

**Dinesh Kumar Vs. Uoi and ors**

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**SooperKanoon Citation :** [sooperkanoon.com/924382](http://sooperkanoon.com/924382)

**Court :** Delhi

**Decided On :** Feb-15-2012

**Appellant :** Dinesh Kumar

**Respondent :** Uoi and ors

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment reserved on: 07.02.2012 Judgment pronounced on: 15.02.2012 + W.P.(C) 1438/2011 DINESH KUMAR ... Petitioner versus UOI AND ORS. ... Respondents Advocates who appeared in this case: For the Petitioner : Petitioner-in-person For Respondents : Mr Jatan Singh with Mr Karan CORAM: HON'BLE MR. JUSTICE BADAR DURREZ AHMED HON'BLE MR. JUSTICE V.K.JAIN V.K. JAIN, J..

1. This writ petition is directed against the orders dated 21.07.2009 and 21.04.2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi(hereinafter referred to as "the Tribunal). The facts giving rise to the filing of this petition are as follows: The petitioner, who was employed as Deputy Field Officer(DFO) in Aviation Research Centre(ARC), Cabinet Secretariat, Government of India, since 24.08.1999, was transferred from ARC, Delhi to ARC Doomdooma (Assam) where he joined on 13.06.2005. A charge-sheet dated 08.08.2008 was served upon him W.P(C) 1438/2011 *Page 1 of 8* alleging (i) insubordination by refusing to take over the charge of Library at ARC Doomdooma and (ii) refusing to resume duties at ARC Doomdooma after availing earned leave for 13 days. Though the petitioner replied to the charge-sheet, he did not turn up before the

Inquiry Officer and the inquiry was therefore, held ex parte. A copy of the Inquiry Report was provided to the petitioner and vide order dated 26.06.2009, he was dismissed from service..

2. O.A. No. 1829/2009 was filed by the petitioner before the Tribunal impleading only Special Secretary ARC as the respondent. Out of the 15 reliefs sought in the application, 12 related to sending Shri S.K.Tripathy, Special Secretary ARC and several other persons including his wife to judicial custody, payment of compensation amounting to Rs.25 lacs and freezing of account of all the above referred persons. The remaining three reliefs pertained to the setting aside of the order of the dismissal of the petitioner from service and seeking his reinstatement with consequential benefits. The OA was dismissed vide order dated 21.07.2009. Thereafter, the petitioner filed an appeal against his dismissal from service. The appeal was dismissed by the appellate authority vide order dated 15.09.2009. OA No.2977/2009 was then filed by the petitioner challenging the order dated 26.06.2009, whereby he was dismissed from service as well as the order dated 15.09.2009 whereby his appeal was rejected. He also sought a direction that Shri S.K.Tripathy, Special Secretary ARC be convicted and W.P(C) 1438/2011 *Page 2 of 8* sentenced under Section 307/219/166/167/120-B of IPC and he be paid compensation amounting to Rs.50 lacs on account of deterioration of the health of his mother due to litigation. The O.A. as well as M.As were dismissed vide impugned order dated 21.04.2010..

3. We have heard the petitioner, who appeared in person, as well as the learned counsel for the respondent. In O.A. No.1829/2009, which was decided on 21.07.2009, the petitioner claimed that certain documents had not been supplied to him. The Tribunal after examining those documents found them to be extremely vague, some of them being the documents pertaining to proceedings under the Public premises (Eviction of Unauthorized Occupants) Act, 1971. The petitioner contended before the Tribunal that the aforesaid documents would show the malicious intentions of the respondents in proceeding against him. The Tribunal, however, did not find any substance in the contention. It was noted that the petitioner had not availed the opportunity to defend himself before the Inquiry Officer and the plea of mala fides had not been established. The Tribunal also did

not believe the claim of the petitioner that the Inquiry Report was not supplied to him. In this regard, the Tribunal noted that in his letter dated 04.05.2009 alleging non-receipt of Inquiry Report, the petitioner had falsely claimed that he had not even been informed of the reasons for holding the departmental inquiry whereas in fact, he had received the memorandum of charge and also sent replies dated W.P(C) 1438/2011 *Page 3 of 8* 19.08.2008 and 06.10.2008, denying the charges. The Tribunal was of the view that the petitioner had not been truthful in the matter. It was also held by the Tribunal that the petitioner had not availed the remedy of appealing against the order of the disciplinary authority and no grounds had been adduced for not filing the appeal in view of the provisions contained in Section 20(1) of the Administrative Tribunal Act, the application was not admissible..

4. In the second round of litigation, the petitioner again claimed that copy of the charge-sheet was not given to him and he was not given an opportunity to defend himself in the inquiry. The Tribunal noted that while dismissing O.A. No.1829/2009 filed by the petitioner, no liberty was given to him to file an appeal and he could not be allowed to re-agitate the same points by way of another O.A. The Tribunal accordingly dismissed the second OA filed by the petitioner..

5. During the course of hearing before us, the petitioner could point out no legal infirmity in the order passed by the Tribunal. He did not dispute that not only was the charge-sheet received by him, he had also replied to it on 19.08.2008 and 06.10.2008 as is noted in the order dated 26.06.2009 whereby he was dismissed from service. He did not dispute that he did not participate in the inquiry, despite having an opportunity to do so. He did not bring to our notice any communication asking for documents in order to enable him to defend himself before the Inquiry Officer. In order to succeed, the petitioner was required to satisfy us that he had W.P(C) 1438/2011 *Page 4 of 8* asked for certain documents, which were relevant to the charges against him and non-supply of those documents had prevented him from defending himself before the Inquiry Officer or otherwise prejudiced him. The petitioner, however, has not been able to do so. When we asked the petitioner as to why he did not participate in the inquiry, he had no plausible answer to give. When we asked him as to why he did not take charge of the Library at ARC Doomdooma and why he did not join ARC Doomdooma after availing earned

leave for 13 years, the only answer given by the petitioner was that the officers at ARC Doomdooma were indulging in corruption and he apprehended a threat to his life. However, there is absolutely no material on record to indicate any threat to the life of the petitioner at ARC Doomdooma. Even if there was any such threat, the appropriate remedy for the petitioner was to lodge a report with the police in this regard, but, he could not have refused to join his duties at ARC Doomdooma merely because he apprehended threat to his life if he went to Doomdooma. In any case, the petitioner did not appear before the Inquiry Officer to substantiate the plea taken by him to justify his absence from duty. We, therefore, find no merit in the contention..

6. During the course of hearing, it transpired that the petitioner had been transferred from ARC Doomdooma to ARC Charbatia (Orissa) with effect from 31.05.2008, vide order dated 29.04.2008. When we asked the petitioner as to why he did not join at Charbatia in case he apprehended his life at Doomdooma, he had W.P(C) 1438/2011 *Page 5 of 8* no satisfactory answer to give and made a bald allegation that the officers at Charbatia were also in connivance with the officers at Doomdooma and, therefore, he had a threat to his life at Charbatia as well..

7. As regards the allegation that the copy of the Inquiry Report was not provided to the petitioner, we notice that the same was sent to the petitioner not once but twice; firstly on 27.04.2009 and then on 03.06.2009. Hence, this ground taken by the petitioner also has no merit..

8. While considering a challenge to the order of punishment passed in departmental proceedings, the Court cannot re-assess the evidence led during the inquiry nor can it interfere with the finding recorded therein on the ground that another view in the matter is equally possible on the basis of the material on record. Once the Court finds that the inquiry was conducted fairly and properly, there was no denial of natural justice and the findings recorded therein are based on some evidence, it is not open to the Court to interfere with such findings, unless it is shown that the finding is clearly perverse. Yet another ground on which the Court can interfere with the findings recorded in a disciplinary proceeding is the

violation of a statutory rule or where the order passed by the disciplinary authority is arbitrary or mala fide or is based on extraneous considerations. In the case before this Court, the inquiry has been conducted in a proper and fair manner, the Inquiry Officer had been sending copies of every proceeding to the petitioner, despite the W.P(C) 1438/2011 *Page 6 of 8* fact that he was not participating in the inquiry. The evidence was led during the course of the inquiry and therefore, it cannot be said that the findings recorded therein are based on no evidence. As noted earlier, even during the course of hearing before us, the petitioner did not dispute that he had not joined duty either at Doomdooma or at Charbatia. Therefore, it cannot be said that the view taken by the disciplinary authority is such a view which no reasonable person could have taken on the basis of the material available to him. The allegations of mala fides also do not stand substantiated. We, therefore, find no ground to interfere with the view taken by the Tribunal..

9. As regards proportionality of punishment, it is no more *res integra* that neither the Tribunal nor this Court can interfere with the punishment awarded in departmental proceedings, unless it is shown that the punishment is so outrageously disproportionate as to shock the conscience of the Court. It is primarily for the Disciplinary Authority to decide what punishment the act committed by the employee warrants and it is not permissible for the Court to direct a lesser punishment only because it considers that the lesser punishment would be more reasonable as compared to the punishment awarded by the Disciplinary Authority. In the facts and circumstances of the case, considering the persistent refusal of the W.P(C) 1438/2011 *Page 7 of 8* petitioner to join duty, firstly at Doomdooma and then at Charbatia, we see no reason to interfere with the punishment awarded to the petitioner. The writ petition is devoid of any merit and is, therefore, dismissed. V.K.JAIN, J BADAR DURREZ AHMED, J FEBRUARY 15, 2012 'sn' W.P(C) 1438/2011 Page 8 of 8