Kuldeep Singh vs The Commissioner Of Police & Ors on 17 December, 1998

Equivalent citations: AIR 1999 SUPREME COURT 677, 1999 (2) SCC 10, 1999 AIR SCW 129, 1999 LAB. I. C. 437, 1999 (3) SERVLJ 111 SC, 1998 (6) SCALE 588, (1999) 3 SERVLJ 111, 1998 (8) JT 603, (1999) 80 ECR 265, (1999) 95 FJR 80, (1999) 81 FACLR 630, (1999) 1 LABLJ 604, (1999) 1 SCT 303, (1998) 4 SCJ 115, (1999) 1 SERVLR 283, (1998) 9 SUPREME 452, (1998) 6 SCALE 588, (1999) 1 ESC 339, (1999) 1 CURLR 499, (1999) 2 LAB LN 74, 1999 SCC (L&S) 429

Bench: S.Saghir Ahmad, S.P. Kurdukar

PETITIONER:
KULDEEP SINGH

Vs.

RESPONDENT:
THE COMMISSIONER OF POLICE & ORS.

DATE OF JUDGMENT: 17/12/1998

BENCH:
S.SAGHIR AHMAD, & S.P. KURDUKAR.,

ACT:

HEADNOTE:

JUDGMENT:

JUDGMENT

S.SAGHIR AHMAD

Leave granted.

The appellant, a constable in the Delhi Police was dismissed, after a regular departmental enquiry, from service, by order dated 03.05.1991, passed by Dy Commissioner of Police, South District, New Delhi, which was upheld in appeal by Addl. Commissioner of Police by his order dated 22.07.1991. The appellant then approached the Central Administrative Tribunal, Principal Bench, New Delhi and the Tribunal, by the impugned judgment dated 28th February, 1997, dismissed the Claim Petition. A writ Petition filed before the Delhi High Court against this judgment was dismissed on 19.09.1997 as not maintainable as the judgment passed by the Tribunal was given before the date on which the decision of this Court was rendered in L.Chandra Kumar Vs. Union of India & Others, AIR 1997 SC 1125 = (1997) 3 SCC 261, in which it was held that a writ petition against the order passed by the Tribunal, constituted under the Administrative Tribunal, Act, 1985, would be maintainable (prospectively) before a High Court. The Review Application filed against the judgment of the Tribunal was dismissed on 26.05.1997. Learned counsel for the appellant has contended that the findings recorded by the Enquiry Officer cannot be sustained as the enquiry itself was held in utter violation of the principles of natural justice. It is also contended that there was no evidence worth the name to sustain the charge framed against the appellant and therefore, the findings are perverse particularly as no reasonable person could have come to these findings on the basis of the evidence brought on record.

Learned counsel appearing on behalf of Union of India has, on the other hand, contended that the enquiry was held in consonance with the principles of natural justice and during the course of the enquiry, full opportunity was given to the appellant to defend himself. As far the evidence is concerned, it is contended that though it is true that none of the complainant was examined but on account of Rule 16(3) of the Delhi Police (F&A) Rules, 1980, it was not required to produce the complainant in person as the Rule itself contemplated that in the absence of a witness whose presence could not be procured without undue delay, inconvenience or expense, his statement, already made on an earlier occasion, could be placed on record in the departmental enquiry and the matter could be decided on that basis. It was under this Rule that the previous joint statement of the complainants was brought on record without examining any of them. Learned counsel for the respondents contended that the scope of judicial review in disciplinary proceedings is extremely narrow and limited. The court cannot, it is contended, re-examine or re-appraise the evidence and substitute its own conclusion in place of the conclusions arrived at by the Enquiry Officer or the disciplinary authority on that evidence. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the Enquiry Officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the Appellate Authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictate of the superior authority. In Nand Kishore vs. State of Bihar, AIR 1978 SC 1277 = (1978) 3 SCC 366 = 1978 (3) SCR 708, it was held that the disciplinary proceedings before a domestic Tribunal are of quasi-judicial character and, therefore, it

is necessary that the Tribunal should arrive at its conclusions on the basis of some evidence, that is to say, such evidence which, and that too, with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicion cannot take the place of proof even in domestic enquiries. If, therefore, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by the Enquiry Officer would be perverse.

The findings, recorded in a domestic enquiry, can be characterised as perverse if it is shown that such a finding is not supported by any evidence on record or is not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of the that evidence. This principle was laid down by this Court in State of Andhra Pradesh vs. Sree Rama Rao. 1964 2 LLJ 150 = AIR 1963 SC 1723 = 1964 (3) SCR 25, in which the question was whether the High Court, under Article 226, could interfere with the findings recorded at the departmental enquiry. This decision was followed in Central Bank of India vs. Prakash Chand Jain, 1969 2 LLJ 377 (SC) = AIR 1969 SC 983 and Bharat Iron Works vs. Bhagubhai Balubhai Patel & Ors. 1976 Labour & Industrial Cases 4 (SC) = AIR 1976 SC 98 = 1976 (2) SCR 280 = (1976) 1 SCC 518. In Rajinder Kumar Kindra vs. Delhi Administration through Secretary (Labour) and Others. AIR 1984 SC 1805 = 1985 (1) SCR 866 = (1984) 4 SCC 635, it was laid down that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse. It was also laid down that where a quasi-judicial tribunal records findings based on no legal evidence and the findings are his mere ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated.

Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse, But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be the conclusions would not be treated as perverse and the findings would not be interfered with.

In the light of the above principles, let us scrutinise the case in hand.

The charge framed against the appellant in the instant case is as under:-

> "You, Constable Kuldeep Singh No.2138/SD. are hereby charged that while posted at P.P. Amar Colony on 22.2.1990. You kept illegally Rs.200/out of Rs. 1000/- given by the factory owner, Smt. Meena Mishra running her factory at A-25, Garhi Lajpat Nagar for the payment of her laborers, Shri Radhey Shyam S/O Shri Phool Vash. Shri Rapal Singh S/O Shri Brahma Nand and Shri Shiv Kumar S/O Shri Ganga Ram. All

these three laborers had made a complaint that Smt. Meena Mishra had stopped their payment or Rs. 2200/- for three months. The above act your part amounts to grave misconduct and unbecoming of a police officers which renders you, constable Kuldeep Singh No. 2138/SD, liable for punishment u/s 21 of Delhi Police Act, 1978.

Sd/- Shakti Singh SHAKTI SINGH Inspector, Enquiry Officer, DE Cell, Vigilance, Delhi."

The list of witnesses who were proposed to be examined at the domestic enquiry, as set out in the charge-sheet, was:-

List of witnesses

1.Sh. D.D. Sharma, Insp.He will move him the then S.H.O. Lajpat to present.

Nagar,

2.Smt. Meena Mishra R/O She will depose A-25, Garhi, Lajpat Nagar, that she had Nagar, given Rs.1000/-

to Ct. Kuldeep Singh on 22.2.1990 for payment to 3 laborers and Constable had kept Rs.

200/with him.

3.Sh. Rajpal SinghHe will depose S/O Brahama Nandthat on 22.2.90 R/O Village Ramhe along with Nagar, P.S. BaroliShiv Kumar and Distt. Etah (U.P.)Radhey Shyam had gone to factory A-25, Garhi with Ct.

kuldeep Singh for settlement of payment and he kept Rs.200 with him.

4.Radhey Sham S/O Phool Vash R/o Distt. Etah Village Bulal Puri U.P. at present H.No. 74 Main Market Garhi Lajpat Nagar. --do--

SO/DE Cell"

The list of documents, indicated in the charge-sheet, was:-

List of documents.

1.Copy of report of SHO/Lajpat Nagar, dated 5.3.1990 against Constable Kuldeep Singh No.2138/SD.

2.Copy of Laborers Statement.

SO/DE Cell."

The charge against the appellant thus was that on 22.2.1990, three laborers namely, Radhey Shyam, Rajpal Singh and Shiv Kumar who were working in the factory of Smt. Meena Mishra at A-25, Garhi, Lajpat Nagar, and had not been paid their salary by the factory owner had approached the appellant who was posted at Police Post, Amar Colony, attached to P.S. Lajpat Nagar, New Delhi, for his help in the matter. The appellant along with the aforesaid laborers went to the factory owner who gave Rs. 1000/- to the appellant for payment to the three laborers but the appellant did not pay the whole of the amount to them and instead gave them only Rs. 800/-, keeping an amount of Rs. 200/- in his own pocket.

In order to prove this charge, the Department examined Inspector D.D. Sharma, SHO, P.S. Lajpat Nagar; and Smt. Meena Mishra. Their statements have been reproduced in copious details in the findings submitted by the Enquiry Officer, a copy of which has been placed on the record. Smt. Meena Mishra stated that the three persons, namely, Rajpal Singh, Radhey Shyam and Shiv Kumar, were working in her factory, to whom she had made payment separately and individually. She stated. that she had paid Rs. 563/- to Rajpal; Rs.211/- to Shiv Kumar and another sum of Rs. 808/- jointly to Radhey Shyam and Rajpal. She stated that she had not paid Rs. 1000/- to Kuldeep Sing (appellant) on 22.2.1990, as she had asked the three laborers to come after a few days and it was then that the whole of the amount described above which was due from her was paid to them.

Inspector D.D. Sharma, who was, at the relevant time. posted as S.H.O. P.S. Lajpat Nagar, New Delhi. stated that he had received a complaint from Radhey Shyam, Rajpal Singh and Shiv Kumar. They were summoned to the Police Post, Amar Colony where the contents of the complaint were verified from them and their statement was recorded. No other witness was examined on behalf of the Department, not even the complainants, Rajpal Singh and Radhey Shyam, though their names were mentioned in the charge-sheet for being examined as witnesses against the appellant. The appellant examined one of the complainants, namely, Shiv Kumar in defence who supported the appellant that Smt. Meena Mishra had not made any payment on 22.2.1990 but had called him and two other complainants, namely, Radhey Shyam and Rajpal Singh after few days and when they went again to her, she made the full payment. The appellant also examined constable Shoukat Ali who was posted, at the relevant time, at Police Post Amar Colony. He stated that Radhey Shyam, Shiv Kumar and Rajpal Singh had come to the Police Post to make a complaint against Smt. Meena Mishra that she had not paid them their salary. This constable directed them to meet the Emergency Officer, ASI Bhopal Singh who sent the appellant with them to Smt. Meena Mishra. The appellant came back and informed ASI Bhopal Singh that Smt. Meena Mishra had agreed to pay the amount due from her to these three persons after a few days.

ASI Jagdish Prasad and ASI Bhopal Singh, who were also examined in defence, corroborated the above statement of constable Shoukat Ali.

ASI Bhopal Singh further stated that the appellant was deputed by him to go to Smt. Meena Mishra with the complainants and the the appellant, on his return from the factory, told him that Smt. Meena Mishra had agreed to make payment to the three laborers a few days later. The witness, however, stated that all the three laborers had come to Police Post, Amar Colony of P.S. Lajpat Nagar on 22.2.1990 where their statement was recorded by ASI Jagdish Prasad on the dictation of SHO D.D. Sharma. This statement was placed on the record before the Enquiry Officer. This was the entire evidence produced at the domestic enquiry.

What immediately strikes the mind is that Smt. Meena Mishra, who is alleged to have paid the amount of Rs. 1000/- to the appellant, stated in clear terms as a witness for the Department, that she had not made any payment to the appellant. This payment is not proved in any other manner as none of the three recipients of the above amount, who were the complainants, has been produced at the departmental enquiry, though two of them, namely, Radhey Shyam and Rajpal Singh were proposed to be examined.

Non-production of the complainants is sought to be justified with reference to Rule 16(3) of the Delhi Police (F&A) Rules, 1980. Rule 18(3) is an under:-

> "If the accused police officer does not admit the misconduct, the E.O. shall proceed to record evidence in support of the accusation as is available and necessary to support the charge. As far as possible the witnesses shall be examined direct and in the presence of the accused, who shall be given opportunity to take notes of their statements and corssexamine them. The E.O. is empowered, however, to bring on record the earlier statement of any witness whose presence cannot, in the opinion of such officer be procured without undue delay, inconvenience or expense necessary provided that it has been recorded and attested by a police officer superior in rank to the accused officer or by a Magistrate and is either signed by the person making it or has been recorded by such officer during an investigation or a judicial enquiry or trial. The statements and documents so brought on record in the departmental proceedings shall also be read out to the accused officer and shall be given an opportunity to take notes, Unsigned statements shall be brought on record only through recording the statements of the officer or Magistrate who had recorded the statement of the witness concerned. The accused shall be bound to answer any questions which the E.O. may deem fit to put to him with a view to elucidating the facts referred to in the statements or documents thus brought on record."

This Rule, which lays down the procedure to be followed in the departmental enquiry, itself postulates examination of all the witnesses in the presence of the accused who is also to be given an opportunity to crossexamine them. In case, the presence of any witness cannot be procured without undue delay, inconvenience or expense, his previous statement could be brought on record subject to the condition that the previous statement was recorded and attested by a police officer superior in rank than the delinquent. If such statement was recorded by the Magistrate and attested by him then also it could be brought or record. The further requirement is that the statement either should have been signed by the person concerned, namely, the person who has made that statement, or it

was recorded during an investigation or a judicial enquiry or trial. The Rule further provides that unsigned statement shall be brought on record only through the process of examining the Officer or the Magistrate who had earlier recorded the statement of the witness whose presence could not be procured.

Rule 16(3) is almost akin to Sections 32 and 33 of the Evidence Act. Before the Rule can be invoked, the factors enumerated therein, namely, that the presence of the witness cannot be procured without undue delay, inconvenience or expense, have to be found to be existing as they constitute the condition-precedent" for the exercise of jurisdiction for this purpose. In the absence of these factors, the jurisdiction under Rule 16(3) cannot be exercised.

Rajpal Singh and Radhey Shyam, who were the original complainants along with Shiv Kumar, were not examined and the Enquiry Officer, regarding their absence, has stated in his report as under:-

> "The two prosecution witnessess Rajpal Singh and Radhya Shyam have not attended to proceeding. They have not been found residing in their vill. now and it had come to notice that the defaulter has managed their disappearance and has settled them some where in Devli Khanpur and also has arranged their employment but the addresses of those PWs are not known. Such is the act of the defaulter to create his defence and is an attempt to hide his misconduct. Though their complaint Ex. PW-1/A has been exhibited and has been taken on file to ascertain the facts and for natural justice. This will show that the blame for the non-availability of these two witnesses has been laid on the appellant who was already under suspension and it is not understandable as to how and on what basis or on what material, the Enquiry Officer came to the conclusion that the appellant was responsible for their disappearance or had procured employment for them in Devli Khanpur. If it was known to the Enquiry Officer that they were available in Devli Khanpur, was any attempt made to contact them at Devli Khanpur or to bring them to the enquiry proceedings from that place, is not indicated by the Enquiry Officer in his report making it obvious that the factors necessary for the exercise of jurisdiction under Rule 16(3) were not present and it was not open to the Enquiry Officer to have taken recourse to this Rule to bring on record the previous statement of the complainants which allegedly was recorded by Inspector D.D. Sharma. Moreover, the so-called previous statement itself of the complainants appears to be a highly suspicious document for the reason that S.H.O., D.D. Sharma had stated before the Enquiry Officer that he had received a complaint of Radhey Shyam, Rajpal Sing and Shiv Kumar whereupon all the three persons were summoned by him and after verifying the facts from those complainants had recorded their statement which he had dictated to ASI Jagdish Prasad. There were, therefore, two documents:
>
> (i) The original complaint made by the aforesaid three persons:
>
> (ii) The statement of these persons, recorded by ASI Jagdish Prasad, at the dictation of S.H.O., D.D. Sharma, after verifying the facts, set out in the complaint, from these

persons.

complaint, from these persons.

(1) The original complaint was not placed on the record and it was the statement, recorded by S.H.O., D.D. Sharma, which was produced before the Enquiry Officer. The absence of original complaint, therefore, indicates that there was, in fact, no complaint in existence which further supports the statement of Department's own witness Smt. Meena Mishra that no payment was made by her on 22.02.1990.

Apart from the above, Rule 16(3) has to be considered in the light of the provisions contained in Article 311(2) of the Constitution to find out whether it purports to provide reasonable opportunity of hearing to the delinquent. Reasonable opportunity contemplated by Article 311(2) means "Hearing" in accordance with the principles of natural justice under which one of the basic requirements is that all the witnesses in the departmental enquiry shall be examined in the presence of the delinquent who shall be given an opportunity to cross-examine them. Where a statement previously made by a witness, either during the course of preliminary enquiry or investigation, is proposed to be brought on record in the departmental proceedings, the law as laid down by this Court is that a copy of that statement should first be supplied to the delinquent, who should thereafter be given an opportunity to cross-examine that witness.

In State of Mysore vs. Shiv Basappa 1963(2) SCR 943 = AIR 1963 SC 375, the witness was not examined in the presence of the delinquent so far as his examination-in-chief was concerned and it was his previous statement recorded at an earlier stage which was brought on record. That statement was put to the witness who acknowledged having made that statement. The witness was thereafter offered for cross-examination and it was held that although the statement (examination-in-chief) was not recorded in the presence of the delinquent, since the witness had been offered for cross-examination after he acknowledged having made the previous statement, the rules of natural justice were sufficiently complied with. In Kasoram Cotton Mills Ltd. vs. Gangadhar 1964(2) SCR 809 = AIR 1964 SC 708 AND State of U.P. vs. Om Prakash Gupta, AIR 1970 SC 679, the above principles were reiterated and it was laid down that if a previous statement of the witness was intended to be brought on record, it could be done provided the witness was offered for cross-examination by the delinquent.

Having regard to the law as set out above, and also having regard to the fact that the factors set out in Rule 16(3) of the Delhi Police (F&A) Rules, 1980, did not exist with the result that Rule 16(3) itself could not be invoked, we are of the opinion that the Enquiry Officer was not right in bringing on record the so-called previous statement of witnesses Radhey Shyam and Rajpal Singh. It will be noticed that there were three complainants but only two, namely, Radhey Shyam and Rajpal Singh were proposed to be examined. Why was not the third complainant, Shiv Kumar, proposed to be examined? The reason becomes obvious from the fact that when he was examined as a Defence witness, he fully supported the appellant by stating that no payment was made by Smt. Meena Mishra on that date. But he was held by the Enquiry Officer to be an impostor on the ground that he had not proved himself to be actual Shiv Kumar. The Enquiry Officer has observed as under:-

> "DW 1, Sh. Shiv Kumar is a prepared witness and has not proved himself to be actual Shiv Kumar. This DW 1 has denied that he had visited the police station and had never met with SHO. Moreover he has denied to have signed EX PW-A/A. He had not made any complaint to the SHO. His version has been contradicted by ASI Jagdish Prasad, DW-4 the writer of this complaint Ex PW-1/A. Both these defaulter himself. So the statement of DW-1, Shiv Kumar has not been relied upon because he is not actual Shiv Kumar who is a complainant in this case and is a false person who has been produce by the defaulter."

The reasons why he has been held to be an impostor or a false person have not been indicated. The finding in this regard is wholly arbitrary and perverse. The findings recorded by the Enquiry Officer, have also been upheld by the Deputy Commissioner of Police, South District, New Delhi who had passed the order on 3rd of May, 1991 by which the appellant was dismissed from service. The Addl. Commissioner of Police, before whom the appeal was filed by the appellant, also agreed with the findings recorded by the Enquiry Officer as also the Deputy Commissioner and dismissed the appeal on 22.07.1991.

From the findings recorded separately by the Deputy Commissioner of Police, it would appear that there is a voucher indicating payment of Rs. 1000/- to Rajpal Singh, one of the labourers, on 8th of February, 1990. This document was not mentioned in the chargesheet in which only two documents were proposed to be relied upon against the appellant, namely, copy of the report of S.H.O., Lajpat Nagar dated 5th of March, 1990 against the appellant and the copy of the labourers' statement. This document has, therefore, to be excluded from consideration as it could not have been relied upon or even referred to by the Dy. Commissioner of Police. Moreover, according to the charge framed against the appellant, payment was made on 22.2.90 and not on 08.02.90 as indicated in the voucher and, therefore, voucher, for this reason also, has to be excluded.

To sum up, the charge against the appellant consisted of two components, namely :

> (a) On 22.2.90 Smt. Meena Mishra paid Rs. 1000/-

to the appellant for being paid to the three labourers.

(b) Appellant paid Rs. 800/- to labourers and kept Rs. 200/- with himself.

Smt. Meena Mishra, appearing as a witness for the Department, denied having made any payment to the appellant on that day. The labourers to whom the payment is said to have been made have not been produced at the domestic enquiry. Their so-called previous statement could not have been brought on record under Rule 16(3). As such, there was absolutely no evidence in support of the charge framed against the appellant and the entire findings recorded by the Enquiry Officer are vitiated by reason of the fact that they are not supported by any evidence on record and are wholly perverse.

The Enquiry Officer did not sit with an open mind to hold an impartial domestic enquiry which is an essential component of the principles of natural justice as also that of "Reasonable Opportunity", contemplated by Article 311(2) of the Constitution. The "Bias" in favour of the Department had so badly affected the Enquiry Officer's whole faculty of reasoning that even non-production of the complainants was ascribed to the appellant which squarely was the fault of the Department. Once the Department knew that the labourers were employed somewhere in Devli Khanpur, their presence could have been procured and they could have been produced before the Enquiry Officer to prove the charge framed against the appellant. He has acted so arbitrarily in the matter and has found the appellant guilty in such a coarse manner that it becomes apparent that he was merely carrying out the command from some superior officer who perhaps directed "fix him up".

For the reasons stated above, the appeals are allowed. The judgment and order dated 28th February, 1997, passed by the Central Administrative Tribunal, is set aside. The order dated 3rd of May, 1991, passed by Deputy Commissioner of Police by which the appellant was dismissed from service as also the order passed in appeal by Addl. Commissioner of Police are quashed and the respondents are directed to reinstate the appellant with all consequential benefits including all the arrears of pay up-to-date which shall be paid within three months from today. There will, however, be no order as to costs.