

\$~20

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) NO. 8493 of 2014**

%

Judgment dated 14th September, 2015

UNION OF INDIA & ORS.Petitioners

Through : Mr. Satyakam, Additional Standing Counsel

Versus

MAHENDER JIT SINGH Respondent

Through : Mr. Kuldeep Singh with Mr. Harpreet Singh,
Advocates

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J.

1. The present writ petition challenges the correctness of the order dated 16.12.13 passed by the Central Administrative Tribunal in O.A. No. 114/2012, whereby the learned Tribunal allowed the said O.A. filed by the respondent herein and dismissed the impugned penalty order dated 27.06.2006 and order of the appellate authority dated 04.07.2012.
2. The facts of the present case, in brief, are that the respondent joined Delhi Police on 07.04.1967 and superannuated on 30.06.2007 as Assistant Commissioner of Police. On 18.07.2001 the respondent was served with the charge-sheet involving three articles of charge which read as under :-

"ARTICLE-I

*That the said shri Mahender Jeet Singh Mattoo, ACP
committed gross misconduct as he fraudulently applied*

for United States Immigration status under section 245-A of Immigration and Nationality Act and obtained Employment Authorization Card in June 1990 and non-immigrant Visa on April 26,1991 from the American Embassy on wrong facts which is unbecoming of a Govt. Servant.

ARTICLE-II

On 24.02.99, Mr. Arthur H. Mills, U.S counsel, USA Embassy made a complaint as per which one Amarjit Singh Mattoo, Date of Birth 18th of may, 1954 , P.P. No. R764379 and Sarabjeet Kaur, Date of Birth 9th September 1958, P.P. No. A5810987 applied for tourist visa. During the course of extensive interview, Sarabjeet Kaur admitted to the consular office that she was actually one Manjeet Kaur, date of birth 15th of March 1973 and that the Amarjit was not her husband as claimed. Her real husband, one Jagtar Singh, is in the U.S., and her family had paid a sum of Rs. 25000/- for this fraudulent passport and was to pay more when she got the visa. Amarjit Singh also admitted that Manjeet Kaur was not his wife and that he had agreed with a travel agent , one Arbind Dingley, to pose as Manjeet Kaur's husband for a free ticket to the U.S. While the statements were being written, an individual identified as Mahender Jeet Singh Mattoo was noticed waiting outside the Embassy. Upon being brought into the Embassy, it was discovered that he was the brother of Amarjit Singh and was also an Assistant commissioner of Delhi Police. Upon questioning, he admitted being involved in the smuggling scheme of Ms. Manjeet Kaur and was to receive Rs. 1lakh for his assistance, while the travel agent was to receive Rs. 4lakhs.

ARTICLE-III

That the said Shri Mahender Jeet Singh Mattoo s/o Sh. Kripal Singh being a police officer had no business to be at the American Embassy officially on the date when he was taken into custody by the Embassy Officials and that he had gone there to help his brother who was posing as husband of one Manjeet Kaur to smuggle the lady into United States of America on a false passport. ”

A criminal case was simultaneously registered against the respondent vide FIR No. 76/1999. However, the criminal case ended in a final report filed under Section 173 of Code of Criminal Procedure which was accepted by the Court of competent jurisdiction.

3. The respondent denied the charges and a regular departmental enquiry was ensued in which the Inquiry Officer found the Articles of Charge Nos. I and II as not proved vide inquiry report dated 21.12.2005. The Inquiry Officer, in the above inquiry report, held that the mere presence of the respondent outside the U.S. Embassy was insufficient in itself to prove the misconduct alleged against the respondent. He further held that the “disclosure statement” of the respondent was inadmissible as evidence on account of the fact that it has been recorded while the respondent was in Police Custody. However, Article of charges no.III was held as proved against the respondent on the ground that his presence outside the U.S. Embassy was unbecoming of a Government servant as a Police Officer. The Lieutenant Governor of Delhi placed reliance on disclosure statement of the respondent and passed an order dated 27.06.2006 which imposed the punishment of reducing the pay of the respondent by four stages with immediate effect in the pay scale of Rs.6,500-10,500/- till the attainment of his superannuation i.e. 30.06.2007 with further stipulation that during the period of such reduction, the respondent shall not earn any increment of pay.
4. Mr. Satyakam, Additional Standing Counsel, appearing on behalf of the petitioners submitted that the orders passed by the

Disciplinary and Appellate Authorities are well reasoned, succinct and based upon material facts. The counsel further clarified that there was ample evidence against the respondent and the penalty imposed upon the respondent was commensurate with the guilt proved against him which was upheld by the Appellate Authority after the UPSC consultation.

5. The counsel for the petitioners drew a distinction between the degree of proof required in criminal trial and in departmental proceedings. The counsel urged that the proceedings of departmental inquiry are quasi judicial in nature. Therefore, the guilt of the delinquent official is not required to be proved beyond any reasonable doubt as in a criminal case. The counsel also submitted that there was no delay in deciding the appeal of the respondent however, if there was any delay found which may have occurred on account of various administrative reasons and procedure involved and not deliberate or intentional.
6. The counsel for the petitioners vehemently opposed the order passed by the learned Tribunal and submitted that the Inquiry Officer in his finding proved charge No. III against the respondent. The counsel for the petitioners submitted that the presence of the respondent at American Embassy is not disputed which has raised suspicion on his part.
7. Mr. Kuldeep Singh, learned counsel appearing on behalf of the respondent strongly supported the view taken by the learned Tribunal.

8. We have heard learned counsel for the parties and considered their rival submissions. We have also carefully examined the impugned order passed by the Central Administrative Tribunal dated 16.12.2013. It is the case of the petitioners that the learned Tribunal has failed to consider the Enquiry Report and the charges framed against the respondent. The short point which comes up for consideration before this Court is as to whether the respondent is found guilty of the charges imposed on him by Disciplinary Authority or whether the respondent stands free from all the charges. It would be useful to reproduce para 10 of the judgment of the Central Administrative Tribunal, which read as under:

“Now, we take up the 3rd issue. A plain reading of the charges, which have already been quoted earlier in this order, reveals that Article of Charge No.I relates to fraudulent application for US immigration visa by the applicant and the Article of Charge No. II relates to confession made by him that he was involved in women smuggling on consideration of Rs. 1,00,000/-. Article of Charge No. III alleges that he had gone to help his brother who was involved in smuggling of a lady into US which is unbecoming of a Government servant. Articles of charge No. I and II having not been proved, Article of Charge No. III obviously falls flat unless it is corroborated by the independent witness which has not been the case here. This issue is accordingly decided in favour of the applicant”

9. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Inquiry Officer performs a quasi judicial function. The charges levelled against the delinquent officer must be found to have been proved. The Inquiry Officer has a duty to arrive at a finding upon taking into consideration the materials brought on

record by the parties. The purported evidence i.e. Disclosure statement of the respondent collected during investigation by the Investigating Officer against the respondent by itself could not be treated as evidence in the disciplinary proceeding. Reliance, inter alia, was placed by the Lieutenant Governor of Delhi on the disclosure statement of the respondent which could not have been treated as evidence. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the Lieutenant Governor of Delhi was the purported disclosure made by the respondent before the police. According to the petitioners, the respondent being a senior Police Officer himself, it is unlikely that the respondent had made the disclosure statement under coercion or the contents of the disclosure statement could have been distorted by the local police. Admittedly, there was no direct evidence to prove the disclosure statement, Even though there was no indirect evidence in the present case. The tenor of the order dated 27.06.2006 demonstrates that the concerned Officer had made up his mind to find him guilty.

10. The pleas raised by the learned Counsel for the Petitioners are unsustainable and cannot be accepted in the facts and circumstances of the present case. In any case, in exercise of its jurisdiction under Article 226 of the Constitution of India, this Court does not have to re-appreciate the evidence and reach a finding different from the findings of the Inquiry Officer and Disciplinary Authority. Even if on considering all the evidence, this Court has a different inference, the view and the inferences drawn by the Inquiry Officer and the Disciplinary Authority are not

to be substituted by another view, even if possible, in the facts and circumstances. In *M.V. Bijlani v. Union of India and Ors. (2006) 5 SCC 88*, it was held by the Hon'ble Supreme Court that the judicial review is of the decision making process and not with re-appreciation of evidence. It was held by the Apex Court as under:

“25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.”

In any case, considering the allegations made against the respondent, this Court has also perused the Inquiry report and the observations made by the Inquiry Officer. The findings of the Inquiry Officer can be interfered by this Court in exercise of its jurisdiction provided the findings are illegal or perverse in any manner and based on no evidence.

11. In any case in exercise of its jurisdiction, it has always been in the discretion of the High Court to interfere or not depending upon the facts and circumstances of the case. In *Shangrila Food Products*

Ltd. and Anr. v. Life Insurance Corporation of India and Anr.
(1996) 5 SCC 54, the Hon'ble Supreme Court had held as under:

"...The High Court in exercise of its jurisdiction under Article 226 of the Constitution of India can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. The jurisdiction of the High Court, being extra ordinary, is normally exercisable keeping in mind the principle of equity. One of the ends of the equity is to promote honesty and fair play."

12. In the totality of facts and circumstances, this Court does not find any illegality or un-sustainability or perversity in the order of the learned Tribunal setting aside the order of punishment and there is no ground to interfere with the view taken by the learned Tribunal which will entail any interference by this Court in exercise of its jurisdiction under Article 226 of Constitution of India.
13. The writ petition is without any merit, and it is, therefore, dismissed. Parties are, however, left to bear their own cost.

G. S. SISTANI, J

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 14th, 2015
sc//