

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

Decided on: 25.07.2017

+ **W.P.(C) 10731/2009**
BALDEV SINGH

..... Petitioner

Through : None.

versus

DISTRICT AND SESSION JUDGE AND ORS. Respondents
Through: Sh. Satyakam, ASC with Sh. Pramod
Sakhuja, o/o DSJ.
Sh. Viraj. R. Datar, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE S.P. GARG

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The petitioner is aggrieved by his dismissal from service by the District and Sessions Judge by order dated 27.02.2006.
2. The records would reveal that the petitioner joined the Indian Army in 1974 as a Gunner. He sought and was granted discharge on some ground of disability in the year 1983 from the army. He thereafter competed for and was appointed as a Lower Division Clerk (LDC) in the establishment of the District and Sessions Judge on 09.07.1984. He was subsequently promoted as an Upper Division Clerk (UDC)/Reader in May 1988.
3. Upon allegation of misconduct pertaining to the petitioner tampering with the record in a matrimonial case and also for receiving illegal gratification, an inquiry was instituted and a charge sheet was issued on

22.08.2005. The relevant part of the charge sheet reads as follows:

**“STATEMENT OF ARTICLES OF CHARGE FRAMED
AGAINST SH. BALDEV SINGH, UDC/READER”**

Article I

That Sh. Baldev Singh, UDC while working as Reader in the court of Sh. K.S. Pal, ADJ, Delhi during the year 2005, removed the original reply to the application under Section 24 of the Hindu Marriage Act along with application under Section 151 CPC filed by Smt. Karnail Kaur, mother of the petitioner on 14/02/2005 in case titled as Virender Singh Vs. Mandeep Kaur when the Presiding officer was on leave.

Article II

That Sh. Baldev Singh, UDC while working as Reader in the court of Sh. K.S. Pal, ADJ, Delhi during the year 2005 took money as illegal gratification from the parties for giving dates as and when the Presiding Officer remains on leave.

Article III

That Sh. Baldev Singh, UDC while working as Reader in the court of Sh. K.S. Pal, ADJ, Delhi during the year 2005, on 22/02/2005 when the Presiding officer was on leave misbehaved with Smt. Karnail Kaur, complainant/mother of the petitioner in case titled as Virender Singh Vs. Mandeep Kaur.

Being a Reader, it was the primary duty of Sh. Baldev Singh, to maintain absolute integrity, devotion to duty and to do nothing unbecoming of Government Servant and to perform his official duties in a courteous manner, which he failed to do so.”

4. The petitioner also received Statements of Imputation and Misconduct and other relevant documents relied upon by the authorities in the departmental proceedings. The respondents relied on the depositions of Smt. Karnail Kaur who was brought as a witness.

5. During the course of proceedings, the petitioner confessed to having committed the misconduct alleged against him. The statement recorded in this regard reads as follows:

“18.2.2006

Statement of Sh. Baldev Singh Delinquent Official presently posted as Reader in Court of Sh. P.K. Jain, ADJ, Distt. Courts, Rohini, Delhi.

On Oath

Today itself I had gone to the Gurudwara and had sat in the Gurudwara for some time to have complete introspection in respect of what I have been doing till date.

During introspection, I realized I had not been working with the degree of honesty and sincerity which is expected from a good public servant while working in the court of Sh. K.S. Pal, ADJ, on account of my family problems and compulsions and I had been accepting money from people for doing my official work. I then in the Gurudwara itself took an oath that during the remaining part of my service, I shall work with absolute integrity and honesty and will try to serve the public coming in contact with me as the ideal most employee of the office of Distt. & Sessions Judge, Delhi.

So far as complaint of Smt. Karnail Kaur against me in this enquiry is concerned, the same is correct in material particulars. Despite my having denied the allegations contained in Memorandum No.55958/F-1108 Vig. Dated Delhi 22.8.2005 vide my reply dated 7.10.2005 received in the office of the Distt. & Sessions Judge Delhi vide Diary No.20392/B dated 13.10.2005 today I want to submit that I had given my reply to the charge sheet under a wrong legal advise given to me while I had not introspected about my misdeeds.

Today before the Enquiry Officer, I admit my having

misplaced original reply to the application under Sec. 24 of HMA along with the application under Sec. 151 of CPC filed by Smt. Karnail Kaur, mother of the petitioner, on 14.2.2005 in case titled as Virender Singh Vs. Mandeep Kaur which I have not been able to trace till date.

I also admit that due to unavoidable circumstances and my family compulsions while working in the court of Sh. K.S. Pal, ADJ, I had been taking money as illegal gratification from the parties for giving dates and when the Presiding Officer remained on leave but while working in different capacities in the court of Hon'ble Sh. S.N. Dhingra, Sh. Lokeshwar Prasad, Sh. O.P. Dwivedi, Sh. M.A. Kahan, Sh. S.P. Sabharwal, Sh. S.I. Khanna and many other judicial officers during different periods I had been working with utmost honesty and sincerity.

I admit my having misbehaved with complainant Smt. Karnail Kaur mother of the petitioner Virender Singh in case titled as Virender Singh Vs. Mandeep Kaur in the court of Sh. K.S. Pal, while the Ld. PO was on leave on account of my being disturbed on account of my family circumstances on 22.2.2005.

I admit that while working in the court of Sh. K.S. Pal, my integrity, devotion to duty has not been upto the mark due to my family problems for which I may be forgiven.”

6. Since after recording the confession, however, the petitioner appears to have written to the District and Sessions Judge, alleging that he was coerced and forced to make the statement, the relevant allegations against the Enquiry Officer levelled by the petitioner – contained in his letter of 18.02.2006, are extracted below:

“That as per my apprehension, the Ld. Enquiry Officer from the very inception of the enquiry proceedings showed his attitude viz. he on the first day told me that there was nothing in my enquiry and he will dispose off the same soon, he also told me that there is no need to have some Defence Assistant. Like

Sh. Nanak Chand and even offered the services of his own Reader for conducting enquiry on my behalf. Ultimately, he told me that I should conduct the enquiry myself. On the last date of hearing he told me that today I should go to the Gurudwara and after offering prayers to Guru Maharaj (Matha Tekna) I should come to him and do whatever he tells me and he will dispose off the enquiry in my favour.

That on 18.02.2006 when I visited the court the departmental witness (complainant) was also present alongwith her Counsel but the Ld. Enquiry Officer told them that there was no need to record her statement. The Ld. Enquiry Officer recorded my confessional statement of his own and asked me to sign the same. He threatened me that in case I do not sign the same he will get me dismissed immediately and also put me behind the bars. He further stated that if I sign the same he will finish the matter in my favour. Thus, under that compulsion I had to sign the aforesaid confessional statement under great duress, pressure, coercion, threat and false assurance of the Ld. Enquiry Officer. The Ld. Enquiry Officer went to such an extent that he got written from me in my own hands some sentence on the bottom of my above said statement to the effect that I have again read and understood the said statement before putting my signature.”

7. On the basis of the report furnished by the Enquiry Officer, the petitioner was issued with an order of dismissal from service on 27.02.2006. He appealed to this Court which in its administrative capacity acted as an appellate authority under the rules, on 14.03.2006. A Judge of this Court decided the appeal after taking note of the materials, including the petitioner's confessional statement as follows:

“9. Only contention urged at the hearing by the defence assistant was that the confessional statement attributed to the appellant was not voluntary. That complaint made to the learned District and Sessions Judge on 18.2.2006 was proof of

said fact.

10. On being questioned as to why has the appellant introduced the story of being made to visit a gurudwara and thereafter report back to the inquiry officer before confessional statement was recorded, appellant and his defence assistant took a virtual somersault and explained that the appellant was assured that if he came out with the truth, inquiry officer would take a lenient view. This was stated to be an inducement for the appellant to so record his confession.

11. On the issue of the confession being involuntary, suffice would it be to note that the confessional statement has not only been signed on each page by the appellant but a footnote has been appended in the handwriting of the appellant to the effect that he has read over and understood the confessional statement and affirms the same to be correct.

12. It is thus difficult to believe that the appellant was forced to sign a confessional statement.

13. Appellant cannot simultaneously ride on 2 boats. Either the confessional statement was a result of inducement or the appellant was forced to sign the same. The two cannot co-exist.

14. As noted above, appellant is making a rolled over plea. The first part of the plea is that he was told to clean his conscious by visiting a gurudwara and thereafter confessing to the truth with allurement of leniency being shown to him coupled the second part of the plea is that the statement made by the appellant was not voluntary and that on a pre-dictated statement, appellant was forced to pen his signatures.

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21. Be that as it may, issue which needs consideration is whether the appellant was forced to sign a confessional statement or whether the same was indeed made by the

appellant out of free will and volition.

22. Prima facie, the confession appears to be voluntary evidenced by the endorsement thereon in the hand of the appellant.

23. I find no merits in the appeal. The appeal is dismissed.”

8. The writ petition reiterates the contents of the appeal as it were. The petitioner argues that the confessional statement was not voluntary but rather was induced, on account of the Enquiry Officer's hurry to get over the matter. It is stated that due to the unfair treatment of the Enquiry Officer, the petitioner made representations on the same date but to no avail. It was also stated that the order sheets in the enquiry proceedings on 14.11.2005, 25.11.2005 and 30.11.2005 show that the proceedings had not been completed and that a preliminary inquiry was still on. In these circumstances, there was no cause for the petitioner to have proceeded to make a confessional statement.

9. Lastly, the petitioner urged that the principles of natural justice and the mandate of Rules 14(8) and 15A of the *Central Civil Services (Classification, Control and Appeal) Rules, 1965* were not followed since these rules stipulate the procedure that is to be followed in departmental enquiry. It was lastly urged that the dismissal order is an unreasoned one inasmuch as the disciplinary authority has not indicated its independent application of mind in support of the dismissal order.

10. The record clearly shows that an appropriate enquiry was instituted followed by issuance of charge sheet upon the petitioner on 22.08.2005. In fact, the petitioner has reproduced the Articles of Charges contained in that

document. It also transpires that the Articles of Charges were accompanied by Statements of Imputation and list of witnesses whose statements/depositions had to be relied upon to say that the charges were proved. In these circumstances, the petitioner's grievance that the character of the proceeding is only of a preliminary enquiry cannot be countenanced. As to the petitioner's argument that the enquiry was proceeded with in a rather casual manner and no substantial steps were taken on various dates spelt out earlier, the Court observes that the number of dates and the opportunities granted *per se* do not indicate that the petitioner was denied any opportunity. In fact, during the recording of the complainant's statement, he was also present. At this stage it appears that the petitioner capsulated the allegations in the hope of being dealt with leniently.

11. No doubt, his letter dated 18.02.2006 appears to be an attempt to somehow salvage the situation. Further, all the surrounding circumstances show that the presence of the complainant and the possibility of being confronted with the proof of misconduct alleged has resulted in his confessing the guilt. All of these aspects have been gone into in an elaborate manner by the appellate authority.

12. The Court is of the opinion that given the limited nature of judicial scrutiny in such matters where the disciplinary and appellate authorities have gone into evidence, unless there is an indication on the record that there was no evidence to support the conclusion, interference is not called for. (see *Union of India v. H.C. Goel* AIR 1964 SC 364).

13. As far as the complaint with respect to the dismissal order not containing any reasons is concerned, the Court notices that in this case the enquiry report contains reasons that have been considered and have not been

perfunctorily adopted by the disciplinary authority. In view of settled authority on this point, no infirmity can be found with the disciplinary order.

14. For the foregoing reasons, it is held that there is no merit in the writ petition. It is accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

S.P. GARG
(JUDGE)

JULY 25, 2017



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