

Constable Sushil Kumar Vs. Union of India (Uoi) Through

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Court : Central Administrative Tribunal CAT Delhi

Decided On : Sep-21-2006

Judge : S Raju, D a N.D.

Appellant : Constable Sushil Kumar

Respondent : Union of India (Uoi) Through

Judgement :

1. Applicant, a Constable in Delhi Police, by virtue of this OA, assails an order passed by the respondents on 25.10.2004 whereby after departmental inquiry, three years' service has been forfeited permanently with reduction of pay and the suspension period as not spent on duty. Also assails an order passed in appeal dated 10.5.2005 upholding the punishment.

2. A brief factual matrix transpires that the applicant, who while posted as a Constable (Munshi) in the Kot, i.e., Armory had lost two revolvers and one pistol in the, was placed under suspension on 2.7.1997 along with one Head Constable and two other Constables.

Summary of allegations served upon the applicant alleges that applicant along with two other Munshis were directly responsible for care and custody of arms and ammunitions in the Kot. They have failed to perform their duties property and committed gross misconduct and on their negligence, loss of revolvers and pistol had taken place. A charge when framed was defended; inquiry officer framed a charge of failure to keep the proper custody of arms and ammunitions. However,

in the conclusion by the inquiry officer recorded the following observations: In view of the fact that Ct. Narinder Singh was arrested in case FIR No. 717/97 Under Section 409 IPC P.C. Kotwali and the weapons in question have been recovered. No direct fault can be attributed to these defaulters. Nevertheless, negligence on the part of these defaulters cannot be ruled out. The fact that the keys to the Kot were being handled in such a casual and lackadaisical manner has been established and the defaulters definitely deserves punishment on this score. As mentioned above, this is a case of gross negligence and punishing authority may like to take action accordingly.

3. On representation against the inquiry report, the disciplinary authority by an order dated 13.8.1998 imposed the major punishment upon the applicant and others holding that the applicant with others have not conducted any physical verification of Armory during the next six days until the theft was detected. The aforesaid when assailed in appeal, the appellate authority turned down the appeal on 4.3.2003 leading to OA-2207/2003, which was disposed of on 7.7.2004 on a short ground of multiplicity of punishment, which by a modified order, was rectified and on appeal upholding the punishment, gives rise to the present OA.4. Learned Counsel for applicant, at the outset, stated that the disciplinary authority has held him guilty on extraneous charges of not inspecting the Armory and as there is no misconduct of the applicant, he has been punished on no misconduct without any evidence on record merely on suspicion and surmises.

5. Learned Counsel would contend that in the finding recorded by the inquiry officer, this has been made clear that a case was registered against Constable Narender Singh, who has been arrested, whereby he allowed the entry of outsider to inside the Kot, who removed the key under the pillow of Constable Bijender Singh. Constable Narender Singh, who was on duty, removed the revolvers, yet the negligence, which has been found, has not been ruled out by the inquiry officer without specifying as to why and how it constituted to hold him guilty of the charges. Accordingly, it is stated that the punishment cannot be sustained.

6. On the other hand, respondents' learned Counsel vehemently opposed the contentions and stated that due procedure was adopted in the inquiry, which led to

an order of penalty, which is proportionate to the charge.

7. As regards non-specific finding of the inquiry officer, it is argued that the applicant is jointly responsible to have custody of key and on this negligence and failure to regularly check the Armory, led to theft.

8. We have carefully considered the rival contentions of the parties and perused the material placed on record.

9. It is trite that in the departmental inquiry, evidence adduced must link with the officer against whom the misconduct is alleged. Mere statement that the evidence adduced is sufficient to hold guilt by the inquiry officer would be an illegality as held by the Apex Court in *Sher Bahadur v. Union of India and Ors.*

10. Moreover, in a departmental inquiry, it is trite that one cannot be held guilty of a charge, which he has not been confronted with and has not been afforded an opportunity to rebut the same, as held by the Apex Court in *M.V. Bijlani v. Union of India and Ors.*

11. As per Rule 16 (ix) of Delhi Police (Punishment & Appeal) Rules, 1980 after the defence evidence has been closed and written statement of defence has been submitted, the inquiry officer is mandated to record his finding on each article of charge with reasons. However, if the inquiry officer establishes the charge different from the originally framed, the aforesaid charge should form a separate part and after an opportunity to rebut the charge, a reasonable opportunity to defend is also to be accorded. *Anil Kumar v. Presiding Officer and Ors.* 1985 SCC (L&S) 815 that in the matter of departmental proceedings, inquiry officer has to record a reasoned finding and on ipsi dixit, he cannot hold one guilty of the charge. *Union of India v. H.C Goel*, which is reiterated in *Kuldeep Singh v. Commissioner of Police JT 1998 (8) SC 603*, held that a government servant cannot be punished on mere suspicion and surmises and no misconduct. A perverse finding is unsustainable in law. In such an event, the test prescribed is of a common reasonable prudent man.

14. In the light of above, for interference in the inquiry the scope is limited in judicial review having regard to the conclusion of the inquiry officer where despite

finding no direct fault attributed to the applicant. The negligence has been imputed without recording his reasons on article of charge as to why the applicant and others were negligent merely the keys of the Kot were being handled in a casual manner.

15. It is pertinent to mention that the charge leveled against the applicant in the departmental inquiry was that due to negligence on part of applicant and other Constables, two revolvers and one pistol went missing. Applicant failed to keep proper custody of arms and ammunitions resulting in loss of revolvers and pistol. It is also pertinent to mention that after registration of a case FIR No. 717/97 under Section 409 IPC against Constable Narender Singh, who has been held to have stolen keys from Constable Bijender Singh, at the time of theft, the applicant not being in custody of the keys and was neither put on a sentry duty, a particular act of theft at a particular time has not to be viewed in such a manner that all posted employees, as a staff of Kot, irrespective of posting, are to be punished. Negligence would be on either Constable Narender Singh or Constable Bijender Singh, as they have failed to ensure safety to keys, which were stolen by Constable Narender Singh. In such view of the matter, having held no direct fault attributed to the applicant, negligence, which has not been ruled out, is based on a conduct, which does not amount to misconduct.

16. The disciplinary authority has gone a step ahead. In its order dated what has been held against the applicant is that he has failed to conduct any physical verification of Armory during the next six days until the theft was detected, which culminated into finding of negligence. The aforesaid part of the charge has never been leveled against the applicant and against which no proper procedure has been adopted under Rule 16 (ix) of the aforesaid rules. This not only prejudiced the applicant in rebutting the charge but also a denial of a reasonable opportunity to defend it.

17. We are satisfied that for no misconduct and no evidence, the applicant has been found guilty of charge and even applying the test of a common reasonable prudent man, this finding would not have been recorded.

18. Accordingly, the disciplinary as well as the appellate authorities have not taken into consideration this aspect of the matter and rather punished the applicant on an extraneous charge, which cannot be countenanced in law.

19. In the result, for the foregoing reasons, OA is allowed. Impugned orders are set aside. Applicant is entitled to all consequential benefits. No costs.

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