IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:12.10.2022

\+ **W.P.(C) 8738/2019**

SUNIL KUMAR SAINI ..... Petitioner

Through: Mr. Shekhar Kumar, Mr. Aman Bhalla and Mr. Aman Tehlan, Advs.

versus

THE DISTRICT AND SESSIONS JUDGE ..... Respondent

Through: Mrs. Avnish Ahlawat, Standing Counsel for DSJ along with Mr. Nitesh Kumar Singh, Mrs. Tania Ahlawat, Mrs. Palak Rohmetra, Ms. Laavanya Kaushik and Ms. Aliza Alam, Advs.

\+ **W.P.(C) 8896/2019**

TARUN KUMAR ..... Petitioner

Through: Mr. A.K. Bhardwaj and Ms. Jagrati Singh, Advs.

versus

HIGH COURT OF DELHI AND ANR. ..... Respondents

Through: Mr. Rajat Aneja and Ms. Aditi Shastri, Advs. for Delhi High Court
Mrs. Avnish Ahlawat, Standing Counsel for DSJ along with Mr. Nitesh Kumar Singh, Mrs. Tania Ahlawat, Mrs. Palak Rohmetra, Ms. Laavanya Kaushik and Ms. Aliza Alam, Advocates for R2

CORAM
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

AMIT MAHAJAN, J

1. Being aggrieved by the Impugned order dated 17.02.2018, passed by Shri Talwant Singh, District and Sessions Judge (HQ), Delhi, imposing a penalty of dismissal from service, the present writ petitions are filed by the petitioners.

Brief facts

2. Since the petitioners in both the writ petitions, that is W.P. (C) 8896/2019 and W.P.(C) 8738/2019 were dismissed by a common dismissal order, the present common judgment is being passed.

3. Petitioner, Sunil Kumar Saini, was initially appointed as Lower Division Clerk (LDC)/Junior Judicial Assistant (JJA) in the office of the District and Sessions Judge (HQ), Delhi on 13.03.1997 and at that relevant time, was discharging his duty as a Reader in the court of Shri Dinesh Kumar, the then learned M.M.-04(Traffic), South Saket Courts, Delhi.

4. The petitioner, Tarun Kumar, was initially appointed as Peon/ Ahlmad in the office of the District and Sessions Judge (HQ), Delhi on 22.12.2008 and at the relevant time was posted as Assistant Ahlmad in the court of Shri Dinesh Kumar, the then learned M.M.-04(Traffic), South Saket Courts, Delhi.

5. The controversy in the present case relates to issuance of forged orders under the signature of the learned MM. The learned MM was discharging his duties in relations to the offences falling under the Motor Vehicles Act, 1988 (hereinafter referred as "MV Act") for the South District, New Delhi. Section 66 of the MV Act defines an offence of permit violation committed by a vehicle and its owner/ driver. The punishment for the offence is provided under Section 192A of the MV Act. The Act empowers the traffic police to impound and suspend the permit of such vehicle if it is found to have committed an offence under Section 66 read with Section 192A of the MV Act.

6. Section 192A of the MV Act provides that whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of provisions of Section 66, shall be punishable for the first offence with a fine which may extend to ₹5,000/- but shall not be less than ₹2,000/- and for any subsequent offence with imprisonment which may extend to one year but shall not be less than three months or with fine which may extend to ten thousand rupees but shall not be less than five thousand rupees or with both.

7. The concerned Court of Metropolitan Magistrate, however, has been given a power to acquit the person or to impose a lesser punishment. The challans issued by the Traffic police are sent to the concerned Metropolitan Magistrate of the area and are disposed by a

summary trial procedure by maintaining the records of proceedings in Summary Trial Register (hereinafter referred as "STR").

8. In case the accused is convicted for the offence under Section 66 read with Section 192A of the MV Act, relevant orders are passed and in case no offence is made out, finding to that effect is recorded in the STR. *Robkars* are, thereafter, issued showing that no offence has been made out.

9. *Robkar* is a Urdu word which essentially means order of the Court. The term, however, is still being used as a matter of practice in common parlance and, hereafter, also referred in the present judgment as "*Robkar*".

10. Whenever any such *Robkars* are issued, the original copies are kept in the Court, while a *dasti* copy is given to the owner/driver of the vehicle who produces it before the concerned Traffic Police Officer to enable him to get the vehicle released.

11. As a matter of practice, the Readers assigned to the Court are given a duty to prepare the *Robkars* and in the absence of Reader, such *Robkars* are prepared by Ahlmad or other personnel attached with the Court depending upon their availability.

12. The *Robkar* being an order of the Court, are issued under the signature of the concerned Metropolitan Magistrate. The original copy is kept in the Court record and a *dasti* copy with stamp and seal

of the Court with a writing "Sd/-" at the place of signature of the Magistrate is given by the Reader/Ahlmad to the owner/driver of the vehicle.

13. On 19.11.2011, on an oral complaint being made by an Advocate, Ms. Kalpana Gaur, that some Court officials have been removing the offences under Section 66/192A of the MV Act, by issuing forged *dasti 'Robkar*'; Mr. Dinesh Kumar, M.M.-04(Traffic), South Saket Courts, Delhi, after collecting preliminary information, conducted preliminary inquiry. He asked all officials attached with his Court to inform if they have any knowledge about preparation of such forged *dasti Robkars*. The replies in writing were given by all officials attached with his Court including the petitioners herein. The learned MM examined the STR, where a total of 292 orders of removal of allegations under Section 66 and 192 of the MV Act were found to have received from the Traffic Inspector of Kalkaji circle. He found that a total of 59 *dasti Robkars* had, in fact, not been passed by him and were forged. Both the petitioners admitted to have prepared some forged orders and the learned MM in preliminary inquiry found their handwriting to be matching the handwriting in some of the *Robkars* . The learned MM then recommended that a strict disciplinary action be taken against the petitioners.

14. On being *prima facie* satisfied, the petitioners were placed under suspension by the learned District and Sessions Judge *vide* order dated 20.03.2012.

15. FIR No. 140/12 under Sections 420/ 463/ 464/ 465/ 466/ 467/ 468/ 471/ 474/ 120B, IPC dated 28.04.2012, was also registered with Police Station Saket which we are informed, is still under investigation. In addition to the FIR, a Departmental inquiry was also initiated against the petitioners. The chargesheet was, thereafter, issued *vide* Memorandum dated 20.11.2013, for imposition of major penalty. On denial of the charges, a regular departmental inquiry was, thereafter, assigned to Shri Sanjeev Jain, the then learned AD & SJ, who submitted his Inquiry Report on 21.09.2015.

16. The learned Inquiry Officer on the basis of evidence, opined that the charges against the petitioners are proved. The Inquiry Officer found that the case against the petitioners is clearly established and they are guilty of forging orders of the Court. He opined that the orders were issued to the owners of commercial vehicles whose permits could have potentially been cancelled if convicted for offences under Section 66 and 192A of the MV Act. Considering the brevity of charge and after affording an opportunity of personal hearing, the then learned District and Sessions Judge imposed a major penalty of dismissal *vide* order dated 17.02.2018.

17. The appeal under Rule 35 of the Delhi District Courts (Appointment & Conditions of Service) Rules, 2012, against the order dated 17.02.2018, was also dismissed by the appellate authority being

High Court of Delhi *vide* order dated 03.05.2019, which has led to filing of the present writ petitions.

Submissions made by the Learned Counsel for the Petitioners

18. The Learned Counsel for Sunil Kumar Saini contends that the judicial orders which are in question and stated to have been prepared by Sunil Kumar Saini are not forged and were issued only on the directions of the Learned MM. He further, contends that he cannot be held guilty of issuing forged or fabricated *Robkars* as the receipts of the amount/fine received from the parties duly bear the signature of the Learned MM.

19. He further contends that the Disciplinary Authority has erroneously come to conclusion that the petitioner Sunil Kumar's handwriting matches the handwriting in which 3 forged *Robkars* are prepared, without seeking the opinion of any handwriting expert to determine whether the disputed handwriting on the allegedly forged *Robkars* was of Sunil Kumar's. He further states that in the absence of opinion by any handwriting expert as per Indian Evidence Act, 1872, the finding of the Inquiry Officer and the Learned MM that the disputed handwriting was of Sunil Kumar is not reliable and cannot form basis to hold him guilty of the charges framed against him.

20. Learned Counsel submits that the Learned MM who in his preliminary inquiry report held that the disputed handwriting on 3 forged orders matched the petitioner Sunil Kumar's handwriting, during his cross-examination on 03.02.2015, admitted that there was a possibility of an error in his aforesaid opinion. Consequently, the Department's entire case based entirely on findings of the Learned MM in his preliminary enquiry report, is demolished in view of this statement made by the learned MM himself during his cross examination that there is a possibility of an error in his opinion regarding the handwriting/signatures of the delinquent official.

21. The Learned Counsel further submits that the Disciplinary Authority has failed to consider that apart from the findings of the Learned MM, not even a single witness is cited by the Department to prove that the forged orders were issued by the petitioner. Therefore, in the absence of any credible evidence, the dismissal of the petitioner from service is completely iniquitous. The Disciplinary Authority has erroneously failed to appreciate that the alleged *Robkars* at Serial No. 1-37 and Serial No.52-54 were issued on the dates, when the Petitioner was not even posted in the said court. He submits that the practice of issuance of alleged *Robkars* was in existence prior to the posting of the Petitioner.

22. Learned Counsel further submits that the charge framed against Sunil Kumar were vague inasmuch as the memorandum of charge dated 20.11.2013 served upon him did not specify as to how many

Robkars were forged by him. The material facts and particulars of the charges against Sunil Kumar were not available to him and he was consequently denied a reasonable opportunity of defending himself.

23. The Learned Counsel for Tarun Kumar adopted the arguments raised on behalf of Sunil Kumar Saini and further argued that the petitioner Tarun Kumar was merely a Dak Peon in the District Courts Establishment and was promoted by way of LDC only in July 2010 as an Assistant Ahlmad in the Learned MM's court. Being the junior most staff in the court, he was only obeying the orders of the learned MM and the remaining court staff when he prepared the *Robkars* in question, without any knowledge as to whether he was doing anything unlawful, therefore, he ought not to be dismissed from the service for following the instructions of his superiors.

24. Learned Counsel further states that the petitioner was not given any opportunity to lead evidence to defend himself, thus rule 29(17) of the "Delhi District Courts Establishments (Appointments and Conditions of service) Rules 2012 was violated.

REASONING

25. It is not a case where petitioners have disowned the statement given by them before the learned Metropolitan Magistrate. During the preliminary enquiry conducted by the learned MM. They have categorically stated as under:

STATEMENT BY SUNIL KUMAR SAINI

"Shri Dinesh Kumar Ji
MM, Saket, Delhi

Sir,

It is requested that Robkar of Circle KKC were made by me. On 17.11.2011 in the evening at 5.00 pm when after depositing the cash I returned to Court, Advocate and accused both came and said me that Judge Sahab has discharge our vehicle and you may prepare our robkar. Deposit challan was not with me, because Ahlmad had left and I had no knowledge to see the STR register. Thereafter I made the robkar of vehicle No. 1712, from STR register, because only I have posted here only two month back.

On 18.11.2011 in the evening I was doing the work of Court, when Advocate Divya and Kalpana both came to me and said me that Reader Sahab the Robkar of vehicle No. 1712 made by you, was wrong and in case you did not made our robkar we will made your complaint to the Judge Sahab. I refused to make their robkar and they made my complaint to Judge Sahab.

I got this mistake because I did not know much about the challan court.

I should give one chance to correct the mistake and I will not repeat such mistake in future.

I wanted to tell entire things to Judge Sahab. On 18.11.2011 due to not tallying the fine before the Court, I could not tell entire things to Judge Sahab.

Yours faithfully

Sunil Kumar Saini
Reader

Date 21.11 2011"

STATEMENT BY TARUN KUMAR

"Dated: 21.11.2011

Sir,

I am one of the employee of your office. I was Peon in 4th Class (Group D) and now Lower Division Clerk. Till today I have not worked as LDC in any office. Traffic Court is my first court, I served. And I have no knowledge about the Robkar. So many times when I used to sit in the Court then Accused and Advocate I was pressurized by them. And now when I newly came then I have been assigned this duty that Robkar is made when It is written in STR Register 66/192A. Thereafter few accused and advocate were pressuring me due to which I was Robkar day by day. Few days back I felt that I have done a mistake and I was not knowing the meaning of Robkar. I agree that due to oversight I have made a mistake but I am telling truth that I do not have any knowledge about the court procedure. I have been serving as LDC for the last one year. Therefore I did not made this mistake intentionally. Sir, I request with my folded hands that my mistake may kindly be excused. I assure you that in future I will rectify my mistake in future. Sir, my service is in your hands. I am really sorry for this. In future if I make little to little mistake then you are liberty to take action against me. But, Sir, please give me one more chance.

I assure you that I will not do any work which may create hurdle in the Court work. Sir, my service is totally new, you are everything for me, Sir, please give me one more chance to improve myself. Sir, if you give one more chance then I assure you Sir, that in future I will be very faithful to the work and will do the work very carefully.

Sir, you are requested that please excuse this child. Please excuse me and I am also feeling very guilty.
Sir, if you excuse me then I will be very grateful to you.

Yours faithfully,
(TARUN KUMAR)
LDC, In the Court of Shri Dinesh Kumar Ji
Saket Court, New Delhi

26. After the preliminary inquiry was conducted, a proper memorandum with the Statement of Articles of Charge and Statement of Imputation of Misconduct dated 20.11.2013 was issued on the petitioners highlighting the allegations against them while they were posted as Reader and Assistant Ahlmad respectively. The Inquiry Officer, thereafter, appointed by the learned District and Sessions Judge conducted a proper and detailed inquiry. The Department examined as many as ten witnesses to substantiate the allegations against the petitioners. The entire evidence was put to the petitioners and an opportunity of cross-examination was also given to them. In relation to the afore-mentioned statement given by the petitioner, Mr. Sunil Kumar Saini only stated that he did not get the sufficient time to go through the documents at the time when the statement was given. Mr. Tarun Kumar, only states that it was a mistake committed due to inexperience. However, what is important is both the petitioners did not disown the statement given by them. After considering the evidence on the arguments placed, the learned Inquiry Officer gave a categorical opinion that the department has successfully established its charges against the petitioners. The learned District and Sessions Judge also, thereafter, passed a reasoned order imposing a penalty of dismissal from service. The said order was also a well reasoned order after considering the objections raised by the petitioners.

27. It is obvious that the statement given by them was voluntary. It is not alleged that the same was given under some coercion or pressure from the Metropolitan Magistrate. The learned Magistrate gave a detailed report in his preliminary inquiry where he examined 262 orders whose details were taken out from the STR. He did not allege that all 262 orders were forged. As per the report total 60 orders, excluding the three orders for the challans of vehicles (being Challan Nos. 112528/29, 113266/67 & 112530/31 for Vehicle Nos. DL2W-1712, DL2W-1493 & DL2W-2356 respectively), three different dasti orders for these three challans, which were disposed off on 17.11.2011, were found to be forged and no order of removal of the allegations under Section 66 and 192A of MV Act had been passed by the Court. However, subsequently report was filed. On the basis of this report 4 orders were found to have been passed by the linked magistrate and were found on the record. Therefore, total of 56 such *dasti* were found to be forged. The petitioner, Sunil Kumar Saini, in fact, in his statement admitted to have prepared orders in respect of three vehicles. The learned Magistrate, after comparing the handwritings of the petitioners reached a *prima facie* conclusion that the orders of Item Nos. 5 to 15, 17, 18, 21 to 25, 29 to 41 and 44 to 46, were in the handwriting of the petitioner, Tarun Kumar while the orders of Item Nos. 42, 47 and 49 were in the handwriting of the petitioner, Sunil Kumar Saini.

28. The law in relation to interference by the High Court in exercise of powers under Article 226 of the Constitution of India in

disciplinary proceedings is well settled. It is settled that the High Court does not sit in appeal over the opinion of the disciplinary authority formed on the basis of evidence produced before it. The Hon'ble Supreme Court in ***Indian Oil Corporation Ltd. v. Rajendra D. Harmalkar; 2022 SCC OnLine SC 486***, held as under:

> *"28. On the question of judicial review and interference of the courts in matters of disciplinary proceedings and on the test of proportionality, a few decisions of this Court are required to be referred to:*
>
> > *i) In the case of Om Kumar (supra), this Court, after considering the Wednesbury principles and the doctrine of proportionality, has observed and held that the question of the quantum of punishment in disciplinary matters is primarily for the disciplinary authority to order and the jurisdiction of the High Courts under Article 226 of the Constitution or of the Administrative Tribunals is limited and is confined to the applicability of one or other of the well-known principles known as 'Wednesbury principles'.*
> >
> > *In the Wednesbury case, [1948] 1 K.B. 223, it was said that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. Lord Greene further said that interference was not permissible unless one or the other of the following conditions was satisfied, namely, the order was contrary to law, or relevant factors were not*

considered, or irrelevant factors were considered, or the decision was one which no reasonable person could have taken.

ii) In the case of B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749, in paragraph 18, this Court observed and held as under:

"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."

iii) In the case of Lucknow Kshetriya Gramin Bank (Now Allahabad, Uttar Pradesh Gramin Bank) v. Rajendra Singh, (2013) 12 SCC 372, in paragraph 19, it was observed and held as under:

*"**19.** The principles discussed above can be summed up and summarised as follows:*

> ***19.1.*** *When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.*
>
> ***19.2.*** *The courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority……."*
>
> *(Emphasis supplied)*

29. The argument that in the absence of opinion of Handwriting Expert, the finding given by the Inquiry Officer is not reliable and would fall foul of Indian Evidence Act, is misconceived. The principles governing the disciplinary inquiry and that of criminal prosecution are distinct. In a disciplinary inquiry, the employer enquires into the allegation of misconduct and unlike the criminal prosecution where the charge has to be established beyond reasonable doubt, in departmental proceedings, the misconduct has to be established on preponderance of probabilities. Therefore, strict rule of Evidence Act does not apply in the departmental disciplinary proceedings. The Hon'ble Supreme Court in ***State of Karnataka v. Umesh; (2022) 6 SCC 563***, held as under:

> *"16. The principles which govern a disciplinary enquiry are distinct from those which apply to a criminal trial. In a prosecution for an offence punishable under the criminal law, the burden lies on the prosecution to establish the ingredients of the offence beyond reasonable*

doubt. The accused is entitled to a presumption of innocence. The purpose of a disciplinary proceeding by an employer is to enquire into an allegation of misconduct by an employee which results in a violation of the service rules governing the relationship of employment. Unlike a criminal prosecution where the charge has to be established beyond reasonable doubt, in a disciplinary proceeding, a charge of misconduct has to be established on a preponderance of probabilities. The rules of evidence which apply to a criminal trial are distinct from those which govern a disciplinary enquiry. The acquittal of the accused in a criminal case does not debar the employer from proceeding in the exercise of disciplinary jurisdiction.

17. In a judgment of a three-Judge Bench of this Court in State of Haryana v. Rattan Singh V.R. Krishna Iyer, J. set out the principles which govern disciplinary proceedings as follows : (SCC p. 493, para 4)

> *"4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Evidence Act, 1872 may not apply. All materials which are logically probative for a prudent mind are permissible……"*

21. The Court also held that : (C. Nagaraju case, SCC p. 372, para 13)

> *"13. ……..The object of a departmental inquiry is to find out whether the delinquent is guilty of misconduct under the conduct rules for the purpose of determining whether he should be continued in service. The standard of proof in a departmental inquiry is not strictly based on the rules of evidence. The order of dismissal which is based on the evidence before the*

enquiry officer in the disciplinary proceedings, which is different from the evidence available to the criminal court, is justified and needed no interference by the High Court."

30. It is evident from the record produced by the respondents before this Court, that a proper opportunity was given to the petitioners to present their case in the form of producing evidence and also an opportunity to cross-examine the departmental witness. In fact, after the cross-examination of the petitioners, they denied that they want to lead any further evidence in their defence. The same is reproduced below:

By Tarun Kumar

"Q109. Whether you want to lead any evidence in your defence?
Ans. No."

By Sunil Kumar Saini

"Q112. Whether you want to lead any evidence in your defence?
Ans. No."

31. It is of no consequence that the precise number of forged orders are not mentioned against the petitioners. The petitioners admitted to have indulged in such activity; therefore, the onus cannot be shifted on the respondent to allege each and every specific orders which have been forged. The impugned order, therefore, cannot be faulted.

32. The defence taken by the petitioner, as is evident from the record seems to be of ignorance. The petitioners are not illiterate and were appointed to serve in the Courts after having qualified in terms of the relevant recruitment procedures. The mistake which has been established in the present case cannot be called or termed as a simple *bonafide* mistake. The staff employed in the Courts cannot claim ignorance of the procedures and the relevant safeguards which are required to be followed. They are, in fact, required to be more vigilant and well-versed with the procedural aspects involved in day to day functioning of the Courts. For the purpose of judicial works, the Judicial Officers depend on their Court staff and any such dereliction of duty cannot be ignored or forgiven. Being attached with the Courts, they cannot claim ignorance to the consequences of their actions.

33. The High Courts, while exercising power under Article 226 of the Constitution of India, does not sit in appeal to re-appreciate the evidence and is only to see whether appropriate procedure has been followed or not. As is evident from the facts of the present case, a proper procedure has been followed by the disciplinary authority and fair opportunity had been given to the petitioners. The order passed by the disciplinary authority is a speaking order having been passed for cogent reasons, and is based on the proper inquiry of the evidence on record.

34. The writ petitions, being devoid of merits are, therefore, dismissed.

AMIT MAHAJAN, J

VIBHU BAKHRU, J

OCTOBER 12, 2022
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