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Court : Central Administrative Tribunal CAT Delhi

Decided On : May-03-2012

Judge : The Honourable Mr. Shailendra Pandey, Member (a) & the Honourable Mr. a.K.Bhardwaj, Member (J)

Appeal No. : O.A.No.2514 of 2010 & M.A.No.3004 of 2010

Appellant : Anil Kumar

Respondent : Commissioner of Police Phq Mso Building Ip Estates, New Delhi and Others

Advocate for Def. : Shri. Amit Anand

Advocate for Pet/Ap. : For the Applicant: Ajesh Luthra, Advocate. For the Respondents: Amit Anand, Advocate.

Judgement :

A.K. Bhardwaj:

1. On 29.8.2008 two PCR calls vide DD No.33-A and 34-A were received at Police Station, Alipur regarding snatching of Rs.500/- by a police official, which were marked to SI Bharat Bhushan for enquiry. He reached P.S. Alipur and met complainant Pradeep S/o Shri Angad who identified the applicant as the person,

who removed Rs.500/- from his wallet. During personal search a note of Rs.500/- was recovered from the pocket of the Constable which was returned to the complainant. SI Bharat Bhushan recorded the statement of the complainant namely, Sh. Pradeep wherein he confirmed that the applicant had snatched Rs.500/- which he received back. However, he declined to get a criminal case registered against the applicant for his action of snatching Rs.500/- from him. The applicant was charge sheeted for committing gross misconduct and misuse of authority. Summary of allegations is placed on record as Annexure A-4 to the OA. Ms. Nirmala Devi was appointed as Enquiry Officer to enquire into aforementioned allegation made against the applicant. The contents of summary of allegation were explained to the applicant in vernacular. While concluding the enquiry entrusted to her, the Enquiry Officer found the charge against the applicant as proved. Accepting the report of Enquiry Officer, the Disciplinary Authority passed a detailed order inflicting the penalty of forfeiture of 5 years of approved service on applicant. He also ordered that the period during which the applicant remained under suspension would be treated as not spent duty. Questioning aforementioned order dated 11.2.2010 passed by Disciplinary Authority, applicant preferred an appeal dated 2.3.2010 before the Appellate Authority. Having found no merit in the pleas taken by the appellant, the appellate authority passed order dated 18.4.2010 rejecting the appeal of applicant. Applicant has filed present Original Application questioning the aforementioned order passed by Disciplinary Authority and Appellate Authority and seeking consequential benefits on the following grounds:-

In imposing the penalty on applicant and rejecting his appeal,

respondents have violated principle of natural justice and fundamental right of the applicant.

During Departmental Enquiry applicant was not identified

PW-5 did not support the charge sheet.

Applicant was falsely indicted only because PW-4 pointed him.

PW-6 did not examine any public witness.

The deposition of defence witnesses was not given any weightage by the Enquiry Officer.

Disciplinary Authority failed to consider that no approval was taken from the concerned authority under Rule 15(2) of Delhi Police Punishment and Appeal Rules, 1980.

The Enquiry Officer did not appreciate the evidence available on record correctly.

2. During the course of arguments, learned counsel appearing for the applicant emphasized on aforementioned ground. On the other hand Shri Amit Anand learned counsel appearing for respondents making reference to the enquiry report and other documents available on record rebutted the grounds taken by applicant in his OA. He submitted that the Enquiry Officer had dealt with the deposition made by defence witness by recording a finding that DWs were colleagues of applicant, thus were not trustworthy.

3. We have heard learned counsel appearing for the parties and perused the records.

4. As far as the plea of the applicant regarding violation of the principle of natural justice is concerned, the said principle is given paramount importance in dealing with the employee in disciplinary proceedings initiated against them. Natural justice is another name for common sense justice and is not codified. Said principle is ingrained into the conscience of man. Natural justice is the administration of justice in a commonsense in a liberal way. Justice is based substantially on natural ideals and human values. Expression 'natural justice' and 'legal justice' do not present water tight classification. It is the substance of justice for which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. It relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It make good to omission of a formulated law. As Lord Buckmaster said no form or procedure should ever be permitted to exclude the presentation of a litigant's defence. Adherence to principle of natural justice as recognized by all civilized state is of supreme importance which a quasi-judicial body embarks on

determining dispute between the parties or any administrative action involving civil consequences in issue. These principles are well settled. The first and foremost principle of rules of natural justice is heed to audi alteram partem rule. It says that no one should be condemned unheard and notice is the first limb of this principle. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice and is an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to vocate interrogate and adjudicate". In the celebrated case of Cooper v. Wandsworth Board of Works, 1963 (143) ER 414 the principle was thus stated:

"Even God did not pass a sentence upon Adam, before he was called upon to make his defence.

"Adam" says God, "where art thou has thou not eaten of the tree whereof I commanded thee that though should not eat".

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond."

5. Thus in order to examine the plea of violation of principle of natural justice raised by the applicant, we need to see 'whether the applicant is given fair opportunity to defend himself'. We find that before imposing penalty upon the applicant, he was served the summary of allegation and was given opportunity to submit his response thereto. Applicant did not admit the allegation and preferred to defend himself in regular disciplinary enquiry. In regular disciplinary enquiry complainant Sh.Pradeep S/o Sh. Angad who was examined as PW-4 deposed that a police man who was in uniform came on motorcycle interrogated him and took his purse and mobile phone and dropped him near Ali Pur Police Station where he returned back the said articles to him. He checked the purse and found

Rs.500/- less thus called the PCR. He was taken to PS Ali Pur where his statement was recorded. During cross examination, he submitted that the Constable who took purse and Mobile phone and Rs.500/- met him in PS Ali Pur and was identified by him. The relevant excerpt of statement made by PW-4 read as under:-

“the Constable who took purse and Mobile phone and Rs.500/- met him in PS Ali Pur and was identified by him.”

6. In his deposition Shri Surinder Kumar S/o Om Prakash who was examined as PW-5 confirmed that on 29.9.2008 as required by his employer, he went to PS Ali Pur with Pradeep because of aforementioned incident. Mr.Bharat Bhushan who was posted as SI at Ali Pur and was detailed on day emergency duty was examined in the departmental enquiry as PW-6. As recorded by Enquiry Officer, he deposed that the complainant had identified Anil Kumar as police man who had removed Rs.500/- from his purse. Relevant excerpt of statement of Bharat Bhushan, PW-6 recorded in enquiry report is reproduced below:-

“The complainant had identified const.Anil who is posted in Mounted Police in front of the gate of the PS Alipur, but the complainant had not given any complaint therefore facts were brought in the knowledge of SHO/Alipur and DD No.33 A and DD No.34-A were filed and facts mentioned in DD No.57-B dated 29/9/2008

X X X

Complainant Pradeep had told by posing him that const.Anil is present in Mount Barrack and therefore he mentioned the name and PIS No. in DD No.57-B dated 29/09/2008.”

7. The applicant examined const. Sri Bhagwan, const. Mukesh and himself as a defence witnesses. He pleaded alibi. It is not for us to re-appreciate the evidence, what we need to see is ‘whether applicant got fair opportunity to defend himself or not’. On perusal of enquiry report, it reveals that applicant had been given opportunity to cross examine the PWs and leading evidence in his defence. Enquiry Officer also explained the charge to applicant which he denied. He was

also given opportunity to submit his defence statement. Thus, we find that the enquiry officer followed the principle of natural justice in holding the enquiry. Coming to the order passed by the disciplinary authority imposing penalty upon the applicant, we find that said authority did not find any irregularity in the procedure adopted by enquiry officer and conclusion arrived by it. While dealing in plea of alibi taken by applicant the said authority recorded it's finding in following word:

"In his representation against the findings of the enquiry officer, the charged official has submitted a copy of DD No.22-B dt.29.9.08, PS Ali pur vide which he has made his departure at 8. 55 a.m. from PS Ali Pur to O.P.L. However, the concerned has neither made his arrival nor departure to and from OPL respectively. It may be noted that the entries made in the rojnamcha does not always present a true picture. It is always possible that even if a person makes his departure in the rojnamcha, he can continue to stay in the police station."

8. Disciplinary Authority also dealt with the contention of applicant regarding non-consideration of statement made by defence witnesses by taking a view that the Inquiry Officer had rightly not accepted the version of defence witnesses. On the basis of evidence available on record disciplinary authority had no doubt in its mind regarding the fact that the applicant had come into contact with the complainant on the day of incident as specified in PCR calls. Again, while dealing of plea of alibi taken by applicant, disciplinary authority viewed that even if the charged official recorded DD No.22-B dated 29.9.2008 to the effect that he had made his departure from PS Alipur to O.P.L., it cannot be presumed that at the time of incident he was in O.P.L. itself. Having no doubt about the fact that applicant had come into contact with complainant and there was no need for him to search, frisk and ask the complainant to sit on his motorbike and take his purse and mobile phone etc., Disciplinary Authority was satisfied that the charges against applicant stood substantiated. In view of aforementioned, we find that Disciplinary Authority has not violated the principle of natural justice in any manner. Coming to the order passed in appeal preferred by the applicant, we find that Appellate Authority has agreed with the Disciplinary Authority. Although the order of Appellate Authority does not satisfy the test of being a speaking and

reasoned order, which is one of the requirement of principles of natural justice, but since we ourselves do not find any flaw in the enquiry report and order of the Disciplinary Authority and the Appellate Authority has only upheld the order of the Disciplinary Authority, we consider it would be a 'useless formality' to interfere with the appellate order and remand the matter back to said authority for fresh disposal of the appeal.

9. What is known as the 'useless formality theory' has received consideration in judgment of the Hon'ble Supreme Court in *M.C. Mehta V. Union of India* JT 1999(5) SC 114 as under:-

"Before we go into the final aspect of this contention, we would like to state that case relating to breach of natural justice do also occur where all facts are not admitted or are not beyond dispute. In the context of those , cases there is a considerable case-law and literature as to whether relief can be refused even if the court thinks that the case of the applicant is not one of 'real substance' or that there is no substantial possibility of his success or that the result will not be different, even if natural justice is followed (See *Malloch v. Aberdeen Corpn*: (1971) 2 All ER 1278, HL) (per Lord Reid and Lord Wilberforce), *Glynn v. Keele University*: (1971) 2 All ER 89; *Cinnamond v. British Airports Authority*: (1980) 2 All ER 368, CA) and other cases where such a view has been held. The latest addition to this view is *R v. Eating Magistrates' Court, ex p. Fannaran* (1996 (8) Admn. LR 351, 358) (See de Smith, Suppl. P.89 (1998) where Staughton, L.J. held that there must be 'demonstrable beyond doubt' that the result would have been different. Lord Woolf in *Lloyd v. McMohan* (1987 (1) All ER 1118, CA) has also not disfavoured refusal of discretion in certain cases of breach of natural justice. The New Zealand Court in *McCarthy v. Grant* (1959 NZLR 1014) however goes halfway when it says that (as in the case of bias), it is sufficient for the applicant to show that there is 'real likelihood-not certainty- of prejudice'. On the other hand, Garner Administrative Law says that slight proof that the result would have been different is sufficient. On the other side of the argument, we have apart from *Ridge v. Baldwin* (1964 AC 40: (1963) 2 All ER 66, HL), Megarry, J. in *John v. Rees* (1969 (2) All ER 274) stating that there are always 'open and shut cases' and no absolute rule of proof of prejudice can be laid down. Merits are not for the

court but for the authority to consider. Ackner, J has said that the 'useless formality theory' is a dangerous one and, however inconvenient, natural justice must be followed. His Lordship observed that 'convenience and justice are often not on speaking terms'. More recently, Lord Bingham has deprecated the 'useless formality theory' in *R. v. Chief Constable of the Thames Valley Police Forces, ex p. Cotton* (1990 IRLR 344) by giving six reasons (see also his article 'Should Public Law Remedies be Discretionary?' 1991 PL. p.64). A detailed and emphatic criticism of the 'useless formality theory' has been made much earlier in 'Natural Justice, Substance or Shadow' by Prof. D.H. Clark of Canada (see 1975 PL.pp.27-63) contending that *Malloch* (supra) and *Glynn* (supra) were wrongly decided. Foulkes (Administrative Law, 8th Edn. 1996, p.323), Craig (Administrative Law, 3rd Edn. P.596) and others say that the court cannot prejudge what is to be decided by the decision-making authority. De Smith (5th Edn. 1994, paras 10.031 to 10.036) says courts have not yet committed themselves to any one view though discretion is always with the court. Wade (Administrative Law, 5th Edn. 1994, pp. 526-530) says that while futile writs may not be issued, a distinction has to be made according to the nature of the decision. Thus, in relation to cases other than those relating to admitted or indisputable facts, there is a considerable divergence of opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can prove a 'real likelihood' of success or if he is entitled to relief even if there is some remote chance of success. We may, however, point out that even in cases where the facts are not all admitted or beyond dispute, there is a considerable unanimity that the courts can, in exercise of their 'discretion', refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed. We may also state that there is yet another line of cases as in *State Bank of Patiala v. S.K. Sharma* (JT 1996(3) SC 722), *Rajendra Singh v. State of M.P.* (JT 1996 (7) SC 216) that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it cannot be waived. We do not propose to express any opinion on the correctness or otherwise of the 'useless formality theory' and leave the matter for decision in an appropriate case, inasmuch as the case before

us, 'admitted and indisputable' facts show that grant of a writ will be in vain as pointed by Chinnappa Reddy, J."

10. In view of above, we are unable to accept the plea of violation of natural justice raised by the applicant. It is also contended that the applicant was not identified by the charged officer. In view of statement made by PW-4 and PW-6 as recorded by Enquiry Officer in his report, we are unable to accept the said plea. During the course of examination, complainant, Pradeep S/o Angad, PW-4 categorically submitted that the constable who took Rs.500/- from his purse and mobile phone was identified by him. Similarly, SI Bharat Bhushan (PW-6) also deposed that the complainant had identified Const. Anil who was posted at PS Ali Pur. Even during the cross examination also PW-6 (SI Bharat Bhushan) reiterated that the complainant Pradeep identified constable Anil. The plea raised by the applicant that PW-5 stated that he was not aware of incident would not come for his rescue in any manner, as the said PW confirmed that as he and Pradeep (complainant) were employed in the same shop and on 29.9.2008 he went to PS Alipur with Bharat Bhushan as some incident had happened with Pradeep. Thus, apparently, PW-5 Surinder Kumar confirmed that some incident happened on 29.9.2008 at P.S. where applicant was posted. As far as plea of non-examination of public witnesses by PW-6 is concerned, said plea may not support the defence of applicant in any manner, as in disciplinary proceedings charges can be held proved even on preponderance of probability. In B.C. Chaturvedi Vs. Union of India 1995 (6) SCC 749. Honble Supreme Court rules as under:

"7. Having regard to the respective contentions, the question that arises for consideration is: whether the view taken by the Division Bench is sustainable in law? As regards the nature of the judicial review, it is not necessary to trace the entire case law. A Bench of three Judge of this Court has considered its scope in recent judgment in B.C. Chaturvedi Vs. Union of India and Ors. [(1995) 6 SCC 749] in which the entire case law was summed up in paragraphs 12, 14 and 15 thus:

"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 the eye of the Court. When an enquiry is conducted on charges of 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 are 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 to 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 officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its 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 or 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 findings and mould the relief so as to make it appropriate to the facts of each case.

14. In *Union of India v. S.L. Abbas*, (1993) 4 SCC 357 : (1993 AIR SCW 1753) when the order of transfer was interfered with by the Tribunal, this Court held that the Tribunal was not an appellate authority which could substitute its own judgment to the bona fide order of transfer. The Tribunal could not, in such circumstances, interfere with orders of transfer of a government servant. In *Administrator of Dadra and Nagar Haveli v. H.P. Vora*, 1993 Supp (1) SCC 551 : (1992 AIR SCW 2830) it was held that the Administrative Tribunal was not an appellate authority and it could not substitute the role of authorities to clear the efficiency bar of a public servant. Recently in *State Bank of India v. Samarandra Kishore Endow*, (1994) 2 SCC 537 : 1994 AIR SCW 1465) a Bench of this Court of which two of us (B.P. Jeevan Reddy and B. L. Hansaria, JJ.) were members, considered the order of the Tribunal which quashed the charges as based on no

evidence, went in detail into the question as to whether the Tribunal has power to appreciate the evidence while exercising power of judicial review and held that a tribunal could not appreciate the evidence and substitute its own conclusion to that of the disciplinary authority. It would, therefore, be clear that the Tribunal cannot embark upon appreciation of evidence to substitute its own findings of fact to that of a disciplinary / appellate authority.

15. It is, therefore, difficult to go into the question whether the appellant was in possession of property disproportionate to the known sources of his income. The findings of the disciplinary authority and that of the Enquiry Officers are based on evidence collected during the inquiry. They reached the findings that the appellant was in possession of Rs. 30,000/- in excess of his satisfactorily accounted for assets from his known source of income. The alleged gifts to his wife as Stridhana and to his children on their birthdays were disbelieved. It is within the exclusive domain of the disciplinary authority to reach that conclusion. There is evidence in that behalf."

8. Law on the nature of the imposition of the penalties, it has been summed up on paragraph 18 thus:

"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."

9. Accordingly, the order of the Tribunal in reversing the imposition of the penalty was set aside. In another judgment in *State of Tamil Nadu v. S. Subramaniam*,

(1996) 7 SCC 509 : (1996 AIR SCW 1272), this Court has considered the scope of the power of judicial review vis--vis reappreciation of evidence and concluded as under (paras 3 and 4 of AIR):

"The Tribunal appreciated the evidence of the complainant and according to it the evidence of the complainant was discrepant and held that the appellant had not satisfactorily proved that the respondent had demanded and accepted illegal gratification. The Tribunal trenched upon appreciation of evidence of the complainant, did not rely on it to prove the above charges. On that basis, it set aside the order of removal. Thus this appeal by special leave.

The only question is; whether the Tribunal was right in its conclusion to appreciate the evidence and to reach its own finding that the charge has not been proved. The Tribunal is not a court of appeal. The power of judicial review of the High Court under Art. 226 of the Constitution of India was taken away by the power under Art. 323-A and invested the same in the Tribunal by Central Administrative Tribunal Act. It is settled law that the Tribunal has only power of judicial review of the administrative action of the appellate on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessary correct in the view of the Court or Tribunal, when the conclusion reached by the authority is based on evidence. Tribunal is devoid of power to reappreciate the evidence and would (sic) come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. This is the consistent view of this Court vide *B.C. Chaturvedi v. Union of India* (1995) 6 SCC

749 : (1995 AIR SCW 4374), State of Tamil Nadu v. T. V. Venugopalan, (1994) 6 SCC 302 : (1994 AIR SCW 3947) (SCC para 7), Union of India v. Upendra Singh (1994) 3 SCC 357 : (1994 AIR SCW 2777) (SCC para 6), Govt. of Tamil Nadu v. A. Rajapandian, (1995) 1 SCC 216 : (AIR 1995 SC 561) (SCC para 4) and B. C. Chaturvedi v. Union of India (1995 (6) SCC 749) (at pp. 759-60) : (1995 AIR SCW 4374). In view of the settled legal position, the Tribunal has committed serious error of law in appreciation of the evidence and in coming to its own conclusion that the charge had not been proved. Thus we hold that the view of the Tribunal is ex facie illegal. The order is accordingly set aside/OA/TP/WP stands dismissed."

10. These two judgments squarely cover the controversy in this case.

11. It is seen that the evidence came to be recorded pursuant to the complaint made by Smt. Kundanben, defendant in the suit for eviction. It is true that due to time lag between the date of the complaint and the date of recording of evidence in 1992 by the Enquiry Officer, there are bound to be some discrepancies in evidence. But the Disciplinary proceedings are not a criminal trial. Therefore, the scope of enquiry is entirely different from that of criminal trial in which the charge is required to be proved beyond doubt. But in the case of disciplinary enquiry, the technical rules of evidence have no application. The doctrine of "proof beyond doubt" has no application. Preponderance of probabilities and some material on record would be necessary to reach a conclusion whether or not the delinquent has committed misconduct. The test laid down by various judgments of this Court is to see what there is evidence on record to reach the conclusion that the delinquent has committed misconduct and whether as a reasonable man, in the circumstances, would be justified in reaching that conclusion. The question, therefore, is; whether on the basis of the evidence on record, the charge of misconduct of demanding an illegal gratification for rendering a judgment favourable to a party has been proved? In that behalf, since the evidence by Kundanben, the aggrieved defendant against whom a decree for eviction was passed by the respondent alone is on record, perhaps it would be difficult to reach the safe conclusion that the charge has been proved. But there is a contemporaneous conduct on her part, who complained immediately to her advocate, who in turn complained to Assistant Government Pleader and the

Assistant Government Pleader in turn complained to the District Government Pleader, who in turn informed the District Judge. The fact that the District Judge made adverse remarks on the basis of the complaint was established and cannot be disputed. It is true that the High Court has directed the District Judge to substantiate the adverse remarks made by the District Judge on the basis of the statement to be recorded from the advocates and the complaint. At that stage, the respondent was not working at that station since he had already been transferred. But one important factor to be taken note of is that he admitted in the cross-examination that Shri Gite, District Government Pleader, Nasik had no hostility against the respondent. Under these circumstances, contemporaneously when Gite had written a letter to the District Judge stating that he got information about the respondent demanding illegal gratification from some parties, there is some foundation for the District Judge to form an opinion that the respondent was actuated with proclivity to commit corruption; conduct of the respondent needs to be condemned. Under these circumstances, he appears to have reached the conclusion that the conduct of the respondent required adverse comments. But when enquiry was done, the statements of the aforesaid persons were recorded; supplied to the respondent; and were duly cross-examined, the question arises; whether their evidence is acceptable or not? In view of the admitted position that the respondent himself did admit that Gite had no axe to grind against him and the District Judge having acted upon that statement, it is difficult to accept the contention that the District Judge was biased against the respondent and that he fabricated false evidence against the respondent of the three advocates and the complainant. When the evidence was available before the disciplinary authority, namely, the High Court, it cannot be said that it is not a case of no evidence; nor could it be said that no reasonable person like the Committee of five Judges and thereafter the Government could reach the conclusion that the charge was proved. So, the conclusion reached by the High Court on reconsideration of the evidence that the charges prima facie were proved against the respondent and opportunity was given to him to explain why disciplinary action of dismissal from service could not be taken, is well justified."

11. Once the complainant, who had identified the applicant as the constable who had taken his purse, as well as mobile phone and had removed Rs.500 from his

purse, made deposition during enquiry proceedings, non examination of any other witness would not vitiate the enquiry proceedings. As has been noted herein above strict rules of evidence are not applicable in disciplinary proceedings. Disciplinary Authority has dealt with the plea raised by applicant in detail. Further, since the complainant identified the applicant as the Constable who removed Rs.500/- from his purse, we are unable to accept the plea of alibi raised by applicant. As far as non-appreciation of deposition made by defence witness is concerned, the enquiry authority viewed that the complainant Pradeep had identified applicant of Mounted Police as a person who had snatched Rs.500/- and has not given any weightage to defence witnesses being colleagues of the delinquent Const. posted with him. The relevant excerpt of in report of Enquiry Officer reads as under:-

“Deposition of DW-1 DW-2 and DW-3 being colleague delinquent Constable does not appear to be convincing as they have all narrated the same line of defence pleas put forth by the delinquent of other PWs.”

12. Thus we are satisfied that the Enquiry Officer had taken into account the statement made by defence witness also. As far as plea of Rule 15(2) of Delhi Police Punishment and Appeal Rules, 1980 is concerned, we find that the complainant himself did not want to register any criminal case or FIR. Beside in terms of the said rule, approval of Additional Commissioner is required only as to whether criminal case should be registered and investigated or a departmental inquiry should be held. As is noted above, since the complainant did not want to register a criminal case against applicant, there was no occasion to resort to procedure laid down in Rule 15 (2) of Delhi Police (Punishment and Appeal) Rules 1980. In terms of the said rule, the Additional Commissioner had to approve either of the two courses of action to be taken against the applicant. As the complainant did not want to register a criminal case, the only course left to be adopted was disciplinary proceedings. The disciplinary authority dealt with the plea of applicant in the following words:-

“The enquiry officer has adopted a proper procedure to conduct the DE proceedings. The charged officer has raised objection regarding Rule 15 (ii) Delhi

Police (Punishment and Appeal) Rules, but obtaining the permission of Additional Commissioner of Police under 15 (ii) is not required in this case because the complainant himself does not want to file any criminal case/FIR. Apart from this since the charged officer has not raised any objection to the procedure followed by the enquiry officer, this point needs no further discussion”.

13. In view of unwillingness of complainant to register a criminal case and the only course open being disciplinary proceedings, we do not find any force in the contention of the applicant that non-adherence to Rule 15 (2) vitiated disciplinary proceedings initiated against him. Thus, we do not find any infirmity in the order of the disciplinary authority passed imposing penalty of forfeiture of 5 years of approved service permanently with cumulative effect on applicant. Since the appellate authority uphold the order of the disciplinary authority, we do not find any justification in disturbing the same as it would be a useless formality to remand the appeal back to the appellate authority. Although, it is not the argument before us but we note that in terms of order dated 11.2.2010 the disciplinary authority treated the period spent by applicant under suspension as not spent on duty for all intent and purposes. In the absence of argument and material before us, we are unable to decide the issue. However, it would be open to the applicant to make a representation to the concerned authority limited to the issue of treatment of the suspension period. In case such representation is made by the applicant, the same shall be examined and decided within 2 months.

14. OA stands disposed of. No costs.

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