

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

Date of hearing and Order: 24.09.2014

+ W.P.(C) 3824/2010

EX. CONSTABLE/ GD BS MAAN Petitioner

Through Ms. Rekha Palli, Ms. Garima
Sachdeva & Ms. Punam Singh,
Advocates

versus

UOI AND ORS Respondents

Through Ms. Barkha Babbar, Advocate for
UOI

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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KAILASH GAMBHIR, J. (ORAL)

1. By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioner seeks (i) a writ of certiorari for quashing the order dated 28.02.2009, passed by respondent No.5 whereby he has been removed from service and also the orders dated 08.07.2009 and 10.11.2009, passed by respondent Nos. 4 and 3 respectively, whereby his appeal and revision were dismissed and (ii) a writ of mandamus to the respondents to reinstate the petitioner in service with all consequential benefits.

2. Advancing arguments on behalf of the petitioner, Ms. Rekha Palli, the learned counsel submits that the report of the Enquiry Officer is wholly perverse as he had deliberately ignored the major contradictions in the statements of the prosecution witnesses and thus, the facts were not properly appreciated by the Enquiry Officer in right earnest and in the proper perspective. She argued that PW-5 who was alleged to be a witness to the petitioner running away with three currency notes of Rs. 10/- denomination each, specifically denied having seen anything of that kind; that even PW-2, the Assistant Commandant stated that he did not remember whether anybody ran after the petitioner when he was alleged to have run away with three currency notes of Rs. 10/- denomination each towards the plant area because it was dark; that even PW-3 denied having any knowledge about the petitioner running away with three currency notes of Rs. 10/- or having seen Rs. 40, as alleged by the respondents. She also argued that the Enquiry Officer failed to consider the fact that Inspector R.S. Sainger, who arrived at the spot at 22:40 Hrs. on 28.08.2008 had specifically noted that everybody was 'Alert' and therefore the case set up by the prosecution that the Assistant Commandant received a call at his residence at 22.28 Hrs. and that he

reached the out gate at 22:35 Hrs., where he got the physical search of the petitioner done was apparently false since this Officer had also stated that he had reached the Control Room along with the petitioner, PW-1, PW-4 and PW-5 at 22.30 Hrs. She also argued that none of the witnesses, especially PW-2 had given any justification as to why nobody tried to apprehend the petitioner when he ran with three Notes of Rs.10/- and as to why he was still asked to perform his duties even after his gross misconduct of having indulged in corruption and also of destroying the evidence. She also argued that the Enquiry Officer failed to appreciate that the seizure list was prepared at the spot on 28.08.2008 and in this seizure list, only a recovery of Rs.10/- had been shown and there was no mention of the petitioner running away from the spot and destroying/hiding three Notes of the denomination of Rs.10/-. She further argued that the petitioner was falsely implicated in this case as a result of a revenge which Constable B.D. Yadav wanted to take from him, a plea which was taken by the petitioner but was ignored by the Enquiry Officer. In support of her arguments, the learned counsel for the petitioner has placed reliance on the following judgments:

- a) *Mohd. Yunus Khan v. State of U.P. and Ors (2010) 10 SCC 539***

- b) *Roop Singh Negi v. Punjab National Bank and Ors.* 2009 2 SCC 570**
- c) *M.V. Bijlani v. Union of India (UOI) and Ors.* 2006 5 SCC 88**
- d) *Kuldeep Singh v. The Commissioner of Police & Ors.* 1999 2 SCC 10**

3. Based on the above submissions, the learned counsel for the petitioner strongly urged for directing reinstatement of the petitioner in service as the petitioner has already undergone a lot of agony and trauma after his removal from service.

4. Ms. Barkha Babbar, the learned counsel for the respondents, strongly refuting the case of the petitioner and the submissions made by the learned counsel for the petitioner, submits that the Enquiry Officer had submitted his report to the Disciplinary Authority after having meticulously and carefully examined the statements of the PWs and the defence version given by the petitioner along with other material placed on record and there can be no basis to term the report of the Enquiry Officer as perverse; that the Disciplinary Authority had agreed with the findings of the Enquiry Officer and before awarding the penalty of removal from service, written representation made by the petitioner was duly considered by the Disciplinary Authority; and that no fault can be

found with the decision taken by the Appellate Authority and the Revisional Authority and also with the punishment awarded by the Disciplinary Authority, as the same commensurate with the gravity of the proven misconduct of the petitioner.

5. She further argued that the petitioner had not disclosed that he had any money with him in the Declaration Register on 28.08.2008 and the petitioner was well aware this fact after having attended the briefing session several times, during which it was made clear to everyone that during the course of duty, one had to disclose the money in one's possession in the Money Declaration Register. She also submits that the petitioner deliberately violated the Office Order of the CISF Unit, CCIL, Tughlakabad dated 04.06.2007 which specifically provides that personnel on duty should not be in possession of more than Rs.10/- and further, even this amount should also be entered in the Money Declaration Register. She further submits that PW-2 was the Unit Incharge and he got the information that members of the Force were taking money at the gate and hearing this, PW-2 had conducted a search and on search of the petitioner, it was found that he was collecting illegal money. She further submits that from the place of duty of the petitioner, three currency notes

of Rs.10/- denomination were found in a chewed condition and the petitioner himself took out one note of Rs.10/- from the pocket of his pantaloons. She further submits that PW-1, PW-2, PW-3, PW-4 and PW-5 have duly confirmed in their respective statements the details of the entire incident which took place on 28.08.08, that three chewed notes which were thrown by the petitioner were kept on the table of the Control Room along with the other note of Rs.10/- to prepare the confiscation report but the petitioner snatched the chewed note and ran away to destroy the illegal money which he had collected. She also submits that PW-1 and PW-4 ran behind the petitioner but since it was quite dark outside, the petitioner managed to hide himself somewhere and returned back to the Control Room only after 15 minutes of destroying the evidence. Based on the above submissions, she submits that this was not a case of no evidence and in fact, there was ample evidence on record to justify the award of punishment of removal from service to the petitioner because of his involvement in corruption and also the gross misconduct of destroying the evidence. She also submits that this Court would not re-appreciate and re-appraise the evidence led before the Enquiry Officer just with the objective of taking a different view based on the same

evidence. She also submits that in all such cases based on departmental inquiry, principle of preponderance of probabilities would be applicable and not the doctrine of proof beyond reasonable doubt. In support of her arguments, the learned counsel for the respondents has placed reliance on the following judgments:-

- a) Nirmal Jahala v. State of Gujarat and Anr., (2013) 4 SCC 301*
- b) State of Uttar Pradesh and Anr. v. Man Mohan Nath Sinha and Anr. ,(2009) 8 SCC 310*
- c) State of Andhra Pradesh and Ors. v. Sree Rama Rao, AIR 1963 SC 1723*

6. We have heard the learned counsel for the parties at a considerable length and given our thoughtful consideration to the arguments advanced by them.

7. Having regard to the respective contentions, the question that arises for consideration is whether the Order passed by respondent No.5, whereby the petitioner has been awarded the penalty of 'Removal from Service' is sustainable in law. The powers of Judicial Review of this Court under Article 226 of Constitution of India, is a limited power and this Court would not normally interfere with the findings recorded at the departmental inquiry by the disciplinary authority or the Enquiry Officer

as a matter of course. The Court would not sit in appeal over these findings and assume the role of an Appellate Authority. However, this would not mean that the Court will not interfere even in cases where the order of the Enquiry Officer is 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 him is based on no evidence. The power of judicial review available to this Court under the Constitution takes in its stride the domestic inquiry as well and it can interfere with the conclusions reached therein. (Kuldeep Singh v. The Commissioner of Police & ors.(supra)

8. A three Judge Bench of the Hon'ble Supreme Court has considered the scope of judicial review in ***B.C. Chaturvedi v. Union of India & Ors.*** [(1995) 6 SCC 749] in which the entire case law was summed up in paragraphs 12, 14 and 15 thus:

"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 office 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 to 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 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 re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceeding 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 findings and mould the relief so as to make it appropriate to the facts of each case.

9. In *Nand Kishore Prasad v. State of Bihar and Ors.*, AIR 1978

SC 1277, it was held by the Hon'ble Supreme Court that the disciplinary proceedings before a domestic tribunal are of quasi-judicial character ; therefore, it is necessary that the tribunal should arrive at its conclusions on the basis of some evidence, that is to say, such evidence which, with some degree of definiteness, points to the

guilt of the delinquent and does not leave the matter in a state of suspicion as mere suspicion cannot replace the need of proof, even in domestic enquiries. If, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty and in that event, the findings recorded by the Enquiry Officer would be perverse.

10. Further, in *State of Andhra Pradesh v. Sree Ram Rao (1964) ILLJ 150 SC* the question was whether the High Court, under Article 226 could interfere with the findings recorded at the departmental inquiry. It was laid down by the Hon'ble Supreme Court that the findings, recorded in a domestic inquiry, can be characterized as perverse if it is shown that such a finding is not supported by any evidence on record or is not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence.

11. In the present case, as per the Office Order of the CISF Unit, CCIL Tughlakabad, dated 04.06.2007, a personnel on duty should not carry more than Rs.10/- with him and further, this amount should be entered in the Money Declaration Register, before joining duty every day. It is the

case of respondents, that on 28th August 2008, at 22:25 Hours, PW-1, S.S Yadav saw the petitioner, B.S Maan standing near the Entry Gumti window and that the petitioner took out something from his pocket and kept inside the window on the table along with the entry pass of the vehicle and other papers. When PW-1 reached near the window, he saw that along with the papers there were some 12-15 Rs. 10/- currency notes on the table. At the same time H.C Irshad, PW-3 was also making entry from the same Gumti window. PW-1 asked PW-3, as to who kept these currency notes with him. To this, PW-3 replied that the petitioner had just kept them. After this, the petitioner asked PW-3 to remove those currency notes from there. During this, PW-1 called S.I Suraj Mani, PW-5 who was posted near the out gate and asked him to see the said currency notes lying there. PW-5 came and saw the money and told PW-1 that he had already briefed the petitioner not to take money from anyone and still the petitioner had committed a wrong by taking the money. After this, PW-1 immediately called Assistant Commandant Sh. Harish Pandey, PW-1 and Shift In-charge S.I./Exec Om Prakash, PW-4 and narrated the incident over phone and asked them to arrive at the spot. In the mean time, PW-3 came out of that Entry Gumti and the petitioner entered the same and

picked up all the currency notes from the table and started to chew them one by one. When PW-1 asked him not to do this, the petitioner did not stop. At around 22:32 Hrs. S.I./Exec. Om Prakash, PW-4 reached the spot while the petitioner was still chewing the Rs. 10/- notes one by one. At around 22: 35 Hrs., PW-2 also reached there and PW-1 informed him that the petitioner was having Rs. 10/- currency notes in his pocket and that he had already chewed some of them. After this, PW-2 asked the petitioner to give whatever he is carrying in his pocket. On this, the petitioner took out some currency notes from his pant pocket and threw them out of the window. Seeing this PW-2 ordered PW-4 to bring the said currency notes and PW-4 accordingly brought them. Thereafter, on the directions of PW-2, PW-4 conducted the personal search of the petitioner. During the search, the petitioner took out a Rs. 10/- note from his pocket and gave it to PW-4. Following this PW-4 kept all the notes on the table, for everyone to see. On this, PW2 asked the petitioner about the currency notes but the petitioner did not reply. After taking all the four currency notes, PW-2 alongwith PW-1 and PW-4 came to the In-gate control room and kept those four currency notes on the table to prepare a confiscation report. However, the petitioner picked the three chewed currency notes

from the table and ran towards the plant. He was followed; but, as it was dark, he was successful in hiding himself. After around 15 minutes, the petitioner returned back to the control room and when PW-2 asked him about the notes, he denied having any knowledge of it. After this, there was only one Rs. 10/- currency note left. Thereafter, PW4 prepared the confiscation report of the only Rs. 10 note and PW1, PW-2, PW-5 and the petitioner signed the said confiscation report.

12. On a close scrutiny of these facts, we have come across some doubtful facts of such nature, that the story of the respondents clearly appears to be false and fabricated and concocted against the petitioner.

These circumstances are as follows:

- a) In the present case, the allegation on the petitioner apparently is that the petitioner took a bribe from some person, while on duty, even after being fully aware of the prohibition on keeping more than Rs. 10/- on person and if the on person amount exceeded on person then it ought to be so recorded in the Register kept for this purpose. Illegal gratification of course would be an entirely different matter. However, it shall be noted that no person has actually witnessed him taking such bribe. Even the prime witness, PW-1 only saw him keeping those notes on the table through

the window alongwith some papers. In such circumstances, it cannot be said with certainty whether the money found in possession of the petitioner was a bribe.

- b) As per the evidence of PW-1, he saw the petitioner standing near the entry Gumti window and also taking out something from his pocket and keeping it inside the window, on the table. He categorically states in his evidence that there were around 12-15 currency notes of Rs. 10/- denomination lying alongwith some papers. To substantiate this fact, there was only one witness available on the spot along with the petitioner, namely H C Irshad, PW-3. It shall be noted that PW-3 in his statement has directly contradicted the statement of PW-1, by stating that there were only 2-3 notes of Rs. 10/- denomination lying alongwith those papers. It shall further be noted that no other witness had seen 12-13 notes lying alongwith the said papers and nothing had been mentioned in this regard even in the confiscation report. This fact raises a doubt on the testimony of PW-1.
- c) Further, as per the evidence of PW-1, the notes were lying on the table at around 22: 32 Hrs. However, at around 22: 35 Hrs, when the Asst. Commandant, PW-2 arrived at the spot, the petitioner had swallowed all the currency notes except three. Meaning thereby that within 2-3 minutes, the petitioner swallowed around 9-12 notes. This fact appears to be highly improbable as it is humanly not possible to

swallow 9-12 currency notes of Rs. 10/- denomination in just 2-3 minutes.

- d) As per the evidence of PW-2, no medical examination of the petitioner was conducted. We fail to fathom as to why no attempt was made by PW-2 to conduct the medical examination of the petitioner, to ascertain whether the currency notes were within his body especially when PW-1 had claimed to have witnessed, the act of the petitioner of swallowing 9-12 currency notes.
- e) As per the evidence of PW-1 as well as PW-2, when PW-2 alongwith PW-4 reached the spot, the petitioner had chewed three currency notes of Rs. 10/- and had thrown them out of the window. However, this fact has itself been contradicted by the statement of PW-4, Constable Om Prakash as he clearly stated in the General Diary Entry that when he reached the spot along with PW-2, he just saw some notes lying outside the window i.e., he never saw the petitioner throwing them, rather, he just saw them lying outside the window already.
- f) Nothing has been placed on record regarding the place of recovery. None of the witnesses have stated anything related to the place of recovery.
- g) As per the evidence of PW-1, PW-2 as well as the statement of PW-4 in the General Diary Entry, the petitioner after

picking up the three currency notes ran towards the plant and absconded. However, after fifteen minutes he again came to the spot and when PW-4 inquired from him as to where the currency notes were, he denied knowing anything about them. After this, the petitioner willingly signed the confiscation report and also joined the duty. Even if this version of the respondents is believed to be true, it still takes us by surprise that one person picks up a few notes and runs and four persons were not able to catch him. It is also worthy to note here that PW-5, who is alleged to be a witness to seeing the petitioner running away with three currency notes of Rs. 10/- , specifically denied having seen anything of that kind. Even PW-3 denied having any knowledge about the petitioner running away with three currency notes of Rs. 10/- or having seen Rs. 40, as alleged by the respondents. It shall also be noted that even the seizure list prepared at the spot on 28.08.2008 mentions only the recovery of a single currency note of Rs. 10/- denomination and finds no mention of the petitioner running away from the spot and destroying/ hiding the other three currency notes. Further, even if it is believed that the petitioner ran away with the said currency notes and destroyed them, a question arises as to why the petitioner, returned to the spot, just after fifteen minutes, knowing fully that he will be caught. Not only that, he also signs the confiscation report and again joins back on duty. It is highly improbable that a person, who is already under the

fear of being caught, will come back to the spot that too just after fifteen minutes and will also wilfully sign the confiscation report and above all, the officers will also allow him to join back on duty. We find no explanation whatsoever, as to why the petitioner was allowed to join back on duty after such an incident with such ease.

- h) As per the evidence of PW-2, Assistant Commandant Harish Pandey, on the night shift in the plant, 2-3 personnel the Crime and Intelligence Dept. were deployed. However, it is equally surprising that none of them were called to the spot to report the incident.

13. It is settled legal position that preponderance of the evidence, also known as balance of probabilities is the standard of proof required in most civil cases, unlike criminal cases where the prosecution is required to prove the case beyond reasonable doubt. The standard is met if the proposition is more likely to be true than untrue. Effectively, the standard is satisfied if there is greater than 50 percent chance that the proposition is true. (**Ref. Lord Denning, in *Miller v. Minister of Pensions 1947 (2 All ER 372)*.**) In the present case, the respondents have clearly failed to fulfill their burden of proof. For the reasons stated above the statement of each witness contradicts the other and the story

of the respondents on the face of it appears to be concocted and deceiving. Pertinently too, the Enquiry Officer has deliberately failed to comply with the principles of natural justice, as the view taken by him is not backed by cogent evidence. The decision of the Enquiry Officer to suspend the petitioner, on the face of it, appears to be perverse and arbitrary. Although, it can be believed that the petitioner did not enter the amount of money carried by him in the Money Declaration Register; however, the fact that he was involved in illegal gratification and that he destroyed the evidence of the same has not been proved at all. Before imposing such a severe penalty of removal from service, one must keep in mind the effects of the same as it may deprive a person of his livelihood and may also bring with itself many other adverse effects. Besides the graver the charge or likely penalty/punishment the more would be the need to tread cautiously and meticulously in collection and appreciation of the evidence. The misconduct of not making entry in Money Declaration Register on the part of the petitioner could not be a ground for removal from service. In the present matter, the petitioner in his defence had also raised the issue that the petitioner had been falsely implicated by respondents for

settling a personal score. However, since this contention is not backed by any cogent evidence, we do not find it essential enough to dwell upon it.

14. In the light of the aforesaid facts, the present petition filed by the petitioner deserves to be allowed. Accordingly, the orders dated 10.11.2009, 08.07.2009 and 28.02.2009 passed by respondent Nos. 3, 4 and 5, respectively are hereby quashed and the respondents are directed to reinstate the petitioner within a period of three months from the date of this order with the grant of all consequential benefits.

15. With aforesaid direction, the present writ petition is disposed off.

KAILASH GAMBHIR, J.

NAJMI WAZIRI, J.

SEPTEMBER 24, 2014

v