and documents before the enquiry officer, he gave his report, a copy of which was given to the petitioner and he in turn was given ample opportunity to reply to the said enquiry report. The petitioner gave a detailed representation against the enquiry report which was considered by the disciplinary authority before awarding the punishment of removal from service. In the circumstances, the petitioner has failed to establish any 'illegality', 'irrationality' or 'procedural impropriety' in the facts and circumstances of the case.

15. The learned counsel for the petitioner has also failed to show any irrationality in the inferences of the enquiry officer, as the inferences cannot be held to be so outrageous so as to be in total defiance of logic or rational standards. The petitioner's counsel has also not disclosed any facts which do not exist or which have not been established and still had been taken into consideration or which are patently erroneous or so outrageous so as to be in defiance of logic and any rational standards. Inferences have been drawn by the enquiry officer on the basis of preponderance of probability and thus the inferences cannot be held to be unreasonable or irrational. Though the learned counsel for the petitioner has contended that Sh.Om Pal, the person with whom the petitioner had allegedly quarreled, had not been examined, however, that will not mitigate the severity of facts established against the petitioner, as the testimonies of the other witnesses are sufficient to establish the charges against the petitioner. Constable Ravinder Kumar, PW-2 had categorically deposed that when he had reached the spot he had found the petitioner in full drunken condition and that he was over speaking, however, this was not even suggested to him in the cross examination by the petitioner that he had not taken any alcohol. About what the petitioner had spoken during his quarrel could not be recollected by the said witness, however, that will not make his statement impeachable or doubtful. The incident had occurred on 21st July, 2005 whereas the statement was recorded on 6th April, 2008 and

in the circumstances, just because the said witness could not recollect as to what was spoken by the petitioner under the influence of liquor, the testimony of the said witness cannot be doubted or rejected. Constable Seth Pal, PW-3, has also deposed that the petitioner was using filthy language in drunken condition and in the cross examination he stated that he cannot repeat the words which were spoken by the petitioner at that time. Even to the said witness no suggestion was given on behalf of the petitioner that the petitioner was not drunk and in fact he had taken the overdose of cough syrup or that he did not use filthy language. Constable Nirwesh Kumar, PW-4, had also deposed that the petitioner had used filthy language while quarrelling with Sh.Om Pal and that petitioner had consumed alcohol and also that he was smelling of alcohol. In the cross examination it was put to him whether the petitioner was quarrelling with Om Pal or was it Om Pal who was quarrelling with the petitioner and the answer of the said witness was that both were quarrelling and using filthy words. A specific question was put to Constable Nirwesh Kumar whether Om Pal had abused the petitioner or not and answer of the said witness was that the Railway Employee Om Pal did not abuse the petitioner. To the specific question as to why he did not separate the petitioner and Om Pal when they were quarrelling, he had answered that since he was performing the sentry duty and he had a rifle with bayonet, therefore, he could not separate them. He had also deposed that at that time he was at a distance of about 50 feet from them and that he could clearly

see them in the street light. Similarly, in the testimony of Head Constable Mukesh Kumar, PW-6 it was not put to him in the cross examination that the petitioner had not taken alcohol and that he had not heard him abusing Om Pal. Consequently, on the basis of the testimonies of these witnesses, if the enquiry officer has inferred that the petitioner had quarreled with Om Pal and that he was under the influence of alcohol, the inferences of the enquiry officer cannot be held to be unreasonable or irrational nor can it be held that the enquiry officer had left out relevant factors or taken into account irrelevant factors.

16. It is no more *res integra* that judicial review is of the decision making process and not about re-appreciation of the evidence. The Supreme Court in (2006) 5 SCC 88, *M.V.Bijlani v. Union of India & Ors.* in para 25 at page 96 had held as under:-

25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

17. Similarly in (1995) 6 SCC 749, B.C.Chaturvedi v. Union of India & ors Supreme Court at page 759 has held as under:-

12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

18. In the circumstances, the petitioner has failed to make out any illegality, irregularity or perversity in the findings of the enquiry officer and in the decisions of the disciplinary authority and the appellate

authority.

19. The plea of the petitioner regarding the disproportionate punishment imposed upon him also cannot be accepted in view of the fact that the petitioner is a habitual offender. The appellate authority has detailed the 13 previous punishments imposed on the petitioner including his termination from service which later on was modified to reduction in the pay scale in order to give him another chance to reform himself. However, despite the repeated attempts the petitioner has failed to reform himself and in the circumstances the penalty of removal from service imposed by the disciplinary authority by order dated 30th June, 2008 cannot be held to be disproportionate.

20. For the foregoing reasons and in the totality of facts and circumstances, there are no grounds for this Court to exercise its jurisdiction under Article 226 of the Constitution of India and to interfere with the punishments awarded to the petitioner. The writ petition is without any merit and it is, therefore, dismissed. The application for stay, being CM No.2370/2012, is also disposed of as having become infructuous as the writ petition has already been dismissed.

ANIL KUMAR, J.

FEBRUARY 24, 2012
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SUDERSHAN KUMAR MISRA, J.