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Court : Central Administrative Tribunal CAT Delhi

Decided On : Apr-30-2012

Judge : The Honourable Mr. G. George Paracken, Member (J) &Amp;amp; the Honourable Mr. Sudhir Kumar, Member (a)

Appeal No. : OA 797 of 2011

Appellant : inder Singh

Respondent : Commissioner of Police, Phq, Mso Building, I.P. Estate, New Delhi and Another

Advocate for Def. : Shri. Anil Singal

Advocate for Pet/Ap. : For the Applicant: Ajesh Luthra, Advocate. For the Respondents: Mrs. Renu George, Advocate.

Judgement :

G. George Paracken:

1. The applicant in this Original Application is aggrieved by the Annexure A-3 Inquiry Report dated nil holding that the charge leveled against him has been proved, Annexure A-2 order dated 11.09.2009 of the disciplinary authority awarding the punishment of ‘Censure’ upon him and the Annexure A-1 order of the

appellate authority rejecting his appeal and thereby upholding the aforesaid orders of the disciplinary authority dated 21.04.2010.

2. A regular joint departmental inquiry against the applicant and co-delinquent officials was ordered by the competent authority vide Annexure A-4 order dated 03.03.2008. The allegations made against them were as under:

“It is alleged against Inspr. Inder Singh, No. D-1/660, ASI Suresh Kumar, No. 2001/D, Ct. Anil Kumar No. 1693/SW and Ct. Mahabir Singh No. 1781/SW that on 23.08.2007, while they were posted at Police Station Dabri, one Abdul Shamshad @ Raju s/o Shri Abdul Sattar R/o RZ-862-A, Gali No. 15-A, Sadh Nagar, Delhi was arrested by SI Ashok Kumar of Spl. Staff/South-West District in case FIR No. 443/2007 u/s 25,27,59 Arms Act, Police Station, Sarojini Nagar, Delhi. Accused had confessed about his associate Bishan’s involvement in case FIR No. 729/2007 u/s 457/380 IPC PS Dabri. On 23.8.2007, SI Jagdish Kumar of PP Manglapuri had obtained one-day Police Custody remand of accused Abdul Shamshad @ Raju from the court concerned. ASI Ramesh Chander of PP Manglapuri had interrogated the accused and thereafter lodged him in the lock up at about 5.30 PM from where accused Shamshad @ Raju was escaped by bending the iron bars of lock up gate and taking advantage of light failure between 9.00 PM to 10.45 PM, for which a case vide FIR No. 740/2007 u/s 224 IPC was got registered at PS Dabri.

Iron bars of lock up gate of Police Station Dabri were in decomposition condition at the time of escape of accused. Though, one generator was provided to the Police Station, but the same was also not in working condition at that time. Further, as per `Chitha’, Constable Mahabir Singh was detailed as Sentary, but Constable Anil Kumar had performed Sentary duty in his place, which reflects that the then SHO had not paid proper attention towards safe custody of accused as well as not supervised the staff under his control properly.

Inspr. Inder Singh, No. D-I/660 (being SHO) failed to get repaired the iron bars of lock-up gate (which were in decomposition condition) as well as Govt. Generator set. He alongwith ASI Suresh Kumar No. 2001/D (Duty Officer) are also failed to ensure that Sentary is alert on his duty and accused is in normal way in the

lockup, specially at the time of light failure and proper deployment of staff as per Chitha Ct. Mahabir Singh No. 1781/SW changed his Sentary duty with Ct. Anil Kumar, without the knowledge of SHO/DO/Chitha Munshi and both the Constables had changed their duty at their own discretion. Ct. Anil Kumar No. 1693/SW performed Sentary duty in vary callous and negligent manner, resulting the accused succeeded in escape from lawful custody of police.

The above act on the part of Inspr. Inder Singh No.D-I/660, ASI Suresh Kumar No. 2001/D, Ct. Anil Kumar No. 1693/SW and Ct. Mahabir Singh No. 1781/SW amounts to gross misconduct and negligence in the discharge of their official duties, which renders them liable to be dealt with departmentally under the provisions of Delhi Police (Punishment and Appeal) Rules, 1980."

3. After holding the enquiry in terms of the prescribed procedure, the Enquiry Officer vide its report came to the conclusion that the charges leveled against them have been proved and its relevant part dealing with the discussion of evidence and conclusion is reproduced hereunder:

"Discussion of Evidence.

The main allegations leveled against the defaulters are as under:

Const. Anil Kumar No. 1693/SW

On 23.08.2007, when he was detailed on sentry duty in the lock up gate from 9.00 PM to 12.00 mid night, one accused Abdul Shamshad @ Raju s/o shri Abdul Sattar R/o RZ-862A, Gali No. 15-A, Sadh Nagar, Delhi succeeded in escaping from lawful custody of Police Station Dabri by bending the iron bars of the lock up gate.

As per 'chitha' detailed 23.08.2007, Const. Mahabir Singh No. 1781/SW was detailed as sentry from 9 AM to 12 noon and 9 PM to 12 mid-night, but instead Constable Anil Kumar No. 1693/SW had performed sentry duty in place of Const. Mahabir Singh No. 1781/SW from 9.00 PM to 12.00 Mid-night. Const. Mahabir Singh No. 1781/SW and Const. Anil Kumar interchanged their duties at their own discretion without the knowledge of SHO/DE/Chitha Munshi.

Ct. Mahabir Singh No. 1781/SW

1. As per ‘Chitha’ dated 23.08.2007, Constable Mahabir Singh No. 1781/SW was detailed as sentry from 9 AM to 12 Noon and 9 PM to 12 Mid-night, but instead Constable Anil Kumar No. 1693/SW had performed sentry duty in place of Const. Mahabir Singh No. 1781/SW from 9.00 PM to 12.00 Mid-night. Const. Mahabir Singh No. 1781/SW and Const. Anil Kumar interchanged their duties at their own discretion without the knowledge of SHO/DE/Chitha Munshi.

Inspr. Inder Singh No. D-I/660 and ASI Suresh Kumar No. 2001/D.

1. Inspr. Inder Singh No. D-1/660 and ASI Suresh Kumar, No. 2001/D (Duty Officer) failed to ensure that sentry is alert on his duty and accused is secure in the lockup, especially at the time of light failure and proper deployment of staff as per ‘Chitha’.

During the DE proceedings 08 PWs have been examined. PW-1 HC (Min.) Subhash Chand No. 2034/SW is formal witness and proved the postings of defaulter officers Inspr. Inder Singh No. D-1/660 and ASI Suresh Kumar No. 2001/D at PS Dabari at the time of occurrence of the instant case. PW-2 Ct. Naresh Kumar No. 1615/SW has produced the Duty Roster vide which no one has been detailed for sentry duty at lock-up of PS Dabri on the instant date from 6.00 PM to 9.00 PM and 9.00 PM to 12.00 PM but in routine Ct. Mahabir (Co-defaulter HC in the DE) should be performed as sentry duty. During cross examination he deposed that he has no knowledge about the change of duties between defaulter officers Ct. Anil Kumar and Ct. Mahabir Singh being Chitha Munshi at the questioned date and time. PW-3 Ct. Sandeep No. 531/SW is formal witness and proved the postings of defaulter officers Ct. Anil Kumar and Ct. (now HC) Mahabir Singh). PW-4 Ct. Wangyal Lama No. 872/SW is also formal witness who proved the FIR No. 443/07 u/s 25/54/59 Arms Act P.S. Sarojini Nagar, and a case FIR No. 443/07 P.S. Sarojini Nagar which marked as Ex. PW-4/A (2 PPs) which was registered by ASI Naresh Chander, Spl. Staff/South West Distt. at P.S. Sarojni Nagar on 22.08.07 against Shamshad s/o Abdul Sattar r/o RZ 862/A Gali No. 15-A Sadh Nagar, Delhi. PW-5 ASI Gyan Singh No. 46/SW, Reader to SHO/Dabri has supported the prosecution and proved that a report in the questioned case sent by

defaulter Inspr. Inder Singh to Sr. Officers (Ex. PW-5/B) was sent on 24.8.07 (Ex. PW-5/A). During cross examination he deposed that defaulter Inspr. Inder Singh returned to PS at about 10.15 PM and at that time light was available in the PS. The duty officer had informed the SHO about the questioned incident. The accused remained in the custody of the officer who was detailed for sentry duty. He also clarified that repair work was got done of the lockup of PS Dabri but neither he has knowledge about the name of welder who repaired the lock up nor the bill of payment of this work. PW-6 Ct Sachin Kumar No. 733/SW MHC (R) PS Dabri (Ex. PW-6/A). He also produced DD Register dt. 23.8.07 and copy of DD No. 27-A regarding arrest and putting the accused Samshad @ Raju @ John in lockup by ASI Ramesh Chand (Ex. PW-6/B), DD No. 79-B dt. 23.8.07 vides which Const. Anil Kumar No. 1693/SW was detailed as lockup Sentry (Ex. PW-6/C) and FIR No. 740/07 dt. 24.8.07 U/s 224 IPC PS Dabri (Ex. PW-6/C) and FIR No. 40/07 dt. 24.8.07 U/s 224 IPC PS Dabri (Ex. PW-6/D). PW-7 SI Ashok Kumar No. D/1201, Spl Staff/SW Distt. During clarification this PW deposed that FIR No. 729/07 U/s 380 IPC PS Dabri was registered before the registration of FIR No. 443/07 PS Sarojini Nagar under Arms Act. Accused was sent to judicial custody when he produced him in the court on 23.8.07 and on the same day SI Jagdish of PS Dabri took him on police remand in FIR No. 729/07. PW-8 ASI Sajjan Pal Singh No. 3020/SW main and I.O. of the case FIR No. 740/07 dated 24.8.07 u/s 224 IPC PS Dabri has also some where supported the prosecution. He also proved that the condition of lockup was in bad shape and the angle iron had become rusted. There is no mention of the dilapidated condition of the door of the lockup in CD No. 2 written by the PW (Ex. PW-8/C). As per Ex. PW-8/E, the defaulter Ct. Anil Kumar had left for urinating without informing the DO and on returned from there, the Ct. saw that accused had run away from the lock-up then he informed the DO ASI Suresh (co-defaulter officer). During cross examination he also stated that sentry duty can be changed between defaulters Ct. Anil Kumar and Ct. (now HC) Mahabir Singh on the connivance by Chitha Munshi. On clarifications by EO, he clarified that during investigation it was revealed that the iron bar were welded on the iron angle (patti) but had weakened due to rust, as such the accused sneaked away after bending the iron bar from that point. The same fact was disclosed by the accused after his arrest. On the fateful night

accused Shamshad was the only inmate in the lockup. The said door is still installed in the lockup but the same has been repaired by changing the iron angle. Now, the lockup is not in use. On the day accused escaped from the lockup, delinquent Const. Anil Kumar was on Sentry duty at the relevant time. No other Sentry was on duty in the police station at the relevant time means 2 sentries were not deployed on duty in PS Dabri at that time.

The testimony of DWs has no bearing in the present case as they all appear tutored to depose in favour of defaulters and as after thought their testimony can not be believed not considered. Defaulter Ct. Anil Kumar No. 1693/SW produced HC Devender Singh No. 5/SW examined as DW-5 in his interest as this DW is facing two DEs on the report of the defaulter Inspr. Inder Singh No. D-1/660. However, Ct. Anil Kumar has also accepted in his statement recorded u/s 161 Cr.P.C. by the IO of case. (Ex. PW-8/E that light was gone and he left the lockup for urinating, he wrote nothing in it that he went to take round of case property. Sentry should have been more vigilant towards his duty when the main power/light has gone, but he had left the lockup without informing the DO. Defaulter ASI Suresh Kumar No. 2001/D has do his duty as per SO No. 33, however, it is in his best knowledge regarding the change of sentry duty between Ct. Anil Kumar and Ct. Mahabir Singh as mentioned at point No.9 in the reply submitted by defaulter Inspr. Inder Singh, No. D-I/660. PW-2 Ct. Naresh Kumar denied that the matter of change of sentry duty was not in his knowledge, it is incorrect as per deposition of PW-8 that duty can be changed as and when it was in the knowledge of Chitha Munshi, in view of fact, it can be said that DO has not marked absent to Ct. Mahabir Singh (defaulter Ct./Now HC). It was the duty of Chitha Munshi and DO to inform the SHO about the change of sentry duty. All the above discussion, SHO cannot escape from his responsibility, even if he was under treatment.

The pleas taken by defaulter Inspr. Inder Singh No. D-I/660 that he was not aware of the change of sentry duty and had gone to Bharat Hospital for treatment is hard to believe and even if true then it reflects about his poor supervision and control over the functioning of the police station.

The pleas taken by defaulter ASI Suresh Kumar No. 2001/D are far away from the truth as discussed above.

The pleas taken by defaulter HC Mahabir Singh No. 1781/SW are accepted in view of deposition of PW-8 and as per point-9 of written statement submitted by defaulter Inspr. Inder Singh No. D-I/660.

The plea taken by Ct. Anil Kumar No. that during investigation IO had noticed any wrong thing against him is not accepted as per deposition of PW-8 who is IO of case and exhibited the statement of Ct. Anil Kumar u/s 161 Cr.P.C. and deposition of PW-5 who has also exhibited the remarks passed by ACP/Dwarka on the report submitted by defaulter Inspr. Inder Singh No. D-I/660 and exhibited as PW-5/B.

CONCLUSION

I have carefully applied my mind to the deposition of the PWs, DWs, defence statements of the defaulters as well as documents produced in the D.E. during the D.E. proceedings. In view of the above discussion, I have come to the conclusion that the charge against the defaulter Inspr. Inder Singh No. D-I/660 and ASI Suresh Kumar No. 2001/D is proved. The charge leveled against Ct. Mahabir Singh No. 1781/SW (now HC No. 415/SB) stands not proved. The charge against Ct. Anil Kumar No. 1693/SW now No. 377/SB that he performed Sentry Duty in very callous and negligent manner, resulting the accused succeeded in escape from lawful custody of police stands proved but charge regarding change of duty at their own discretion stands not proved."

4. According to the disciplinary authority, the applicant being the SHO of the police station, it was his duty to get the defective generator set repaired and to get the decomposed grills of the lock up gate replaced but he did not do so. Therefore, the disciplinary authority has awarded the punishment of 'Censure' upon the applicant for his aforesaid lapse. The appellate authority considered his appeal, the evidence on the departmental inquiry file and heard the applicant in person. It mainly relied upon the testimony of PW-8 ASI Sajjan Pal that the condition of the lock up was in a bad shape and the iron angle had become rusted. It was also of the view that the applicant being the SHO of the Police Station should have

checked up the lock up personally and the iron gate of the lock up should have been got repaired. Finally, it came to the conclusion that the applicant did not produce any documentary evidence in support of his version that the iron gate of the lock up was got welded by him at his own level and there was no reason to interfere with the orders of the disciplinary authority. Accordingly, it rejected the applicant's appeal.

5. The learned counsel for the applicant Shri Ajesh Luthra has submitted that the punishment of 'Censure' was imposed upon the applicant only on two grounds, namely, (1) that he failed to perform his duty to get the defective generator set repaired and (2) to get the decomposed grills of the lock up gate replaced. But the appellate authority considered an additional alleged lapse on the part of the applicant that he did not get the iron gate of the lock up welded properly and he did not produce any documentary evidence in support of his version that he himself got the iron gate of the lock up welded and the accused was lodged in the lock up because of the iron gate. According to the learned counsel, the aforesaid conclusion arrived at by the disciplinary authority as well as the appellate authority are not factually correct because the following facts are duly established by the prosecution witnesses themselves:

"(i) That the iron gate of the lock up was got welded by the applicant at his own level, after his posting at P.S. Dabri and prior to the incident;

(ii) That the generator set of the Police Station was not defective. It was fine and in working condition. The Generator set was not in regular use since diesel was not being supplied by the Govt.;

That the applicant i.e. the S.H.O. of P.S. Dabri at the relevant time, used to arrange diesel at his own level;

That the applicant was away from the police station when the accused managed to sneak from the lock up. The PWs have further proved that the applicant was on his visit to his doctor for heat therapy treatment for his existing cervical problem;

That Ct. Anil Kumar was at sentry duty on the lock up who went for urination, and the accused got the opportunity to sneak;

That the lock up was checked by ACP/DCP/Jt. C.P. concerned whenever they visited the P.S. for checking. It is submitted that had there been any defect in the iron gate, then these senior officers would have also noticed the same and taken appropriate remedial action;

That similarly, night GOs also used to check the P.S. including the lock up and had there been any defect in this iron gate of the lock up which could sufficiently be said to be so defective or decomposed, then it would have not went unnoticed by them as well;

That after keeping the accused in lock-up it is the reasonability of the sentry detailed for lock up duty and he must be present at the lock up;

That the accused managed to sneak since there was electricity failure and sentry had left his duty for a while, without informing the duty officer;

That the electricity had come by the time the applicant return to Police Station and it then came to notice that the sole accused in lock up had sneaked. The applicant immediately deployed 5/6 police officers to search him including PW-2 and himself;

That the appellate had himself submitted a report of escape of accused on which the immediate superior authority i.e. ACP Bhag Singh who had recommended suspension and D.E. against Ct. Anil Kumar (the sentry). However, without any lawful reason, action was initiated against the applicant;

That even PW-8 ASI Sajjan Singh who is inimical deposed to the applicant, since the applicant had in the past written against him for departmental action, has accepting during his re-cross examination that neither this PW nor any other IO has ever recorded any DD that any strip of the lock up door was in rusted condition. Said PW has also conducted investigation in the case FIR No. 740/2007, lodged in connection with the escape of accused, and during the investigation also, he did not find that the iron gate was in a rusted condition;

That in case of electricity disruption, failure or non-supply etc. the applicant and other Inspectors of the P.S. had made private arrangement by installing Invertors in their rooms and form these invertors, sufficient light would spread to the lock-up area as well. Even at the time of incident, this was the position;

That it was brought to the notice of the applicant (SHO) that there is a change in sentry duty. Nonetheless the EO has concluded that this part is not proved".

6. The learned counsel for the applicant has also submitted that the DW-2 SI Ved Prakash had amply deposed during the enquiry proceedings that as per directions of the applicant, welding work was carried out for repair of iron gate of the lock up in May/June, 2006 i.e. prior to the escape of accused at private expense. Even the said DW and also DW4 and DW6 have stated that the Generator set was not defective but it was not in use due to non-supply of the diesel by the Govt. and the applicant would, at times, put it to use by arranging diesel at his own level. However, the enquiry officer failed in its legal obligation to discuss the evidence before arriving at the conclusion. According to him, it not only not discussed the evidence in detail but also brushed aside the deposition of DWs on the ground that the defence witnesses were tutored and, therefore, they were not believable and such a finding was without any material on record and without cross-examining the DWs, as provided in Rule 16 (v) of the Delhi Police (Punishment and Appeal) Rules, 1980. He has also invited our attention to the depositions of PW-2 and PWs. On 23.08.2007, the PW-2 stated that he was working as Chittha Munshi and he himself has written the Chittha on that day and according to it, the distance between lock up and Malkhana is about 100 yards and the Reader's room, Wireless operator room, reception, offices of Inspector Investigation and Addl. SHO/SHO, CIPA room, D.O. Room and record room are situated between lock up and Malkhana. The electricity went off at the time of escape of the accused. The lock up was got renovated 2/3 times by the applicant. He has also deposed that the generator of the police station was alright and there was also a personal inverter installed by the applicant and a point of connection was also there in the reporting room from the inverter. Further, the lock up was checked up by ACP Dwarka after the renovation work and he was satisfied. The DCP (South West) and Joint CP/SR have checked up the lock up as well as the entire police station

during their visit. The PW-5 has also stated that the escape of the accused from the police custody came to notice after the light has come back and if the sentry was aware of the weakness of iron bars, he should have informed about it to the duty officer. He has also deposed that the lock up of Police Station Dabri was constructed before the posting of the applicant and after some time of his posting, welding work was got done at the gate of lock up at personal level and after 2/3 months plaster work on the walls and floor of the lock up was got done on government expenses. Moreover, the accused kept in the lock up was deemed to be in the custody of sentry and the lock up sentry should have been present in the lock up in case of light failure.

7. Another submission of the learned counsel for the applicant is that no fault could have been attributed to the applicant as the maintenance and display of charts with regard to the names of division officers and beat constables, names, addresses and telephone numbers of the staff staying outside the police station, maintenance of duty roster, photographs of B.Cs, thieves, pickpockets and proclaimed offenders, auto lifters, drug peddlers and terrorists, supervise the working of lock up situated in the police station, check its physical suitability, cleanliness, etc., ensure that the undertrial prisoners are properly fed and looked after, etc. was the duties and responsibilities of the duty officer of the police station and not of the SHO. His yet another submission is that the inquiry report, orders of the disciplinary authority as well as the appellate authority are perverse as there was no valid evidence against the applicant to prove the alleged charges made against him. He further submitted that the Inquiry Officer, disciplinary authority as well as the appellate authority have brushed aside the evidence which came on record by the prosecution witnesses as well as the defence witnesses and the appellate authority came to the arbitrary conclusion that there was no documentary evidence on record by the applicant in support of his submissions.

8. The respondents have filed a detailed reply. At the outset, the learned counsel for the respondents Smt. Renu George submitted that one of the co-accused, namely, Constable Anil Kumar had filed OA 2639/2010 before this Tribunal and the same was dismissed vide order dated 19.08.2011. The relevant part of the said order reads as under:

“11. We have heard the learned counsel for the applicant Shri Anil Singal and the learned counsel for the respondents Mrs. Sumedha Sharma. We have also perused the departmental records made available by the respondents. It is proved during the enquiry that the applicant was detailed as lock up sentry on 23.08.2007. It was also proved that the accused Abdul Shamshad @ Raju was lodged in the lock up at police station Dabri and he escaped from the lawful custody by bending the iron bars of the lock up gate taking the advantage of the light failure between 9.00 PM to 10.45 PM. It has also been proved during the enquiry that he had left the sentry point without informing the duty officer. The Enquiry Officer, therefore, proved that he performed sentry duty in a very callous and negligent manner, resulting the accused succeeded in escape from the lawful custody of the police. In view of the fact that the charge against him has been proved, we do not find anything illegal in the order of the disciplinary authority imposing the punishment of forfeiture of one year approved service permanently entailing proportionate reduction in his pay and treating his suspension period from 24.08.2007 to 09.06.2008 as period not spent on duty. The contention of the applicant that the respondents have not followed Rule 29 (3) of the Delhi Police (Punishment and Appeal) Rules has also no merit.

12. In view of the facts and circumstances of the case, we do not find any merit in the case and the same is accordingly dismissed. There shall be no order as to costs”.

9. She has also invited our attention to the findings of the disciplinary authority that the applicant and co-delinquent ASI Shri Suresh Kumar cannot be let off from the charges straightway as they have also been found responsible in the escape of the accused either by the direct or indirect actions. She has submitted that the disciplinary authority has specifically held that being the SHO of the police station, it was the applicant’s duty to get repaired the defective generator set provided to the police station and to get the decomposed grills of the lock up gate replaced but he failed to do so. She has also invited our attention to the findings of the Inquiry Officer that the applicant and the co-delinquent ASI Suresh Kumar failed to ensure that sentry was alert on his duty and the accused was in normal way in the lock up, specially at the time of light failure and proper deployment of staff as per

`Chitha'. She has, therefore, justified the conclusion arrived at by the Inquiry Officer that the applicant and the co-accused ASI Suresh Kumar have failed to discharge their duties properly and the charge leveled against them has been proved. She has also submitted that there was no merit in the contention of the applicant that he got the welding work done at the gate of lock up at personal level before the accused has escaped from the lock up. Further, according to her, the claim of the applicant that the generator set could not be used because diesel was not being supplied by the Government is not tenable because it is on record that there was enough light provided in other areas of the police station.

10. We have heard the learned counsel for the parties in this case. We have also perused the entire documents on record. First of all, we observe that the charges leveled against the applicant and other co-delinquents are different as far as their degree of culpability is concerned. It is also seen that the penalties imposed upon them by the Disciplinary Authority are also different depending upon the levels of their involvements. The specific charge proved against the Applicant was that he failed to get the iron bars of lock up gate which was in a decomposed condition and the Government generator set repaired. He along with the co-delinquent ASI Suresh Kumar failed to ensure that (i) the Sentry was alert on his duty, (ii) the accused was in the normal way in the lock up, specially at the time of light failure and (iii) proper deployment of staff as per Chitha. According to the Enquiry Officer the main allegations against the applicant and the co-delinquent ASI Suresh Kumar were as under:

"Inspr. Inder Singh No. D-1/660 and ASI Suresh Kumar, No. 2001/D (Duty Officer) failed to ensure that sentry is alert on his duty and accused is secure in the lockup, especially at the time of light failure and proper deployment of staff as per 'Chitha'.

The Enquiry Officer has considered the allegation against the applicant that the accused Shamshad @ Raju has escaped from the lock up between during the light failure from 9.00 PM to 10.45 PM on 23.08.2007. The Enquiry Officer has also noted the submissions of PW-5 that the applicant returned to the police at 10.15 PM on that date and the light was there at that time. The said PW-5 has also deposed that the repair work was got done in the lock up. The PW-8 has,

however, deposed that the condition of the lock up was in bad shape and the angle iron had become rusted. The Enquiry Officer has not accepted the plea of the applicant that he was not aware of the change of Sentry duty and had gone to Bharat Hospital for treatment during the occurrence of the incident. According to the Enquiry Officer, the evidence came on record that the applicant cannot escape from his responsibility, even if he has gone for some treatment. The disciplinary authority on the basis of the inquiry report held that he was also responsible in the escape of the accused either by direct or indirect actions. It has specifically stated that being the SHO of the police station, it was his duty to get the defective generator set in the police station repaired and to get the decomposed grills of the lock up gate replaced but he failed to do so. On the other hand, the applicant's contention was that he got the iron gate of the lock up welded just before the escape of the accused and the generator was in working condition but due to non-availability of diesel it was not put to use. However, the appellate authority was not convinced with the aforesaid submission of the applicant and held that he did not produce any documentary evident to support his version. The learned counsel for the respondents has also submitted that if the contention of the applicant that he got the iron gate of the lock up welded just before the escape of the accused, then the accused could not have got the Iron Gate bended and could not have escaped. The learned counsel for the applicant, on the other hand, has submitted that there are prosecution witnesses as well as the defence witnesses stating clearly that the applicant got the iron gate of the lock up welded at his own expense but the inquiry officer, disciplinary authority as well as the appellate authority have brushed aside those submissions.

11. This Tribunal is not sitting as an appellate authority over the findings of the disciplinary authority and so long as the findings of the disciplinary authority are supported by some evidence, we cannot re-appreciate the evidence and come to the different and independent finding on the evidence. The aforesaid position of law has been reiterated by the Apex Court in its decision in State of AP and Ors. Vs. S. Sree Rama Rao (AIR 1963 SC 1723) wherein it has been held as under:

"The High Court is not constituted in a proceeding under Article 226 of the Constitution a Court of appeal over the decision of the authorities holding a

departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution.

12. In disciplinary matters, it is well settled position of law that scope of judicial review of the Courts/Tribunal is very limited. Where the findings of disciplinary authority/appellate authority are based on some evidence, Court/Tribunal cannot re-appreciate the evidence and substitute its own findings. The Apex Court in B.C. Chaturvedi Vs. Union of India and Ors. (1995 (6) SCC 749) held as under:

“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 eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or

whether rules of natural justice be 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 of 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 proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent office is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings 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 of 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 finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H. C. Goel (1964) 4 SCR 718 : (AIR 1964 SC 364), this Court held at page 728 (of SCR): (at p 369 of AIR), that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued".

13. Again in Apparel Export Promotion Council Vs. A.K. Chopra (AIR 1999 SC 625), the Supreme Court has held as under:

"17. The High Court appears to have over-looked the settled position that in departmental proceedings, the Disciplinary Authority is the sole Judge of facts and

in case an appeal is presented to the Appellate Authority, the Appellate Authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since, the High Court does not sit as an Appellate Authority, over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot normally speaking substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the Disciplinary or the Departmental Appellate Authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though Judicial Review of administrative action must remain flexible and its dimension not closed, yet the Court in exercise of the power of judicial review is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial Review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process. Lord Haltom in Chief Constable of the North Wales Police v. Evans (1982) 3 All ER 141, observed:

"The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorized by law to decide for itself, a conclusion which is correct in the eyes of the Court."

18. Judicial Review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the Court while exercising the power of Judicial Review must remain conscious of the fact that if the decision has been arrived at by the Administrative Authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the Court cannot substitute, its judgment for that of the Administrative Authority on a matter which fell squarely within the sphere of jurisdiction of that authority.

19. It is useful to note the following observations of this Court in Union of India v. Sardar Bahadur (1972) 4 SCC 618 : (1972 Lab IC 627 at Pp. 630-31):

"Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Article 226 to review the materials and to arrive at an independent finding on the materials.

If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court."

20. After a detailed review of the law on the subject, this Court while dealing with the jurisdiction of the High Court or Tribunal to interfere with the disciplinary matters and punishment in Union of India v. Parma Nanda (1989) 2 SCC 177 : (AIR 1989 SC 1185) opined (at P. 1192 of AIR) :

"We must unequivocally State that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Enquiry Officer or Competent Authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of Legislature or Rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter of exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be

imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority."

21. In B.C. Chaturvedi v. Union of India (1995) 6 SCC 749 : (1995 AIR SCW 4374), this Court opined (at P. 4379 of AIR SCW):

"The disciplinary authority is the sole Judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a Disciplinary Enquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal."

Further it was held (at P. 4380 of AIR SCW):

"A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

(Emphasis supplied)

22. Again in Government of Tamil Nadu v. A. Rajapandian (1995) 1 SCC 216 : (1994 AIR SCW 4833) this Court opined (at P. 4834 of AIR):

"It has been authoritatively settled by string of authorities of this Court that the Administrative Tribunal cannot sit as a Court of appeal over a decision based on the findings of the inquiring authority in disciplinary proceedings. Where there is some relevant material which the disciplinary authority has accepted and which

material reasonably supports the conclusion reached by the disciplinary authority, it is not the function of the Administrative Tribunal to review the same and reach different finding than that of the disciplinary authority. The Administrative Tribunal, in this case, has found no fault with the proceedings held by the inquiring authority. It has quashed the dismissal order by re-appreciating the evidence and reaching a finding different than that of the inquiring authority."

14. In Bank of India and Anr. Vs. Degala Suryanarayana (JT 1999 (4) SC 489), the Apex Court has held as under:

“11. Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The Court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or perversity i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The Court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained. In Union of India v. H. C. Goel, (1964) 4 SCR 718 : (AIR 1964 SC 364) the Constitution Bench has held (at p. 370, para 23 of AIR) :-

"the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not."

x x x x x x x x

13. In the case at hand a perusal of the order dated 5-1-1995 of the Disciplinary Authority shows that it has taken into consideration the evidence, the finding and the reasons recorded by the Enquiry Officer and then assigned reasons for taking a view in departure from the one taken by the Enquiry Officer. The Disciplinary Authority has then recorded its own finding setting out the evidence already available on record in support of the finding arrived at by the Disciplinary Authority. The finding so recorded by the Disciplinary Authority was immune from interference within the limited scope of power of judicial review available to the Court. We are therefore of the opinion that the learned single Judge as well as the Division Bench of the High Court were not right in setting aside the finding of the Disciplinary Authority and restoring that of the Enquiry Officer. The High Court has clearly exceeded the bounds of power of judicial review available to it while exercising writ jurisdiction over a departmental disciplinary enquiry proceeding and therefore the judgments of the learned single Judge and the Division Bench cannot be sustained to that extent. The appeal filed by the Bank of India deserves to be allowed to that extent".

15. In Government of India and Anr. Vs. George Philip (2006 (13) SCC 1), the Apex Court has held as under:

"11. It is trite that the Tribunal or the High Court exercising jurisdiction under Article 226 of the Constitution are not hearing an appeal against the decision of the disciplinary authority imposing punishment upon the delinquent employee. The jurisdiction exercised by the Tribunal or the High Court is a limited one and while exercising the power of judicial review, they cannot set aside the punishment altogether or impose some other penalty unless they find that there has been a substantial noncompliance of the rules of procedure or a gross violation of rules of natural justice which has caused prejudice to the employee and has resulted in miscarriage of justice or the punishment is shockingly disproportionate to the gravamen of the charge. The scope of judicial review in matters relating to disciplinary action against employees has been settled by a catena of decisions of this Court and reference to only some of them will suffice. In B.C. Chaturvedi v. Union of India (1995) 6 SCC 749, it was observed as under in para 18 of the reports:-

“18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.””

12. In Om Kumar v. Union of India (2001) 2 SCC 386, after considering large number of cases, the principle was summarized as under in para 71 of the reports:-

“71. Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and in such extreme or rare cases can the court substitute its own view as to the quantum of punishment."

13. In Damoh Panna Sagar Rural Regional Bank and Anr. v. Munna Lal Jain (2005) 10 SCC 84, it was observed that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it

was in defiance of logic or moral standards. The Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

14. In Mahindra and Mahindra Ltd. v. N.B. Narawade (2005) 3 SCC 134, the respondent was dismissed from service on the charge of having used abusive and filthy language against his supervisor. The labour Court on the finding that the punishment of dismissal was harsh and improper, directed his reinstatement with continuity of service and two-third back wages. The writ petition filed by the employer was dismissed both by the learned Single Judge and also by the Division Bench of the High Court. In appeal a three Judge Bench of this Court set aside the judgments of the High Court and also the award of the labour Court and upheld the order of the disciplinary authority dismissing the respondent from service. In Bharat Forge Co. Ltd. v. Uttam Manohar Nakate (2005) 2 SCC 489, the respondent workman was found sleeping at about 11.40 a.m. while he was on duty in the first shift. On some earlier occasions also he was found guilty of similar misconduct. After domestic enquiry wherein he was found guilty, he was dismissed from service. The labour Court held that the punishment of dismissal was harsh and disproportionate and no reasonable employer could impose such punishment for the proved misconduct and accordingly directed reinstatement with fifty per cent back wages. There was a revision to the Industrial Tribunal and then a writ petition and finally in letters patent appeal the Division Bench of the High Court modified the award of the labour Court by directing the employer to pay a sum of Rs.2,50,000/- to the workman. In appeal this Court, after referring to large number of earlier decisions, set aside the judgment of the Division Bench and restored the order passed by the employer.

15. There are several decisions of this Court wherein the order of disciplinary authority directing removal or dismissal of an employee on the ground of long absence or overstay of leave has been upheld. In Mithilesh Singh v. Union of India and Ors. (2003) 3 SCC 309, the appellant who was constable in Railway Protection Special Force left duty without leave being granted and returned after 25 days and then sought leave. The order of removal from service passed by the

authorities was set aside by a learned Single Judge in a writ petition filed by the employee who directed that some punishment other than order of removal or dismissal or compulsory retirement from service may be passed. The Division Bench of the High Court restored the order passed by the disciplinary authority and the said judgment was affirmed by this Court in appeal on the ground that the scope of interference with punishment awarded by the disciplinary authority is very limited and unless the punishment is shockingly disproportionate, the Court cannot interfere with the same and the employee having failed to show any mitigating circumstances in his favour, the punishment awarded by the authorities could not be characterized as disproportionate or shocking. In Delhi Transport Corporation v. Sardar Singh (2004) 7 SCC 574, several cases of conductors involving absence from duty ranging from 45 days to 294 days without sanctioned leave were considered. The order of the Single Judge of the High Court holding that the employer was justified in passing the order of termination/removal was affirmed by this Court reversing the order of Division Bench of the High Court, wherein the order of the Industrial Tribunal refusing to accord approval to the punishment had been approved. In Union of India and Ors. v. Ghulam Mohd. Bhat (2005) 13 SCC 228, the order of removal from service passed against the respondent, who was a constable in CRPF on the ground that he had overstayed his leave by 315 days was affirmed by this Court reversing the decision of the High Court, by which it was held that the misconduct alleged called for a minor punishment and not a punishment of removal from service. In State of Rajasthan and Anr. v. Mohd. Ayub Naz (2006) 1 SCC 589, the respondent who was an employee of cooperative department remained absent for about 3 years and his service was terminated after a departmental enquiry. The learned Single Judge of the High Court took the view that the facts and circumstances of the case called for a lesser punishment and thus directed that the employee shall be deemed to have retired after having put in 20 years of service with all retiral benefits, which order was affirmed in letters patent appeal before the Division Bench. This Court set aside the order of the High Court with the observation that while considering the quantum of punishment, the role of administrative authority is primary and that of Court is secondary, confined to see if discretion exercised by the disciplinary authority caused extensive infringement of rights and held that the punishment of removal

was absolutely correct”.

16. In view of the above position, we decline to interfere with the impugned report of the Enquiry Officer and the orders of the disciplinary as well as the appellate authorities. Consequently, we dismiss this Original Application with no order as to costs.

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