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Court : Central Administrative Tribunal CAT Delhi

Decided On : Dec-22-2011

Judge : The Honourable Mr. M.L. Chauhan, Judicial Member & the Honourable Mrs. Manjulika Gautam, Administrative Member

Appeal No. : O.A. No. 1495 of 2011 MA No. 1192 of 2011

Appellant : Umed Singh

Respondent : The Commissioner of Police, (Delhi Police) Police Headquarters, New Delhi and Others

Advocate for Pet/Ap. : For the Applicant: Y.S. Chauhan, Advocate. For the Respondents: Mrs. Harvinder Oberoi, Advocate.

Judgement :

Mr. M.L. Chauhan, Member (J):

1. Applicant has filed this OA, thereby praying for the following reliefs:

“i. To quash and set aside impugned order No.6170-96/HAP/SB/(P-I), dated 23.09.2009 passed by Deputy Commissioner of Police, Special Branch, New Delhi and confirming of penalty order dated 09.03.2010 passed by Ujjwal Mishra, Joint Commissioner of Police, SB, New Delhi.

- ii. To award cost in favour of the Applicant and against the respondents; and
- iii. Pass any such other order or orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances may also be passed."

2. Briefly stated, facts of the case are that applicant while posted in PS Sangam Vihar, South District, New Delhi, was entrusted with an enquiry and submit his report in the court of Shri Sanjeev Jain, MM, New Delhi in a criminal complaint No.1876/1 dated 15.10.2004 filed by one Sirajuddin against Mohd. Nawab Sharif relating to alleged murder of Ali Jaan, brother of Mohd. Nawab Sharif. The charge leveled against the applicant was that on 16.10.2004 the said complaint was marked to the applicant by the then SHO, P.S. Sangam Vihar because he was aware of the facts of the case since he had submitted a report in the matter earlier. The applicant has taken the statement of the brother of deceased and also the five other neighbors and all of them have stated that the deceased was ill for a long time and on 09.05.2004 he has died his natural death. The allegation against the applicant was that he did not conduct any enquiry till 05.11.2004 and demanded bribe from Mohd. Nawab Sharif through Bhagwat Yadav, a person well known to Mohd. Nawab Sharif. Thus, he kept the aforesaid complaint pending with some ulterior motives and did not re-enquire the matter and kept the same pending deliberately.

3. After completion of the departmental enquiry the enquiry officer (EO) submitted his findings with the conclusion that the allegation regarding demand and acceptance of bribe is not proved but the charge regarding keeping the file pending is proved. The disciplinary authority (DA) after carefully going through the statements of prosecution witnesses, court witnesses, defence statement/supplementary defence statement and representation submitted by the applicant as well as other relied upon documents available in the department enquiry file and after hearing him in orderly room awarded the punishment of withholding of one increment with permanent effect vide order dated 23.10.2009. The appeal filed against the order passed by the disciplinary authority was also rejected vide order dated 09.03.2010. It is these orders, which are under challenge.

4. Notice of this Application was given to the respondents, who have filed their reply, wherein it is stated that the EO has given a categorical finding that the charge against the applicant stands partly proved upto the extent, from the deposition of PW-3, that the applicant kept the enquiry pending unnecessarily and proceeded on transfer. Applicant did not conduct any enquiry till 5.11.2004. Thereafter the criminal complaint case was transferred to SI Lakhan Singh for enquiry. It is stated that further on written complaint of Mohd. Nawab Shariff a case RC-DAI-2004-A-0045 dated 08.11.2004 was registered against SI Lakhan Singh and after completing the investigation prosecution has been launched against SI Lakhan Singh u/s 7/13 (1)(d) r/w 13 (2) of PC Act, 1988 and to initiate RDA for major penalty against applicant. According to the respondents applicant was required to conduct an enquiry and submit his report in the court of Shri Sanjeev Jain, MM, New Delhi in a criminal complaint No.1876/1 dated 15.10.2004 filed by one Sirajuddin against Mohd. Nawab Sharif relating to alleged murder of Ali Jaan (brother of Mohd. Nawab Shariff) but he failed to investigate the matter and demanded bribe from Mohd. Nawab Shariff through Bhagwat Yadav, a person well known to Mohd. Nawab Sharif, which fact proves that applicant kept the criminal complaint pending with some ulterior motives, as such charge against applicant stands proved.

5. We have heard the learned counsel of the parties. Learned counsel of applicant has also submitted his written submissions. The main thrust of the learned counsel of applicant is that there is no documentary evidence that the complaint was ever marked to the applicant by the SHO. The applicant has also submitted his report on 10.05.2004 itself and thereafter he was transferred to North District then how the applicant could be made liable, that reference has been made by PW-1 regarding DD entry No.14-A but that document was not supplied to the applicant. It is also stated that the author of the complaint No.1876/1 was never made available before the applicant for cross-examination and as such he was prejudiced and deprived of defence opportunity. Even otherwise, PW-2 has categorically stated that the applicant never demanded bribe from him. He has also clarified that he had never made any complaint to any authority, which was to be enquired by applicant. In the alternative it is stated that without admitting that any such complaint No.1876/1 was ever marked to the applicant, then also if

within 15 days of such marking the applicant is transferred to some other place, then also it is not a case of misconduct.

6. We have given due consideration to the submissions made by the learned counsel of applicant. We are of the view that the submissions made by the applicant though attractive but deserve outright rejection. The fact remains that the applicant while posted as ASI in PS Sangam Vihar a DD entry No.14-A dated 09.05.2004 was received for investigation by the applicant regarding death of a person name Ali Jaan. The matter was investigated by the applicant and on the basis of the statements given by the relatives and neighbors of the deceased it was found that it was a case of natural death, as the deceased was suffering from the disease. Applicant has placed on record such investigation report as Annexure A-6. Since one Shri Sirajuddin S/o Shri Abrar Hussan was not satisfied with the investigation so carried out by the applicant he filed a criminal complaint under Section 200 Cr.PC before the Court of ACMM, New Delhil with a prayer that appropriate directions be given to the Police and appropriate legal action be taken against the culprits/accused persons in the interest of justice with a further prayer that SHO of PS, Sangam Vihar, New Delhi be directed to investigate the matter under Section 156 (3) Cr. P.C. to file the detailed report to this effect. PW-3 Shri Avtar Singh in his deposition has stated that on 16.10.2004 he was posted as SHO, Sangam Vihar. During this period an investigation was received in Police Station from Shri Sanjeev Jain, MM, which was marked to applicant with a direction to submit his report. He has further deposed that consequent upon transfer of the applicant the enquiry was marked to SI Lakhan Singh. Thus, the contention raised by the applicant that enquiry was not marked to him is without any basis.

7. Learned counsel of respondents has also drawn our attention to the supplementary defence statement of the applicant, which finds mentioned in the enquiry record, which was produced for our perusal, as on the last date of hearing it was argued by the learned counsel of applicant that complaint was not marked to the applicant by the SHO. At this stage, it will be useful to quote the supplementary statement of the applicant in extenso, which thus reads:

"To

Sh. R.S. Meena, Enquiry Officer,

ACP/DE Cell, Delhi.

Subject: Supplementary statement of ASI Umed Singh N.2050/D.

Sir,

Kindly refer to my earlier written defence statement. I want to submit the following supplementary statement arising out of the situation because your good self has recorded the statements of two court witnesses namely Sh. Lakhan Singh and Sh. Mohd. Nawab Sharif:

1. Mohd. Nawab Sharif is the person whose brother Sh. Ali Jan had died a natural death. It was on account of some anonymous complaint that the enquiry was entrusted to me. So long the enquiry remained with me no money was demanded or accepted from Mohd. Nawab Sharif. Mohd. Nawab Sharif has himself clarified and made it clear in his statement.

2. Sh. Lakhan Singh is the officer to whom the enquiry was entrusted after my transfer to North Distt. It is clear from the fact that Lakhan Singh was caught red handed on the complaint of Mohd. Nawab Sharif. He too has not said even a word regarding my role in this matter.

3. In fact Sh. Lakhan Singh has tried to evade the replies in cross examination.

It is therefore humbly requested that the earlier written defence statement together with this one may please be carefully perused and justice be done to the applicant as there is no documentary material to support the charge. The charge deserved to be dropped.

Thanking you,

Yours faithfully,

Sd/-

(UMED SINGH)

ASI, No.2050/D.”

8. A co-joint reading of these paragraphs makes it clear that the applicant has not disputed the fact that a criminal complaint No.1876/1 dated 15.10.2004, which was sent by the Magistrate to the SHO concerned for investigation was not marked to the applicant, rather applicant has admitted in para-2 that after his transfer enquiry was entrusted to SI Lakhan Singh. It may be stated that the charge regarding demand and acceptance of money has not been proved by the EO. Applicant has been held liable for not re-investigating the matter till the criminal complaint was marked to him by the SHO on 16.10.2004 till his transfer on 5.11.2004. It may be stated here that a copy of file relating to criminal complaint No.1876/1 dated 15.10.1994 formed part of the listed documents. Thus the contention raised by the applicant that the complaint was not marked to him by the former SHO cannot be accepted in view of the admission made by him in his supplementary defence statement in the aforesaid terms. It is also an admitted fact that the applicant has not investigated the matter pursuant to the complaint lodged before the Magistrate. The contention raised by the learned counsel of applicant that applicant has not been made available DD entry No.14-A is not relevant, as DD entry No.14-A relates to the entry recorded on the basis of an anonymous complaint, pursuant to which applicant made investigation and submitted his report on 10.05.2004 that the deceased died by his natural death. As already stated above, this is not the part of the charge against applicant. The charge against the applicant is that he was entrusted with the enquiry pursuant to the criminal complaint filed before the Court as he has earlier investigated the matter, whereby he has submitted his report on 10.05.2004, whereby he has come to the conclusion that the deceased died by natural death. Since the applicant has investigated the matter earlier, it was under these circumstances that the subsequent enquiry was also entrusted to him. Further, the contention raised by applicant that even PW-2 has categorically stated that applicant never demanded the bribe to him is of no consequence to him, as the charge of bribe has not been proved against the applicant by the EO and the applicant has not been inflicted punishment on this account. Applicant has been imposed the punishment only on the basis that pursuant to the direction

given by the learned Magistrate whereby SHO was directed to re-investigate the matter, which enquiry was entrusted to the applicant, he did not investigate the matter till his transfer on 5.11.2004. Applicant has admitted that he has not re-investigated the matter but the defence taken by the applicant is that subsequently the enquiry was not entrusted to him. As already stated above, the charge against applicant regarding entrusting of the enquiry for re-investigation stands fully proved by the deposition of PW-3 as also his admission made in the supplementary defence statement, which has been extracted in the earlier part of the judgment. Thus, according to us, the charge against the applicant stands fully proved.

9. It may be relevant to state that the scope of interference by the Tribunal with the conclusion of guilt is limited to the situation where the proceedings were held in violation of principles of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion and the finding reached by the disciplinary authority is based on “no evidence” or no reasonable person would have reached to that conclusion. The Tribunal will not sit in appeal over such order to re-evaluate or re-assess the material to test the correctness or finding of fact. It is also equally settled that the High Court and the Tribunal while exercising judicial review do not act as an appellate authority. As already stated above, applicant has not made out any grievance regarding violation of principles of natural justice. The only contention raised by the learned counsel is that it is a case of “no evidence”, as such impugned orders are required to be quashed. The standard of proof in disciplinary proceedings is that of preponderance of probability and not proof beyond doubt. If the matter is viewed in the light of the above settled principle, we are of the view that it cannot be said that it is a case of “no evidence”, which requires our interference.

10. Thus, viewing the matter in the light of what has been stated above, we are of the view that the applicant has not made out any case for our interference. Accordingly the OA is found bereft of merit, which is dismissed. No costs.