

\$~64

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

+

Date of Decision: 24.7.2019

% **W.P.(C.) No. 7952/2019**

ANIL KUMAR

..... Petitioner

Through: Mr. Ankit Jain, Advocate with Mr. Siddhant Nath, Mr. Shiven Khurrana, Ms. Aayushi, & Mr. Sarma, Advocates.

Versus

GOVERNMENT OF NCTD & ORS.

.....Respondents

Through: Mrs. Avnish Ahlawat, Standing Counsel GNCTD (Services) with Mr. N.K. Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

RAJNISH BHATNAGAR, J. (ORAL)

CM No. 32986/19

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) No. 7952/19

1. Issue notice. Counsel for the respondents accepts notice. We have heard learned counsels for the parties, perused the record, and we proceed to dispose of the petition at this stage itself.
2. The petitioner has filed the present writ of certiorari, inter alia,

with the following prayers :

- 1 To set aside the order dated 02.11.2018 passed in O.A. No. 1154/2013 by the Central Administrative Tribunal, Principal Bench, New Delhi whereby major punishment of forfeiture of one year was inflicted upon the petitioner.
 - 2 To direct the respondent that the forfeited years of service be restored as if it was never forfeited with all consequential benefits including seniority and promotion and pay and allowances.
 - 3 To direct the respondents to remove the name of the petitioner from secret list of doubtful integrity from date of inception.
3. The allegations against the petitioner were that on 03.06.2009, while he was posted as H.C. (Exe.) No. 223/OD at P.S. Shahbad Dairy, a PCR call about setting ablaze of a girl at L-45, Sec. 5 Bawana Industrial area was received vide DD No. 30-A. The same was entrusted to the petitioner for necessary action but, instead of attending the call himself, the petitioner asked the beat constable Baljeet Singh No. 1103/OD to reach the spot who, instead of going to the spot, went to a nearby ice factory at L-42, Sec. 5, DSIDC, where he gave beatings to Sohan Lal S/o Shri Tika Ram and Rajender S/o Puranwasi Yadav without any reason. It was also alleged against the petitioner that he had not taken any action against the said beat constable Baljeet Singh for beating these two persons and, in the process, he caused damage to the image of the police force. It is further alleged that the petitioner

neither made any effort to trace the burnt girl, nor tried to know as to who had taken her to hospital and whether she is alive or dead till the receipt of information through Duty Constable LNJPN Hospital, Delhi vide DD No. 55-B dated 04.06.2009, P.S. Shahbad Dairy.

4. A detailed departmental enquiry was held against the petitioner and constable Baljeet Singh, wherein, both were found guilty of the charges framed against them by the Enquiry Officer. The evaluation of evidence found in the enquiry report reads as under :-

“EVALUATION OF EVIDENCE

During the course of enquiry, I have examined total four witnesses in support of the charge framed against H.C.(Exe.) Anil Kumar No. 223/OD and Ct. (Exe.) Baljeet Singh No. 1103/OD. All the witnesses are relevant reliable and dependent witnesses. PW-1 H.C. Satish Kumar No. 136/OD produced daily diary A & B dated 03.06.09. PW-2 Sh. Rajender Singh stated that on 03.06.09 at about 09:30 p.m while he was present in the Ice factory, two policemen came to the factory and questioned about Sohan Lal who is a driver of factory owner. He also enquired as to who had made the call to police at No. 100. He told the police officials that the call was made by Sohan Lal who is present at the first floor. Upon this both the police officers, one of whom was Ct. Baljeet, went up stairs. Baljeet bring Sohan Lal at ground floor and beat him. Sohan Lal asked him to inform the factory owner on telephone and he telephonically informed the factory owner. Baljeet snatched his phone and started beating him also saying that if he had sympathy for the girl why

he did not take her to hospital. PW -3 ASI Kaptan Singh No. 3311/D stated that DD No. 56-B dated 04.06.09 PS-Shahbad Dairy was entrusted to him by SHO and he contacted SDM, Narela, got the statement of Smt. Munni Devi w/o Sh. Babu Lal R/o L-45, Sector-5, DSIDC recorded and got a case FIR No. 135/09 u/s 307 IPC registered. PW-4 Sh. Sohan Lal stated that about 5-6 months back at about 09:10 p.m he had made a call at No. 100 that a lady has been set ablaze in the nearby factory. At that time he was present at factory No. L-42, Sector-5, DSIDC, Bawana. The call was responded by two police officers who questioned him as to why he had made the call at no. 100. He told them that a lady has been set ablaze in the nearby factory and he made the call at No. 100. Upon this the two police officials came to him and started beating him. He has identified Ct. Baljeet, who was present in the proceedings. Ct. Baljeet had beaten him outside the factory. From the above averment of the PWs and evidence on record, it is clear that H.C. Anil Kumar failed to take legal action promptly into the call entrusted to him and later the same was marked to ASI Kaptan Singh, who registered a case vide FIR No. 135/09 u/s 307 IPC at PS S.B. Dairy. H.C. Anil Kumar instead of attending the call himself, sent the beat officials at the spot, who in turn beaten Sh. Sohan Lal and Rajender. I have also seen the vide footage of the alleged beating in which a police official is seen beating a person and Sh. Sohan Lal has identified him as the police official constable Baljeet Singh who had beaten him.

CONCLUSION

After carefully going through the statements of the PWs, defence statement of the delinquents H.C.(Exe) Anil Kumar No. 223/OD and Ct.(Exe.) Baljeet Singh

No. 1103/OD and in view of the above discussion, I am of the view that the charge formed against H.C. (Exe.) Anil Kumar No. 223/OD and Ct. (Exe.) Baljeet Singh No. 1103/OD stand proved without any shadow of doubt. (emphasis supplied)

5. After complying with the procedure, the Disciplinary Authority concurred with the said findings of the Enquiry Officer and consequently awarded the punishment of forfeiture of one year approved service permanently to the petitioner entailing reduction in his pay from Rs.10240+2400 to Rs. 9870+2400 vide order dated 10.03.2011. In the said order, the Disciplinary Authority recorded as follows:-

“I have carefully gone through the statements of PWs/DWs, findings of E.O., defence statement, written representations and other material brought on DE file. Both the delinquents were also heard in Orderly Room on 10.3.2011, where they did not adduce any fresh plea, which they have already submitted in their written representation. H.C. Anil Kumar No. 223/OD has mainly contended that on 3.6.09, he was detailed to perform Emergency Duty in P.S./S.B. Dairy. An information regarding settling ablaze of a girl at 45, Sec. 5, Bawana Indl. Area was entrusted to him for necessary action. Since, he was busy in attending another call at a long distance, he contacted the concerned Beat Staff to reach the spot in view of gravity of the call telling them that he was reaching at the spot soon. Later he reached the spot and took stock of the situation but it was not in his knowledge as to in which hospital the victim had been taken. When he reached at the spot SHO/S.B. Dairy and other staff was also

present there. He also stated that since the family members of the victim were not aware as to in which hospital the victim had been taken, he was not briefed about the further course of action. He came to know the name of the hospital only when an information was received from the duty Head Const. of LNJP Hospital. However, when, he was about to leave the hospital to record the statement of victim, the call was entrusted to ASI Kaptan Singh by the SHO and a criminal was registered accordingly.

Const. Baljeet Singh No. 1103/OD has taken the averments that during the course of enquiry Sh. Sohan Lal (PW-4) who was allegedly beaten by him stated that he was beaten by the two policemen but he did not support the charge that he was beaten by him. There is no medical evidence to suggest that Sh. Sohan Lal or Sh. Rajender Singh were beaten. Besides no call about beating was made by them at No. 100. He also stated that even the spot was visited by SHO and other officers but they did not complain about the alleged beating. He also contended that the footage of CCTV might be stage managed to implicate him in false allegations. He also advanced the plea that the allegations leveled by Sh. Sohan Lal and Sh. Rajender Singh are suspicious as there was darkness and Sh. Sohan Lal had stated that he was beaten by a fat police official but he is not fat.

The above plea taken by the delinquents are not found to be satisfactory. It is not in dispute that PCR call regarding settling ablaze of a girl at 45, Sec. 05, Bawana Industrial area was received at P.S./S.B. Dairy and entrusted to H.C. Anil Kumar, No. 223/OD for necessary action. He

Instead of attending the call sent Const. Baljeet Singh, No. 1103/OD and one another Const. to attend the call at his own. He further did not follow the call and also not made any effort to find out the whereabouts of the victim girl from 10:55 p.m on 03.06.2009 till 7:00 P.M. on 06.06.2009. The matter further came into notice only when the Duty Constable of LNJP Hospital has informed P.S./S.B. Dairy regarding the incident vide DD No. 55-B dated 04.06.09. This information was entrusted to ASI Kaptan Singh by SHO/S.B. Dairy vide DD No. 56-B dated 4.6.2009 who got recorded her statement through Tehsildar/Narela and got a case registered vide FIR No. 135/09 dated 5.6.2009 u/s 307 IPC, PS Shabad Dairy. Hence, the plea taken by H.C. Anil Kumar, No. 223/OD in his defence are not plausible.

As regards Const. Baljeet Singh, No. 1103/OD (now 2078/OD), it is clearly established during the D.E. proceedings that on asking by H.C. Anil Kumar, No. 223/OD, he visited nearby ice factory at L-42, Sec. 5, DSIDC, Bawana and questioned about Sohan Lal, who was the driver of the factory owner. He also enquired as to who had made the call to police at No. 100. He went upstairs at first floor of the factory and found Sohan Lal there. Thereafter, he brought Sohan Lal at ground floor and beat him. The beating of the victims namely Rajender is evident from the CD prepared from the CCTV. Hence, in the nut shell I conclude that H.C. Anil Kumar failed to take prompt legal action into an sensitive nature PCR call. He instead of attending the call himself sent the Beat Officials i.e. Const. Baljeet Singh, No. 1103/OD and another Const. at the spot and in turn Const. Baljeet Singh

beaten Sh. Sohan Lal and Rajender. Such incident cause damage to the reputation/ image of the disciplined force like Delhi Police. Const. Baljeet Singh, No. 1103/OD not only tarnish the people friendly image of Delhi Police by beating the complainant who had made the PCR call but this behavior also led to spoiling the image and relationship of police with the general public, which is against the ethos of making Delhi Police the people friendly force. The delinquent Const. has also admitted that he had made a mistake and he shall not repeat the same in future.

Keeping in view of above discussion and over all facts and circumstances of the case I am of the considered opinion that both the delinquent Constables are guilty of the charge framed against them. Hence, I, Amit Roy, Addl. Dy. Commissioner of Police-II, Outer Distt., Delhi at present looking after the work of Addl. DCP-I/OD vide Order No. 2145-85/Estt-I/Outer Distt. dated 1.2.2011, impose the penalty of forfeiture of one year approved service permanently upon H.C. Anil Kumar, No. 323/OD (now 985/OD) and Const. Baljeet Singh, No. 1103/OD, now 2078/OD entailing reduction in their pay from Rs. 10240+2400/- to Rs. 9870+2400/- and Rs. 9710+2400/- to Rs. 9350+2400/- respectively for their lapse, which would meet the end of justice. The suspension period of Const. Baljeet Singh, No. 1103/OD, now 2078/OD from 30.6.2009 to 20.6.2010 is decided as period not spent on duty for all intents and purposes.” (emphasis supplied)

6. The appeal preferred by the petitioner was also rejected by an order passed by the Joint Commissioner of Police acting as

Appellate Authority. The relevant extracts from the said order dated 07.09.2012 reads as follows :

“A regular departmental enquiry was initiated against the appellant vide order No. 7786-95/HAP/OD dated 13.08.2009. The enquiry officer completed the departmental enquiry and submitted findings concluding therein that the charge framed against the appellant proved beyond the shadow of any doubt. A copy of the same was served upon the appellant to submit his representation. The appellant submitted the same. His written reply and verbal submissions during orderly room were not found satisfactory by the Disciplinary Authority and he was awarded the punishment vide the order appealed against.

*During the OR the appellant repeated the same plea what he had already submitted in his appeal except for the mercy. He submitted that when he reached at the spot and enquired about the matter none had complained him about any beating etc. As such he could not take any action in this regard. The plea of the appellant is totally baseless. As both the persons had explained the facts of their beating in the DE on the basis of which the charge was proved. As regard the mercy since the person who informed the police about the incident of setting ablaze a girl required to be encouraged for providing information to the police in time were beaten up mercilessly without any cogent reason, hence **I find no reason to interfere with the punishment awarded by the disciplinary authority and as such the appeal is rejected.**”* (emphasis supplied)

7. Thereafter, the petitioner preferred O.A. No. 1154/2013 and vide impugned order dated 02.11.2018, the Tribunal dismissed the Original Application.

8. We have heard the submissions of the Ld. counsels and given our due consideration to the matter.
9. It is mainly urged by the counsel for the petitioner that the petitioner had examined two defence witnesses, and their depositions were not considered by the enquiry officer and the enquiry officer solely relied upon the evidence of the prosecution witnesses. He further urged that the enquiry officer has relied upon the CCTV footage in the departmental enquiry, which has not been proved as per law. Therefore, he argues that the proceedings are vitiated.
10. On the other hand, it is urged by the counsel for the respondents that there is no infirmity in the impugned order. It is further urged that the enquiry officer after due consideration of the entire evidence on record, concluded that the charge against the petitioner stands proved, which findings have been vertically upheld. It is further urged by the counsel for the respondents that in judicial review, the scope of interference by this Court is very limited.
11. In the instant case, there is no denial from the side of the petitioner that he received a PCR call vide DD No. 30-A dated 03.06.2009 about setting ablaze a girl at 45, Sec. 5, Bawana Industrial Area. In spite of receiving a call regarding commission of such a heinous and serious crime, the petitioner did not think it proper to proceed to attend the call himself. Rather he entrusted it to Beat Constable Baljeet Singh. He did not even bother to

enquire about the whereabouts of the victim. This conduct of the petitioner, in our opinion, reflects very poorly regarding his commitment to his duty. The explanation given by him shows his casual and highly negligent attitude. He claimed he was busy in a long distance call. That does not explain his not following up the matter for nearly three days.

12. As far as the contention of the counsel for the petitioner that defence evidence was not considered and the CCTV footage relied upon by the respondents was not proved as per law, both these contentions have no force, in view of the fact that the disciplinary proceedings are governed by the preponderance of probabilities, and the wrong doings have not to be proved beyond reasonable doubt, as in criminal trial.
13. The record of the entire proceedings reveals that due weightage has been given to the defence witnesses produced by the petitioner and as far as the question of reliance on CCTV footage is concerned, there is a specific finding that Ct. Baljeet Singh was seen beating Sohan Lal and Rajender in the CCTV footage. The testimonies of PW's has been found to be credible and there is nothing in the testimonies of DW's that could shake the case of the department.
14. The defence evidence that the petitioner relies upon has been extracted in the enquiry report/ findings recorded by the enquiry officer. Thus, it would not be correct to say that the enquiry officer has not considered the defence evidence. We have also,

ourselves, perused the enquiry report/ findings and it is evident that the defence evidence of DW1 Sh. Santosh Kumar, and DW2 Sh. Shaquil Ahmed do not advance the defence of the petitioner. DW1– Sh. Santosh Kumar claimed that he was a resident of L-44, Sector-5, DSIDC, Bawana. He claimed that on the fateful day i.e. 03.06.2009, he was residing in jhuggi in front of factory No. L-45 along with his mother and sister in law. He was working as a watchman of factory No. L-45 which was under construction at the relevant time. He claimed that on 03.06.2009, at around 10.00 pm, his sister-in-law – Smt. Munni Devi was cooking food and her clothes got fire. Her mother took his sister-in-law to the hospital. He was cross-examined and stated that the distance between L-42 and L-45 was around 80-90 feet. He claimed that when the police head constable came to his factory i.e. L-45, he was inside the factory. He was not in a position to identify the person standing on the road of factory No. L-42.

15. This statement has absolutely no bearing on the charge framed against the petitioner, since the charge framed against the petitioner relates to dereliction of duty on his part in not responding to call received, informing him of the incident, namely a girl being set ablaze. In fact, the statement of DW-1 reinforces the position that at the relevant date and time, an incident of a girl getting burnt took place.
16. Similarly, the statement of DW-2 Sh. Shaquil Ahmed is also of no avail. He stated that he was working as supervisor in factory

No. L-44. On 03.06.2009, he was on night duty. At around 11 PM, he was checking his labour. He noticed police officers standing in front of factory No. L-42. He claimed that he did not hear about the beating of any worker in factory No. L-42. On his being questioned by the department, he only stated that the senior police officer had come around 11.00 PM to the gate of factory No. L-42 in a gypsy.

17. Pertinently, he did not claim that the petitioner was that senior police officer who had come. It is not even the petitioner's case that he had attended the call on the same night. In the light of the aforesaid, the enquiry officer, the disciplinary authority and the appellate authority, rightly, did not give much weightage to the defence evidence produced by the petitioner.
18. The Enquiry Officer vide his findings dated 13.08.2009, the Disciplinary Authority vide order dated 10.03.2011 and the Appellate Authority vide order dated 07.09.2012 have returned consistent findings of guilt. The O.A. preferred by the petitioner has also been dismissed by the Tribunal vide its order dated 02.11.2018.
19. This Court is not sitting as an appellate forum and it is not for this Court to re-appreciate the evidence. There is nothing on record to show that there has been miscarriage of justice or violation of principles of natural justice as the petitioner was afforded sufficient opportunity to defend himself. The findings returned in the enquiry against the petitioner, which have been

accepted by the Disciplinary Authority and the Appellate Authority cannot be said to be unreasonable, without any basis, or not borne out from the record. Reliance in this regard can be placed upon ***Government of Andhra Pradesh versus Mohd. Nasrulla Khan***, [2006 (2) SCC 373], in which the Hon'ble Apex Court has held that the scope of judicial review is confined to correct the errors of law or procedural error if they result in manifest miscarriage of justice or violation of principles of natural justice. The Apex Court in para 11 has held that :

“By now it is a well established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an appellate authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by appreciating the evidence as an Appellate Authority.”

20. The Apex Court in the case of ***S.R. Tewari vs. Union of India***, [2013 (7) SCALE 417], has reiterated that *“The role of the court in the matter of departmental proceedings is very limited and the Court cannot substitute its own views or findings by replacing the findings arrived at by the authority on detailed appreciation of the evidence on record. In the matter of imposition of sentence, the scope for interference by the Court is very limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to*

the conscience of the court, cannot be subjected to judicial review.”

21. The Hon’ble Supreme Court in a recent judgment titled as ***Union of India and Ors. Vs. Sitaram Mishra and Anr.***, Civil Appeal No. 6183 of 2010, decided on 11.07.2019 has held that :-

“A disciplinary enquiry is governed by a different standard of proof than that which applies to a criminal case. In a criminal trial, the burden lies on the prosecution to establish the charge beyond reasonable doubt. The purpose of a disciplinary enquiry is to enable the employer to determine as to whether an employee has committed a breach of the service rules.”

22. We do not find any infirmity in the impugned order dated 02.11.2018, passed by the Principal Bench of Central Administrative Tribunal. The petition is, therefore, dismissed.

RAJNISH BHATNAGAR, J.

VIPIN SANGHI, J.

JULY 24, 2019

Sumant